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

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WA.No. 17 of 2015
IN WP(C).4981/2011

AGAINST THE JUDGMENT IN WP(C) 4981/2011 of HIGH COURT OF KERALA
DATED 28-01-2014

APPELLANT/1ST RESPONDENT IN WPC :

THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
KOTTAYAM.

BY SR. GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI

RESPONDENTS/PETITIONER AND 2ND RESPONDENTS IN WPC:
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1. CYRIAC JOHN K.
SALESMAN GR. II
ST. DOMINICS COLLEGE & CO. OPERATIVE SOCIETY NO. K. 546
RESIDING AT KALLURAMBLE HOUSE, PALAMPRA.P.O.
PODIMATTOM, KOTTAYAM DIST.

2. KANJIRAPPALLY ST. DOMINIC'S COLLEGE,
CO-OPERATIVE SOCIETY NO. K. 546, PARATHODU.P.O.
REPRESENTRED BNY ITS SECRETARY. (NOW NON EXIST)

BY SRI.BIJU MARTIN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W. A. No.17 of 2015

Dated this the 10th day of August, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The writ petition filed by the first respondent/writ petitioner claiming the service/retirement benefits was disposed of, directing the second respondent to release the balance amount, if any, to be paid to the first respondent/writ petitioner. This was sought to be reviewed by filing R.P. by the appellant herein, referring to disbursement of the benefits such as Provident Fund, Staff Security Deposit, and Employees Welfare Fund etc. effected in the meanwhile and further that the Society itself was no more in existence, having undergone liquidation, leaving no assets except to the tune of ₹2,603/-. Interference was declined in the Review Petition, which made the Joint Registrar of Co-operative Societies to file this appeal.

2. The first respondent herein was working as an employee of the second respondent Society. He joined service as Salesman Grade-II with effect from 01/07/1977. Later, he submitted an application for voluntary retirement in May, 2009 on medical grounds; but it was not acceded to. Pursuant to rejection of the application for voluntary retirement, the matter was taken up further, but later, he resigned from the service, vide Ext.P4. The first respondent approached this Court by filing W.P.(C) No.26145 of 2010 claiming for the service/retirement benefits which was disposed of as per Ext.P6 judgment, giving appropriate directions. Pursuant to the said verdict, the matter was heard and Ext.P7 order was passed by the appellant, directing the second respondent to fix the liability of the petitioner, if any, and to disburse the amounts payable to the writ petitioner as specified therein.

3. Contending that the second respondent Society did not give effect to Ext.P7 order passed by the appellant, the

first respondent approached this Court by filing W.P.(C) No.4981 of 2011 for causing disbursement of the due amount and also to direct the first respondent in the writ petition (appellant herein) to supersede the Managing Committee of the second respondent Society and to entrust the administration of the Society to an Administrator under Sections 32 and 33 of the Kerala Co-operative Societies Act, 1969, for disobeying the departmental directions. When the matter came up for consideration before the learned single Judge, it was brought to the notice of the learned single Judge, from the part of the appellant herein, that earnest efforts were being pursued to cause disbursement of the due amounts, adding that the amount towards Provident Fund had already been released. It was also stated that, all possible steps were being taken to cause disbursement of the Employees Welfare Fund for the period from 26/02/1992 to 31/07/2009. It was in the said circumstances, that the writ petition was disposed of, as per judgment dated 28/01/2014, directing the second respondent Society to release the balance amount, if any, to the first respondent/petitioner within three months.

4. Subsequently, it came to the notice of the appellant herein, that some relevant factual aspects were omitted to be brought to the notice of the learned single Judge, when the matter was disposed of. As a matter of fact, the amounts due under Provident Fund, the amount due under the Employees Welfare Fund and the amount in respect of Staff Security were also released to the first respondent/writ petitioner. Because of the lapses on the part of the Society, further proceedings were taken. The Society was virtually wound up and the available assets were subjected to sale, generating maximum amounts. Out of the total amount generated, a sum of ₹ 46,311/- has been spent towards expenses for various purposes. The balance amount available as on date is only a sum of ₹2,603/-. Even though notice was issued to the first respondent herein to collect

the said amount, he did not appear to accept the same and in the said circumstances, it was transferred to the Common Liquidation Fund, as decided by the liquidator. In other words, after the liquidation of the second respondent Society with effect from 31/10/2013, the said Society was no more in existence and hence, the matter had to be brought to the notice of the Court. It was, accordingly, that Review Petition No.493 of 2014 was filed, which, however, came to be dismissed as per order dated 01/10/2014. This made the appellant to challenge the proceedings by way of the present appeal.

5. Heard the learned Senior Government Pleader Sri.M.Mohammed Shafi and the learned counsel appearing for the first respondent.

6. Notice was not issued to the second respondent, as the said respondent was no more in existence, having wound up in accordance with law. Learned counsel for the first respondent submits that, but for the amount stated as

disbursed to the first respondent, various amounts are still due towards gratuity, leave surrender, arrears of salary and such other heads. Reference is made to Ext.P7 dated 04/11/2010 passed by the appellant herein. There is no dispute with regard to the eligibility of the first respondent/petitioner for the amounts payable under different heads. The question is whether anything is left over, as the assets of the second respondent Society, so as to be proceeded against to the requisite extent. This question cannot be answered in the 'positive', as all the assets of the Society have reportedly been proceeded against and have been sold in auction. The income generated has already been satisfied to the first respondent/petitioner after setting off the expenses incurred by the departmental authorities.

7. It is worthwhile to note the reliefs sought for by the first respondent/petitioner in the writ petition, which are extracted below:-

"(i) to issue a writ in the nature of mandamus commanding the respondents to take immediate steps for the disbursement of the retirement benefits to the petitioner forthwith.

(ii) to issue a writ in the nature of Mandamus or other appropriate writ, order or direction directing the 1st respondent to supersede the Managing Committee of the 2nd respondent Society and to entrust the administration of the Society to an administrator under Sections 32 and 33 of the Kerala Co-operative Societies Act, 1969 for disobeying the departmental directions.

(iii) to issue such other writ order or direction as this Hon'ble court may deem fit to grant in the circumstances of the case.

(iv) to grant the cost of the petitioner."

There is no case for the first respondent that there was any failure on the part of the appellant in taking appropriate action against the second respondent. The factum of passing Ext.P7 order stands admitted. The surviving relief was more with reference to the action to be taken against the second respondent Society, for supersession because of the failure on the part of the said Society in complying with the departmental instructions. Since the Society has already been wound up in accordance with law, nothing further remains to be acted upon by the appellant.

8. There is no case for the first respondent that the amount is liable to be paid by the appellant and there cannot be any such prayer at all; but for seeking to proceed against the second respondent Society and its assets, if any. In the above facts and circumstances, this Court records that nothing else requires to be pursued by the appellant herein in connection with Ext.P7 or the verdict passed by the learned single Judge. It is open for the first respondent to proceed against the left over assets of the second respondent Society, if any, bringing the position to the notice of the departmental authorities for pursuing such steps in this regard. Without prejudice to such rights and liberties, the appeal stands disposed of. If the first respondent/petitioner approaches the appellant for releasing the admitted balance fund available to the extent of

₹2,603/-, the appellant shall take immediate steps to cause the same to be released to the first respondent forthwith, notwithstanding the transfer of the said amount pursuant to the alleged lapse on behalf of the first respondent in collecting the same, earlier.

The appeal is disposed of as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE