

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

RP.No. 146 of 2015 (P) IN WP(C).12147/2010

**AGAINST THE ORDER/JUDGMENT IN WP(C) 12147/2010 of HIGH COURT OF
KERALA DATED 10-12-2014**

REVIEW PETITIONER(S):

**V.P.SASIDHARAN
KOCHU PUTHENPARAMBU, KUMARAKAM P.O, KOTTAYAM.**

BY ADV. SRL.P.N.MOHANAN

RESPONDENT(S):

**1. THE CO-OPERATIVE DEPARTMENTAL EMPLOYEES CO-OPERATIVE
SOCIETY LTD. NO.K.294
REPRESENTED BY SECRETARY, RAILWAY STATION ROAD
KOTTAYAM 686 001.**

**2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (AUDIT)
KOTTAYAM 686 001.**

**R BY GOVERNMENT PLEADER SRL.R. RANJITH
R BY SRL.SURIN GEORGE IPE**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 19-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

RP.No. 146 of 2015 (P) IN WP(C).12147/2010

APPENDIX

PETITIONERS ANNEXURES

**ANNEXURE A1 COPY OF THE JUDGMENT DATED 10-12-14 IN W.P(C)
NO.12147/2010**

RESPONDENTS ANNEXURES

NIL

TRUE COPY

P.A TO JUDGE

SMM

K. VINOD CHANDRAN, J

.....
R.P. No.146 of 2015

in

W.P(C)No.12147 of 2010
.....

Dated this the 19th day of February, 2015.

ORDER

The petitioner seeks review of the judgment in the writ petition on the ground that the petitioner is entitled to gratuity computing the month to be of 26 days, as provided in the Payment of Gratuity Act. Determining of gratuity has to be also on the basis of the last pay drawn, for the 35 years of completed service. This Court in the judgment itself had noticed the proviso to Rule 59 of the Co-operative Societies Rules, 1969 which restricts the gratuity payable to 15 months.

2. The petitioner's prayer in the writ petition itself was for grant of Rs.5,07,356/-. While in the review, he seeks Rs.5,37,095/-. The specific question of 35 years of service to the credit of the petitioner was averred and argued in the matter. This Court had declined the same based on the proviso to Rule 59 of the Co-operative Societies Rules, 1969 .There is no ground for review on

that count.

3. The learned Counsel for the respondent bank also submits that, in fact, amounts were paid far in excess of the petitioner's eligibility to gratuity. The bank has paid about Rs.5 lakhs while his entitlement would be only Rs.3,98,985/- calculating the last pay drawn and determining gratuity on the basis of computation of 15 months pay as restricted in the proviso to Rule 59 of the Co-operative Societies Rules, 1969 . The bank had initiated recovery proceedings, against which the writ petition was filed.

4. However considering the fact that the petitioner had been granted the gratuity long back, when he retired in 30-6-2007, the respondent bank cannot seek any refund from the petitioner .

The writ petition was filed challenging Ext.P1 order of refund on the basis of an audit objection. The petitioner who was paid the gratuity amounts in 2007, on the basis of audit objections was directed to refund the excess amount by Ext.P1 in 2010. The respondent Bank also has

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no case that the petitioner was put to notice of the audit objection or that he was heard before the refund was sought. No default can also be found on the petitioner having been paid gratuity in excess of the due. That is not a proper exercise, hence the review petition would stand allowed in so far as setting aside Ext.P1 and the writ petition would stand disposed of.

**K. VINOD CHANDRAN,
JUDGE**

smm