IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WA.No. 2427 of 2009 ( ) IN WP(C).32472/2008

AGAINST THE JUDGMENT IN WP(C) 32472/2008 of HIGH COURT OF KERALA DATED 00-00-0000

APPELLANT(S)/PETITIONER:

K.P.KHADER, AGED 66 YEARS,
S/O.AATTAKOYA, CHAMATHPURA, KAVARATTI
LAKSHADWEEP.

BY ADV. SRI.M.A.ABDUL HAKHIM

RESPONDENT(S)/RESPONDENTS:
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1. CO-OPERATIVE SUPPLY AND MARKETING
   SOCIETY, KAVARATTI, LAKSHADWEEP.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES
   DEPARTMENT OF CO-OPERATION AND CIVIL, SUPPLIES
   ADMINISTRATION OF U.T. OF LAKSHADWEEP., KAVARATTI.

R1 BY ADV.SRI.M.RAGHURAJ,
R2 BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

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W.A.No. 2427 OF 2009

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Dated this the 4th day of June, 2015

JUDGMENT

P.R. Ramachandra Menon,J.

The prayer to set aside Ext.P6 proceedings dated 17.10.2008 quantifying the liability and Rs.34,555.00, to be satisfied by the appellant, after setting off the amount of gratuity payable to the appellant, was partly allowed by the learned single Judge, ordering the release of gratuity alone, with liberty to move the appropriate forum for quantification. This made the appellant to approach this

Court by filing this writ appeal. The appellant was working as Assistant Secretary in the first respondent/Society and he retired from service on attaining the age of superannuation on 31.3.1999. He was constrained to approach this Court by filing W.P.(C) No. 25642 of 2007 contending that, though the eligible amount of Provident Fund and DCRG were not released to him. It was also pointed out that, though the appellant had moved the first respondent/Registrar of Co-Operative Societies, Lakshadweep, the same did not yield any positive result and hence, the writ petition.

3. Earlier,pursuant to the steps taken by the appellant/petitioner, before the Registrar vide Ext.P2, Ext.P3 direction was issuedm directing the first respondent/ Society to release the CPF, but no direction was given with regard to DCRG. The appellant approached this Court in such circumstances, by filing the writ petition, seeking for appropriate relief in this regard. The said writ petition was

disposed of, as per Ext.P4 judgment dated 12.11.2007 directing the second respondent to ensure that the first respondent released the amounts ordered to be disbursed by the said respondent and to take appropriate action, if there was any failure. The claim for gratuity was also directed to be considered and appropriate orders were to be passed within the time limit as mentioned therein. The first respondent/Society filed Review Petition as R.P. No. 578 of 2008, pointing out that they could not make submissions with regard to the merits involved, when the matter was disposed of. The fact that the writ petitioner was indebted to the Society and that huge amounts were due to be cleared were also brought to the notice of the Court. In the said circumstances, the review petition was disposed of, as per Ext.P5 order dated 3.9.2008, to have the quantification exercise done within three weeks from the date of receipt of a copy of the order, with liberty to have adjustment in accordance with law. With regard to the outcome, the appellant/writ petitioner was set at liberty to have it challenged, if the same was detrimental to his rights and interest.

4. It was pursuant to the above verdict, that the matter was considered and Ext.P6 order was passed by the first respondent on 17.10.2008, whereby it was held that a total sum of Rs.3,91,291.11 was due to the Society, from the appellant, as per the audit report. A sum of Rs.98,757.69 was payable by the Society to the appellant/petitioner, in respect of the retirement benefits. It was sought to be set off and the balance amount of Rs.2,92,533.42 was required to be satisfied within 15 days, lest coercive proceedings should be pursued, which made the appellant to approach this Court again, by filing W.P.(C) No. 32472 of 2008. The challenge was mainly that Ext.P6 order was *per se* wrong and illegal in all respects, as the

employee had retired way back in the year 1999 and that the proceedings to the extent of retaining the DCRG mentioned as above, that too unilaterally, was beyond all provisions of law and hence liable to be intercepted. The learned single Judge observed that the course pursued by the Society setting off the gratuity payable to the appellant against the liability to the Society was not correct or proper. Referring to the provisions of the Payment of Gratuity Act, 1972, particularly Section 4(6), it was observed that such forfeiture could be justified only in the case of termination of service, which was not the position in the instant case, but for retirement on attaining the age of superannuation. It was accordingly, that a positive direction was given to the first respondent to release the gratuity due to the appellant within four weeks as specified. In response to the contention raised by the appellant/writ petitioner that, the liability indicated in Ext.P6 was not correct or sustainable, the learned single Judge observed that it was a question of fact, which was required to be considered on the basis of evidence to be let in, as it was not possible to be pursued in a proceedings under Article 226 of the Constitution. Thus, leaving it open to the appellant to pursue the remedies against the quantification of the liability before appropriate forum in appropriate manner, the writ petition was disposed of. It was also made clear in the judgment that, it would not stand in the way of the Society, in initiating proceedings in accordance with law for enforcement of dues.

5. Heard the learned counsel for the appellant, learned counsel appearing for the first respondent and the learned Standing counsel appearing for the 2nd respondent.

6. The assertion made by the learned counsel for the appellant is that no further proceedings will lie against the appellant for realisation of any amount if at all any, due to the first respondent/Society, as the appellant had retired

from the service on superannuation in the year 1999. The learned counsel also points out that the quantification/fixation of the alleged liability by the first respondent is without any basis and that too, without serving any notice affording an opportunity of hearing to the appellant/petitioner.

7. The learned counsel for the first respondent/Society submits that the quantification has not been done by the first respondent/Society, but fixed in the course of 'audit' conducted by the Departmental Authorities at different points of time. The said liability was forming part of the audit report for the year 1997-98 and it was being continued as per the subsequent audit reports as well; finally leading to Ext.P7. As per Ext.P7, the Society sought for permission of the second respondent/ Registrar for further steps. After considering the request made by the Society, the Registrar opined that it was not at all necessary

to seek for advice of the Registrar as it was well within the prerogative of the first respondent/Society to proceed with further steps for realisation of the due amount in accordance with law. It was accordingly that Ext.P6 was issued, submits the learned counsel.

8. After hearing both the sides, this Court finds that the substantial relief, especially with regard to the disbursement of the gratuity payable to the appellant and other service benefits, stands already cleared by the first respondent/ Society. The only remaining question is whether the alleged liability caused at the instance of the appellant while he was in service and carried forward could be caused to be realised at this stage and if so, how? This Court does not intend to consider this aspect in this appeal, as the rights and liberties in this regard are left open, by the verdict already passed by the learned single Judge and the only rider is that it shall be in accordance with the

provisions of law. The fact remains that no document is produced before this Court as to the issuance of any notice to the appellant, when he was in service or immediately after the retirement till the culmination of the proceedings vide Ext.P6. There is a case for the first respondent as put forth by the learned counsel for the Society with reference to specific pleadings, particularly in paragraph 4 of the counter affidavit, that the liability was very much in excess and is continuing and further that the appellant was very much aware of such liability, who hence had not come forward at any point of time till the year 2007 claiming the retirement benefits/gratuity. In such circumstances, the Society was justified in retaining the said amount and the cause of action arose only when interference was sought to be made by filing the writ petition. This Court does not find anything wrong in this regard.

9. The appeal is disposed of leaving the rights and

liberties of parties on both the sides open. Further proceedings can be pursued against the appellant/petitioner for realisation of the alleged debt, if such a course is permissible in accordance with law, of course in conformity with the statutory provisions in this regard and after affording an opportunity of hearing.

Sd/-

P.R. RAMACHANDRA MENON
JUDGE

Sd/-

BABU MATHEW P. JOSEPH
JUDGE

ks.

True copy

P.S. (Hr.Gr.)To Judge