

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 31 of 2012 (D)

PETITIONER(S):

1. S.KRISHNAN CHETTIAR,
ARAMANA, KILIKOLLOOR P.O., KOLLAM - 4.
2. LOUIS J.
JOSE VILLA, KAIKULANGARA NORTH
THIRUMULLAVAROM P.O., KOLLAM - 12.
3. N.MADHAVAN PILLAI,
KOTTAYIL AZHIKATHU VEEDU, ERATHU NORTH,
CHELIKKUZHAY P.O., PATTAZHI, KOLLAM DISTRICT.
4. N.BALAKRISHNA PILLAI,
SREE BHAVAN, MUTHUPILAKKAD P.O., VIA
PORUVAZHI, KOLLAM DISTRICT.
5. R.RAVEENDRAN,
SREEKRISHNA BHAVAN, MARUTHADI P.O., KOLLAM - 3.
6. G.SREEDHARAN PILLAI,
GEETHA BHAVAN, PULIPPARA P.O., KADAKKAL
KOLLAM DISTRICT.
7. N.GOPINATHAN PILLAI,
KOYIKKAVILAKOM, THUDAYANNOOR P.O., KOLLAM DISTRICT.
8. S.SREEDHARAN,
KOORAYIL VEEDU, VAKKOM P.O., CHIRAYINKEEZHU,
THIRUVANANTHAPURAM.
9. GOPIDAS,
SATHI VILASOM, MAYYANAD P.O., KOLLAM DISTRICT.
10. V.GANGADHARAN
PUTHENVILA VEEDU, ARUVAKKONAM, EZHUCON,
KOLLAM DISTRICT.
11. N.GOPINATHAN NAIR,
CKRA 168-B, KARYAM, SREEKARIYAM P.O.
THIRUVANANTHAPURAM - 17.

12. P.AYYAPPAN NAIR,
VRINDAVANAM, ADICHANALLOOR P.O., KOLLAM DISTRICT.
13. P.KRISHNAN UNNITHAN,
PRASANTHI, NADUVILAKKARA, ALUMMOODU P.O.
KOLLAM.
14. M.SHAHUL HAMEED,
ELLUVILA VEEDU, NEDUMPANA P.O., KOLLAM.
15. K.KOCHUNARAYANAN NAIR,
PEROOR VEEDU, ADICHANALLOOR P.O., KOLLAM.
16. N.VIDYADHARAN
POIKAVILA VEEDU, KOTTARA, MEEYANNOOR P.O.
KOLLAM DISTRICT.

BY ADV. DR.K.P.SATHEESAN

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
CO- OPERATION (B) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 1.
2. THE REGISTRAR
REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM - 1.

* ADDITIONAL R3 IMPEADED

R3. KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD,
REPRESENTED BY ITS SECRETARY,
P.B.NO.85, KALA NIVAS, T.C.NO.27/156, 157
CHINMAYA LANE, KUNNUMPURAM, NEAR AYURVEDA COLLEGE,
THIRUVANANTHAPURAM - 1.

*ADDITIONAL R3 IS IMPEADED AS PER ORDER DATED 23/02/2012 IN IA 2897/12.

R1-R2 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
ADDL R3 BY SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBIT

- EXHIBIT P1: TRUE COPY OF THE RELAVENT PAGES OF THE NOTIFICATION ISSUED BY THE GOVERNMENT OF KERALA AS PER G.O.(P) NO.44/95/CO-OP. DATED 14/03/1995.
- EXHIBIT P2: TRUE COPY OF THE GOVERNMENT ORDER G.PO.(P) NO.58/2003/CO.OP DATED 24/03/2003.
- EXHIBIT P3: TRUE COPY OF THE REPRESENTATION FILED BY THE KERALA CO-OPERATIVE SERVICE PENSIONERS ASSOCIATION DATED 03/08/2006.
- EXHIBIT P4: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONERS 1& 2 DATED 10/05/2007.
- EXHIBIT P5: TRUE COPY OF THE REPRESENTATION FILED BY THE KERALA CO-OPERATIVE SERVICE PENSIONERS ASSOCIATION DATED 10/02/2010.
- EXHIBIT P6: TRUE COPY OF THE QUESTION ASKED BY THE FIRST PETITIONER UNDER RIGHT TO INFORMATION ACT DATED 20/04/2010.
- EXHIBIT P7: TRUE COPY OF THE REPLY GVEN TO THE FIRST PETITIONER UNDER RIGHT TO INFORMATION ACT DATED 15/05/2010.
- EXHIBIT P8: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONERS 1& 2 DATED 24/06/2010.
- EXHIBIT P9: TRUE COPY OF THE JUDGMENT DATED 01/11/2010 IN W.P.(C) NO.33037/2010.
- EXHIBIT P10: TRUE COPY OF THE GOVERNMENT ORDER G.O.(P) NO.105/2011/CO-OP. DATEDDD 09/08/2011.
- EXHIBIT P11: TRUE COPY OF THE ORDER G.O(RT) NO.502/2011/CO-OP. DATED 06/09/2011.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.31 of 2012

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Dated this the 17th day of March, 2015

JUDGMENT

Aggrieved by the denial of arrears of pension and arrears of family pension to the petitioners, they have come up before this Court with this writ petition.

2. The petitioners are retired employees of Co-operative Societies in the State of Kerala and they demitted their office prior to 3.6.1993. As per order dated 14.3.1995, the Government introduced pension scheme to the retired employees of the co-operative sector with effect from 3.6.1993. However, Section 80 of the Co-operative Societies was implemented with effect from 1.1.1974 by which, all employees of the co-operative sector were given provident fund. Therefore, the Government realised that the pension scheme made applicable with effect from 3.6.1993 is a mistake and it was given retrospective effect from 1.1.1974 as per order dated 24.3.2003.

3. However, while rectifying the anomaly, some of the benefits which were given to the employees who demitted their

office after 3.6.1993, were denied to those employees who retired prior to 3.6.1993. Representations were made by the petitioners and ultimately, pursuant to the judgment of this Court in W.P(C) No.33037 of 2007, the Government extended the benefit of family pension to all the employees.

4. The grievance of the petitioner is that in spite of this, arrears of pension and arrears of family pension are denied to them. According to them, they are entitled to get arrears of pension and arrears of family pension as extended to all the employees of the co-operative sector, who retired after 3.6.1993. It is with this background, the petitioners have come up before this Court.

5. In the counter affidavit filed by the second respondent, it was contended as follows:

The Government of Kerala framed a self financing pension scheme for the establishment of pension to the employees of co-operative societies. Through G.O(P) No.128/2006/Co-op. dated 12.7.2006, the Government extended the benefit of the Self Financing Pension Scheme to all primary co-operative societies, regional, central and apex co-operative other than the Kerala Co-

operative Bank and District co-operative Bank coming under the administrative control of RCS w.e.f 3.6.1993.

As per G.O(P) No.44/95 the Self Financing Pension Scheme was applicable only to those who had retired after 3.6.1993. The Government decided to extend the benefit under the scheme to those employees who retired from the service of Co-operative Societies during the period from 1.1.1974 to 3.6.1993 and are alive. Thus, the Government introduced the amended scheme through the G.O(P) No.58/2003/Co-op. dated 24.3.2003.

It was further stated that the Government of Kerala framed a Self Financing Pension Scheme for the establishment of payment of pension to the employees of Co-operative Societies. The pension board is working on the basis of the Government orders from time to time. It was further stated that being a self financing pension scheme, the pension fund collected by the employer in the name of the employee is the only working capital of the scheme. In the case of the employees who had retired in between 1974 and 1993, an amount equal to such portion of the employer's contribution to the CPF with interest upto the date of retirement has to be remitted.

According to the second respondent, the pension board is not levying any interest for the pension fund of the employees who retired between 1974 and 1993. However, in the case of the employees who had retired after 1993 and the pension board is levying 12% interest upto 2/1999 and thereafter 24% interest upto the date of remittance. The pension fund remitted in the name of one employee would be sufficient to pay pension for 30 months for that employee. It was further submitted that since the pension board is not calculating interest on the pension fund of the employees who retired between 1974 and 1993, the pension board is not able to sanction pension arrears to those employees. Receiving nominal amount as pension fund contribution and sanctioning huge amount as arrears would affect the validity of the self financing pension scheme. For sanctioning arrears of pension to those employees, the pension fund remitted by them would not be sufficient and it would adversely affect the existence of the scheme.

It was further stated that as per G.O(P) Nos.58/2003 and 105/2011, the pension board was receiving a meagre amount as the pension fund contribution and it would not be sufficient for

payment of pension during their life time. Therefore, the payment of pension would adversely affect the viability of the scheme.

6. Arguments have been heard.

7. While implementing the pension payment scheme, the retired employees were divided into two categories, viz., those who retired prior to and after 3.6.1993. The petitioners point out that such a classification among similarly placed employees is discriminatory and, therefore, the Government amended the Rules by Ext.P10 extending the benefits to all categories of employees. However, in case of employees who retired prior to 3.6.1993, the arrears of pension was denied by Ext.P11. Therefore, the petitioners are challenging Ext.P11 to the extent of denying the arrears of pension as the same is arbitrary and violative of Article 14 of the Constitution.

8. The only reason pointed out by the respondents is that the payment of arrears of pension and family pension of the petitioners would adversely affect the financial position of pension board. The said reason is patently erroneous and illegal. The learned senior counsel for the petitioners points out that as per the balance sheet of the year 2011, the outstanding balance on account of pension

board was more than rupees six hundred crores. The interest of the said amount alone would come crores of rupees. Therefore, according to the learned senior counsel for the petitioners, paying arrears would not cause any financial burden on the pension board. It was argued that the said reasoning is only a ruse to deny arrears of pension to the petitioners.

9. It is crucial to note that the eligibility of the petitioners for arrears of pension and family pension are not denied by the first respondent. The only constraint pointed out is that the same may adversely affect the financial position of the pension board. It is crucial to note that every year, the retired employees are given contribution to the funds and thus, the fund is increasing every year and the interest accrued from the fund along is utilised for paying pension.

10. It was strenuously argued by the learned counsel for the third respondent that if there is any shortage in the pension fund, there is no provision for recouping the same. The said argument is in correct as per G.O(P) No.53/2001 dated 7.3.2001. It was specified that if there is any shortage in the pension fund, it could be raised, either by Government or by Co-operative Institutions or

by utilising the Co-operative Development Fund.

11. It is also crucial to note that in respect of all the employees, arrears of pension was already granted. In case of persons who retired prior to 1993, pension was granted only after 10 years and that too, after the interference of this court in O.P No.25925 of 1999. Again after nine years, i.e., in the year 2011, ultimately as per the direction of this Court in W.P(C) No.330 of 2010, the family pension was sanctioned. However, they were not given arrears of pension and arrears of family pension.

12. There is not rhyme or reason in dividing similarly placed employees into two categories. One category were given the benefits while the said benefits are denied to the petitioner who belong to other category. Therefore, this Court is of the view Ext.P4 is highly arbitrary and violative of Article 21 of the Constitution of India.

In the result, the writ petition is allowed. Ext.P11 to the extent it denies arrears of pension and arrears of family pension to the employees of the Co-operative Societies who have retired from service prior to 3.6.1993 is hereby quashed. The first respondent is directed to take appropriate steps for payment of arrears of pension

and arrears of family pension to all the employees in the co-operative sector irrespective of their date of retirement. It is hereby declared that the petitioners are entitled to get arrears of pension and arrears of family pension w.e.f the date of their retirement as given in the case of employees who retired after 3.6.1993.

Formal orders to this effect shall be passed within a period of three months from the date of receipt of a copy of this judgment. Monetary benefits shall be released to the petitioners within one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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