

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WA.No. 45 of 2015 () IN WP(C).26268/2013

**AGAINST THE ORDER/JUDGMENT IN WP(C) 26268/2013 of HIGH COURT OF KERALA
DATED 18-11-2014**

APPELLANT(S)/RESPONDENT NO.1:

**V.NAGAPPAN
THANKA NIVAS, NEAR AUP SCHOOL
KODUMBU P.O.PALAKKAD 678 551.**

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENT(S)/PETITIONER/RESPONDENTS 2 AND 3:

- 1. PALAKKAD CO-OPERATIVE MARKETING SOCIETY LTD.
NO.F-1078, CHITTUR ROAD
PALAKKAD REPRESENTED BY ITS SECRETARY.**
- 2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
PALAKKAD - 678 001.**
- 3. KERALA STATE CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM - 695 001.**

**BY SR GOVERNMENT PLEADER SRI.M.K.ABOOBACKER
R1 BY SRI.P.RAMAKRISHNAN, SC**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal No. 45 of 2015
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Dated this the 5th day of March, 2015

J U D G M E N T

Antony Dominic, J.

The appellant retired from the service of the respondent Co-operative Society on 31/10/05. At that time, he was working as an Accountant and was earning salary in the scale ₹1419-2505. His monetary claims consequent on the retirement were all settled on that basis. Subsequently, by Exts.R1(a), R1(b) and R1(c), pay revision was effected in the Co-operative section w.e.f. 1994, 1999 and 2004 respectively. According to the appellant, respondent society adopted the pay revisions and resolved to implement the same by Ext.P1 resolution dated 26/6/12. In the meantime, on 2/5/12, appellant submitted Ext.P2 before the Joint Registrar of Co-operative Societies invoking his power under Section 69 of the Kerala Co-operative Societies Act claiming certain monetary benefits. This claim made by the appellant was registered as ARC No.169/12. The society entered appearance and filed Ext.P3 objection. The matter was considered and Ext.P4 award was passed on 10/10/2012, whereby the Joint Registrar allowed various claims

made by the appellant. The society challenged Ext.P4 award in appeal No.14/13. The Kerala Co-operative Tribunal dismissed the appeal by Ext.P6 judgment. It was challenging Exts.P4 and P6, the society filed WP(C) No.26268/13. By the judgment under appeal, holding that the claim made by the appellant was not maintainable before the Joint Registrar and that the claim was a stale one, the learned single Judge allowed the writ petition. It is this judgment which is under challenge before us.

2. We heard the learned counsel for the appellant, the learned counsel for the respondents and considered the submissions made.

3. The first question that arises is whether the claim made by the appellant before the Joint Registrar was maintainable under Section 69(1)(h) of the Kerala Co-operative Societies Act or whether such claim should have been made before the Arbitration Court. According to the learned single Judge, the claim though a monetary one, arose out of the service rendered by the appellant in the society and therefore was maintainable only before the Arbitration Court. In so far as this aspect of the matter is

concerned, as we have already stated, the claim made by the appellant was in the context of the pay revisions effected by Ext.R1(a), R1(b) and R1(c). Once pay revision is ordered by the Government, the only way for a society to avoid the liability thereunder is by obtaining orders from the Registrar of Co-operative Societies in terms of the second proviso to Rule 188 and the enabling provision contained in the Government Orders.

4. In so far as this case is concerned, the society does not have a case that any such order has been obtained by them from the Registrar. This therefore means that the society was bound by Exts.R1(a), R1(b) and R1(c). If so, the claim made for the benefit of Exts.R1(a), R1(b) and R1(c) involves only the quantification thereof and not adjudication of the liability. Necessarily, therefore, such a claim can only be a monetary claim. We find from the judgment under appeal that the learned single Judge has followed a Division Bench judgment of this Court in ***F.A.C.T. Service Co-operative Societies v. Balakrishna Menon K.*** (2007(3) KLJ 235) to support his conclusion that the claim was not a monetary one. However, a close reading of that judgment would show that what

fell for examination of the Division Bench was whether the claim made by the respondent in that case under Section 66 was maintainable and answering that contention, this Court said that the claim ought to have been made under Section 69. The Division Bench did not thereafter examine whether the claim of the respondent therein was a monetary claim maintainable before the Joint Registrar or a non monetary claim to be adjudicated by the Arbitration Court. Therefore, we cannot sustain that part of the judgment of the learned single Judge.

5. However, Ext.P2, the copy of ARC No.169/12 filed by the appellant shows that in this ARC filed by him on 2/5/12, what he claimed was arrears of revised pay implemented by Exts.R1 (a), R1(b) and R1(c). Exts.R1(a), R1(b) and R1(c) are pay revisions of 1994, 1999 and 2004. Though this claim made by the appellant was disputed by the respondent society in Ext.P3 objection filed by it, Ext.P4 award shows that the Joint Registrar has awarded ₹2,71,500/- towards gratuity, ₹1,81,000/- towards leave surrender and ₹8,96,045/- towards arrears of pay. The Joint Registrar has also directed the Society to remit ₹10,05,336/- towards pension

contribution. Further interest of 10% is also awarded. Award of anything other than the arrears of pay is clearly beyond the case pleaded by the appellant in Ext.P2 case filed by him and such award could not have been passed by the Joint Registrar. In so far as the arrears of pay claimed is concerned, that claim made in May 2012 was time barred and could not have been awarded. It is this award which was confirmed by the Tribunal in Ext.P6.

6. Though we cannot sustain the award passed by the Joint Registrar, fact remains that the appellant is having claim towards revised pension and revised gratuity and such other benefits. Although much time has passed, since cause of action in relation to many of these claims is continuing and recurring, passage of time cannot be held against the appellant. If that be so, he should be entitled to agitate his rights before the appropriate forum for those benefits.

7. In such circumstances, while we disagree with the learned single Judge that the claim made by the appellant was totally not maintainable before the Joint Registrar and in his conclusion that the claim is totally stale, we confirm the judgment

passed by the learned single Judge setting aside Exts.P4 and P6. But however, liberty is given to the appellant to pursue his claims against the society in respect of issues in relation to which his cause of action is continuing and recurring.

The judgment of the learned single is modified to the above extent and the appeal is disposed of.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

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PA to Judge