**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 29.04.2022**

**PRONOUNCED ON : 01.06.2022**

**CORAM:**

**THE HONOURABLE MR. JUSTICE M.S. RAMESH**

**W.P.Nos.12505, 12506, 13241 & 34721 of 2015**
**and**
**M.P.Nos.1, 1, 1 & 1 of 2015**

**In W.P.No.12505 of 2015**:-

1.K.Ravichandran

2.R.Sambangi

3.D.Rajendiran

4.D.Kaveri

5.P.Purushothaman

6.A.N.Thirugnanasambandan

7.R.Rahitha

8.J.Mohan Rao

9.P.Kumarasamy

10.M.Ragouraman

11.B.Senthamaraikannan

12.B.Saradhamani

13.J.Ameerdeen

14.V.Thanigasalam

15.M.Panneerselvam

16.K.Vasanthi

17.M.Thilagar

18.V.Jeeva

19.C.Manivannan

20.A.Abdul Kalam Azad

21.N.Srinivasan

22.A.Subrayan

23.R.Susainathan

24.S.Natarajan

25.D.Santhi

26.G.Baskaran

27.R.Kumaran

28.P.Balamuragan ... Petitioners

Vs.

1.The Chief Secretary,
Government of Pondicherry,
Pondicherry.

2.The Secretary (Co-operation),
Government of Pondicherry,
Pondicherry.

3.The Registrar of Co-operative Societies,
Government of Pondicherry,
Pondicherry.

4.The Liquidator,
Pondicherry Public Servant Co-operative
Stores Ltd., No.P.456,
Puducherry.

[R4 impleaded as per order dated 02.06.2015
by MP.2,2 & 2/2015 in
WPs.13241, 12505 & 12506/2015]

... Respondents

**In W.P.No.12506 of 2015**:

1.R.Prabakaran

2.A.Sammanasunathan ... Petitioners

Vs.

1.The Chief Secretary,
Government of Pondicherry,
Pondicherry.

2.The Secretary (Co-operation),
Government of Pondicherry,
Pondicherry.

3.The Registrar of Co-operative Societies,
Government of Pondicherry,
Pondicherry.

4.The Liquidator,
Ariyankuppam Public Servant
Stores, No.P.455 (Vanavil),
Puducherry.

[R4 impleaded as per order dated 02.06.2015
by MP.2,2 & 2/2015 in
WPs.13241, 12505 & 12506/2015]

... Respondents

**In W.P.No.34721 of 2015**:

1.P.Thirugnanasambandam

2.R.Baburam

3.R.Ramamoorthy

4.M.Ramachandran

5.P.Rajendran

6.V.Murugavel

7.V.Thulasingam

8.N.Arumugam

9.V.Ponnusamy

10.G.Vasudevan

11.M.Arumugam

12.K.Murugaiyan

13.N.Saraswathy

14.D.Nalina

15.A.M.Sha Alam

16.P.Murugaiyan

17.S.Krishnamoorthy

18.P.Panneerselvam

19.V.Purushothaman

20.A.Kasthuri

21.M.Mathiazhagan

22.K.Saroja

23.V.Palani

24.K.Mahonaran

25.G.Manickavelu

26.S.Kaliyaperumal

27.R.Govindammal ... Petitioners

Vs.

1.The Chief Secretary,
Government of Pondicherry,
Pondicherry.

2.The Secretary (Co-operation),
Government of Pondicherry,
Pondicherry.

3.The Registrar of Co-operative Societies,
Government of Pondicherry,
Pondicherry.

4.The Liquidator,
Bharathi Co-operative
Stores Ltd., No.P.564,
Puducherry. ... Respondents

**In W.P.No.13241 of 2015**:

J.Kanchana ... Petitioner

Vs.

1.The Chief Secretary,
Government of Pondicherry,
Pondicherry.

2.The Secretary (Co-operation),
Government of Pondicherry,
Pondicherry.

3.The Registrar of Co-operative Societies,
Government of Pondicherry,
Pondicherry.

4.The Liquidator,
Pondicherry Public Servant
Co-operative Stores Ltd., No.P.456,

Puducherry.
[R4 impleaded as per order dated 02.06.2015
by MP.2,2 & 2/2015 in
WPs.13241, 12505 & 12506/2015]

... Respondents

**COMMON PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pay the Writ Petitioners their unpaid salary from August 2011, Gratuity, Earned Leave Encashment, EPF Contribution (both employer and employee) Bonus, ESI benefits and all other admissible entailments along with interest at 12% per annum.

For Petitioner in all WPs : Mr.V.Vijayshankar
For Respondents in all Wps. : Mr.Chamraj
Mrs.V.Usha, AGP, Puducherry

**COMMON ORDER**

Heard the learned counsel for the parties.

2. In all these Writ Petitions, the petitioners herein are the ex-employees of three Co-operative Societies namely, a) Puducherry Public Servants Co-operative Stores P-456; b) Ariyankuppam Public Servants Stores P-455; and c) Bharathi Co-operative Consumer Stores Ltd., P-564. The petitioners herein were employed as Salesman / Assistant Clerk / Supervisors and had put in services between 20 to 25 years. As per the bye-laws of these Societies, the employee who have put in more than five years of continuous

service in the stores shall be entitled for gratuity, apart from other service benefits including earned leave encashment, EPF contributions, ESI benefits and other admissible entailment. Around the year 2011, these Co-operative Stores were running on loss, which prompted the Government of Puducherry (hereinafter referred to as 'Government') to constitute a Rehabilitation Committee for improving the functioning of the Stores and to provide alternate employment to their staffs. By the month of March and April 2007, the salaries payable to the petitioners were stopped and ultimately on 22.01.2013, the Government had ordered for winding up of all these Stores. Consequently, the affairs of these Stores were handed over to the Liquidator. Thereafter, the Government had initiated efforts to accommodate the employees of the Stores including the petitioners herein in other Stores and Societies, which proved futile. The petitioners herein now seek for disbursement of their unpaid salaries, gratuity, earned leave encashment, EPF Contributions, ESI benefits and other admissible entailments along with interest.

3. The learned counsel appearing for the petitioners submitted that the three Stores are fully owned by the Government, which was also contributing share capital every year and since the Government could not rehabilitate the Stores or provide for alternate

employment for the petitioners herein, it is bound to settle their dues. According to the learned counsel, the statutory dues of gratuity cannot be avoided or averted. Likewise, the employees Provident Fund, which was deducted from their salaries are statutory benefits to which these petitioners are entitled to.

4. The learned Government Pleader appearing on behalf of the all the respondents submitted that the Writ Petition against the Co-operative Societies, is not maintainable in view of the decision of the Hon'ble Five Judges Bench of this Court in ***K.Marappan Vs. The Deputy Registrar of Co-operative Societies and Another***, which held that a Society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws, cannot be enforced through a Writ Petition. He further submitted that Government would not be liable for payment of salary and other dues of these Co-operative Societies, which are not State owned Societies. By placing reliance on the counter affidavit filed on behalf of the Liquidator, the learned Government Pleader submitted that all these three Stores do not have any movable or immovable assets for salvage, except for some condemned and damaged furniture items. In this background, the learned Government Pleader sought for dismissal of the Writ Petitions.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It would be apposite to address the ground of maintainability, after addressing the other grounds with regard to the Government's liability to pay the dues of the employees of the Co-operative Societies.

7. The management of the affairs of the Co-operative Societies Stores are governed by the Board of Executive Committee members comprising of Directors, who are the employees of various Departments of the Government of Puducherry. The Managing Director is an official of the Co-operative Department of the Puducherry Government. The Government infuses share capital every year to the Stores. The object of the Societies is to cater to the various needs to the employees of the Government of Puducherry. When these Societies were running on loss, the Registrar of Co-operative Societies constituted a Rehabilitation Committee for revitalization and to make them financially sound. However the rehabilitation efforts failed. The Government thereafter initiated efforts to provide alternate employment to the staffs of these three Societies including these petitioners, which also did not fructify. It is in this background that the Government had ordered

for winding up these stores on 22.01.2013 and a Liquidator was appointed.

8. Under the bye-laws, all these petitioners are entitled for payment of gratuity amount, since they have put in required number of years of service. Likewise, the Provident Fund deducted from the salary of the employees were utilised in the business of these Stores for many years, without depositing the deductions to the CPF contributions. Disappointingly, the Liquidator has now reported that all these Stores do not own any movable or immovable assets, which could be salvaged to meet the claims of these petitioners. Though the Government was instrumental in forming the Societies and stepping into the affairs of the Societies when they were facing the loss by taking efforts unsuccessfully to rehabilitate and provide alternate employment, they are now trying to wriggle out of the situation by stating that they are not liable for payment of the salaries and other dues to these petitioners on the ground that these Socieites are not State Owned Societies.

9. In identical circumstances, in the case of ***Parimal Chandra Raha and Others V. Life Insurance Corporation of India and Others*** reported in ***1995 Supp (2) SCC 611***, when the employees of the canteens run by Co-operative Societies made

claims from LIC, a stand was taken that since the canteens were not run by LIC and its employees were not the employees of LIC, they are not liable to make the payments. The Hon'ble Supreme Court, took not of the role of the Corporation vis-a-vis, the Co-operative Societies canteens and found that the Co-operative Societies canteens are in reality the agencies of LIC and by lifting the veil between the Corporation and the Co-operative Societies' workers, fixed the liability on LIC. The relevant portion of the order reads as follows:-

> *"29. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the cooperative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even irk organising the canteen committees. It is further the Cor- poration which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the*

*canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time what ever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the promises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the em- ployees and of the offices of the Corporation, In fact, by controlling the hours during which the counter and floor service will he made available to the employees by the canteen,*

*the Corporation has also tied to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the pre- mises of the office itself and continuously since inception of the Corporation, as pointed out earlier, The employees of the Corporation have all along been making the complaints About the poor or in adequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees,the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the*

*canteen workers are in fact the employees of the Corporation."*

10. The facts in hand are identical to that of the case in *Parimal Chandra Raha (supra)*. If the ratio extracted above is applied to the facts of the case in hand, it is seen that the Government of Puducherry had also involved itself in the affairs of the Co-operative Societies at the time of its inception, as well as its unsuccessful efforts of rehabilitation of the Societies and for providing re-employment to its workers.

11. The role of the State as a model employer has been stressed upon in various decisions of the Hon'ble Supreme Court including the case of ***State of Jharkhand and Another V. Harihar Yadhav & Others*** reported in ***2014 (2) SCC 114*** in the following manner:-

> *"52. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a model employer. In Som Prakash Rekhi v. Union of India, Krishna Iyer, J., has stated thus: -*
>
> *70. "Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is*

*Indian humanity. The public sector is a model employer with a social conscience not an artificial person without soul to be damned or body to be burnt."*

*53. In Gurmail Singh and others v. State of Punjab and others, it has been held that the State as a model employer is expected to show fairness in action.*

*54. In Balram Gupta v. Union of India and Another, the Court observed that as a model employer the Government must conduct itself with high probity and candour with its employees.*

*55. In State of Haryana v. Piara Singh, the Court has ruled that: (SCC p.134, para 21)*

*"21. ... The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16."*

*56. In Bhupendra Nath Hazarika and another v. State of Assam and others, while laying emphasis on the role of the State as a model employer, though in a different context, the Court observed: (SCC p.540, para 65)*

*"65. .... It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer*

*should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized.""*

Thus, by liftying the veil between the Societies and the Government and by applying the ratio laid down in *Parimal Chandra Raha and Harihar Yadhav's cases (supra)*, I have no hesitation to hold that there is a responsibility, as well as a liability cast upon the Government of Puducherry, which is a public duty, to pay the dues of these petitioners herein, in connection with their services in their respective Stores.

12. Insofar as the first ground of maintainability of these Writ Petitions are concerned, the learned Government Pleader placed reliance on the decision of the Hon'ble Five Judges Bench of this Court in *K.Marappan (supra)*, to highlight the proposition that when a Society cannot be characterised as a 'State', the service conditions of its employees are governed by its bye-laws, which cannot be enforced through a Writ Petition. *K.Marappan's case (supra)* may

not be of much assistance to the respondents, since it is also held therein that even if a Society cannot be characterized as a State within the meaning of Article 12 of the Constitution of India, a Writ would lie against it to enforce a statutory public duty cast upon the Society. The relevant portion of the order reads as follows:

> *"21.3. Even if a society cannot be characterised as a State within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity."*

13. As already held, the duty cast on the Government in the present case, is a public duty and therefore the present Writ Petitions seeking to enforce such a public duty, would be maintainable against a Co-operative Society, in view of *K.Marappan's case (supra)*.

14. For all the foregoing reasons, a Writ of Mandamus is hereby issued, directing the Chief Secretary to Government of Puducherry; the Secretary (Co-operation), Government of Puducherry and the Registrar of Co-operative Societies, Government of Puducherry to pass orders, in favour of each of the petitioners herein, for disbursement of their unpaid salaries, earned leave encashment, EPF Contributions, ESI benefits and other admissible entailments, due to them for their respective services under the Co-operative Societies namely, a) Puducherry Public Servants Co-operative Stores P-456; b) Ariyankuppam Public Servants Stores P-455; and c) Bharathi Co-operative Consumer Stores Ltd., P-564 respectively, within three months from the date of receipt of a copy of this order. All the Writ Petitions stands allowed accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

**01.06.2022**

Index:Yes
Order: Speaking

DP

To

1.The Chief Secretary,
Government of Pondicherry,
Pondicherry.

2.The Secretary (Co-operation),
Government of Pondicherry,
Pondicherry.

3.The Registrar of Co-operative Societies,
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4.The Liquidator,
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**M.S.RAMESH.J,**

DP

**ORDER MADE IN**

**W.P.Nos.12505, 12506, 13241 & 34721 of 2015**
**and**
**M.P.Nos.1, 1, 1 & 1 of 2015**

**01.06.2022**