

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 7870 of 2005 (J)

PETITIONER : -

THE PERINGOME SERVICE CO-OPERATIVE BANK LTD.,
PERINGOME P.O., KANNUR DISTRICT,
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.M.SASINDRAN
SRI.TOJAN J. VATHIKULAM

RESPONDENTS : -

1. STATE CO-OPERATIVE EMPLOYEES PENSION BOARD,
THIRUVANANTHAPURAM-1,
REPRESENTED BY ADDITIONAL REGISTRAR/SECRETARY.
2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE CO-OPERATIVE DEPARTMENT,
THIRUVANANTHAPURAM.
3. K.P.BHASKARAN, S/O.KUNHIKANNAN,
(FORMER SECRETARY, PERINGOME SERVICE
CO-OPERATIVE BANK), PERINGOME, PAYYANNUR (VIA),
KANNUR DISTRICT.

R1 BY ADV.SRI.V.G.ARUN

R1 BY ADV.SRI.P.VMOHANAN,SC,K.ST.CO.OP.EMP.PENSION BOARD

R1 BY ADV.SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD

R3 BY ADV.SRI.O.VMANIPRASAD

R2 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXHIBIT P1 : COPY OF THE DISMISSAL ORDER DATED 30.1.1996.
- EXHIBIT P2 : COPY OF THE PROCEEDINGS No.1852/01/AEL/K.dis DATED 8.5.2001.
- EXHIBIT P3 : COPY OF THE ORDER DATED 25.5.2001.
- EXHIBIT P4 : COPY OF THE LETTER DATED 1.6.2001.
- EXHIBIT P5 : COPY OF THE PAYIN-SLIP DUPLICATE.
- EXHIBIT P6 : COPY OF THE NOTICE FROM THE 1st RESPONDENT.
- EXHIBIT P6(a) : COPY OF THE CALCULATION STATEMENT.
- EXHIBIT P7 : COPY OF THE JUDGMENT DATED 14.10.2004 IN O.P. 11937/2002.
- EXHIBIT P8 : COPY OF THE NOTICE DATED 1.12.2004.
- EXHIBIT P8(a) : COPY OF THE DEMAND NOTICE.
- EXHIBIT P8(b) : COPY OF THE CALCULATION STATEMENT.
- EXHIBIT P9 : COPY OF THE LETTER DATED 14.12.2004.
- EXHIBIT P9(a) : COPY OF THE DEMAND NOTICE DATED 10.12.2004.
- EXHIBIT P9(b) : COPY OF THE CALCULATION STATEMENT.
- EXHIBIT P10 : COPY OF THE RECEIPT SHOWING PAYMENT OF AN AMOUNT OF Rs.1,03,626/-.
- EXHIBIT P11 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.
- EXHIBIT P12 : COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED 5.3.2005.

RESPONDENTS' EXHIBITS :

- EXHIBIT R1(a) : COPY OF THE LETTER No.PB/1/661/MNR DATED 5.3.2005 OF THE FIRST RESPONDENT.

// TRUE COPY //

P..A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 7870 of 2005

Dated this the 16th day of September, 2015

JUDGMENT

In this writ petition pending for the past decade, the issue that falls for consideration is as follows: What is the rate of interest to be charged on the amount due from the employer under the Self-Financing Pension Scheme assuming that there is a delay on the employer's part in remitting the said amount.

2. The petitioner is a Co-operative Bank, and the third respondent was its Secretary, now retired. The third respondent having joined the service in 1968 was initially placed under suspension on 02.05.1994 pending disciplinary proceedings. Eventually, when those disciplinary proceedings ended in the third respondent's removal from service, he approached the Joint Registrar and obtained Exhibit P2 order, through which he was directed to be reinstated. Accordingly, through Exhibit P3 order, the petitioner society reinstated the third respondent on 01.06.2001. The said reinstatement, however, was conditional. The third respondent's absence from

02.05.1994 to 31.03.1999 was treated as 'Leave without Allowance'; from 01.04.1999 to 31.05.2001, as 'Leave with Allowance'.

3. As can be seen from the record, having been reinstated on 01.06.2001, on the very same day, the third respondent submitted an application to be retired under 'Voluntary Retirement Scheme' (VRS). It appears that the petitioner accepted the third respondent's request and retired him under 'VRS.'

4. In the light of the reinstatement of the third respondent and his subsequent retirement, the petitioner Bank on 20.08.2001 remitted Rs.1,17,820/- to the first respondent towards the pension contribution of the third respondent. After receiving the said amount, the first respondent, on 18.12.2001, issued Exhibit P6 demanding an additional amount of Rs.1,34,166/-.

5. Aggrieved, the petitioner challenged Exhibit P6 before this Court and invited Exhibit P7 judgment. This Court, having set aside Exhibit P6, directed the first respondent to reconsider the issue of balance amount to be contributed by the petitioner Bank. In that context, the first respondent issued Exhibit P8

demand notice, dated 01.12.2004, quantifying interest in two faces, i.e. interest from May 1994 to March 1995 at 12% and from 04.02.1999 to 30.11.2004 at 24%. Thus, the balance amount was requantified as Rs.1,29,705/-.

6. Nevertheless, the first respondent, once again, issued Exhibit P9 demand notice, dated 14.12.2004, which is said to be a revised one. In the said demand notice, the first respondent demanded Rs.1,03,626/- maintaining the rate of interest at 12% and 24% for the periods as had been shown in Exhibit P8. Once again questioning Exhibit P9, the petitioner has filed the present writ petition.

7. In the above factual background, the learned counsel for the petitioner has submitted that the first respondent both in Exhibits P8 and P9 has specifically mentioned that it demanded interest at 12% and 24% for two different periods in terms of Clause 38 of the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, (the 'Scheme' for brevity). According to the learned counsel, interest can be charged once there is a default on the employer's part in making regular contributions. Further, he has drawn my attention to Clause 39 of the Scheme and

contended, in the alternative, that even if Clause 39 were to be applied, it would only be attracted when there was a willful default on the employer's part in remitting the accumulated Contributory Provident Fund amount prior to the introduction of the Scheme.

8. Eventually, the learned counsel would contend that neither under Clause 38 nor Clause 39 could the first respondent mulct the petitioner with any penal interest. Summing up his submissions, the learned counsel, apart from highlighting the illegality of Exhibits P8 and P9, has submitted that the petitioner Bank has already paid the amounts demanded in Exhibit P9 under protest, though.

9. Sri. K.R. Sunil, the learned Standing Counsel for the first respondent has initially outlined the Scheme, laying emphasis on the fact that the Scheme has been made workable only based on the interest that is generated by the fund. He has further submitted that unless the employer remits the entire accumulated amount along with interest, it is not possible for the first respondent to meet its statutory obligations. In other words, while the contributory fund was lying with the employer, since amounts were collected under

the old Contributory Scheme, it would invariably carry interest and the employer would be required only to remit the amounts along with interest that has already accrued on the deposit.

10. The learned Standing Counsel has further laid emphasis on the fact that the petitioner ventilated his grievance only concerning the interest charged while the third respondent was under suspension. According to him, the petitioner never made a grievance out of the first respondent charging 24% interest as had been reflected in Exhibits P8 and P9 demand notices.

11. In continuation of his submissions, the learned counsel would contend that once the dismissed employee has been reinstated, by legal fiction, it is deemed that the said employee continued all along without any cessation in service. In that event, the petitioner ought to have remitted the amounts at the earliest point in time. Thus, the learned Standing Counsel has urged this Court to dismiss the writ petition as devoid of any merit.

12. Heard the learned counsel for the petitioner, the learned Standing Counsel, as well as the learned Government Pleader for the respondents, apart from perusing the record.

13. Chronologically observed, the third respondent joined the service in 1968 and was placed under suspension on 02.05.1994. On 01.08.1995, an order of removal was passed against the petitioner, and that removal took retroactive effect from 02.05.1994. Later, in the light of subsequent proceedings initiated by the third respondent before the Joint Registrar, he was reinstated into service on 01.06.2001.

14. As has already been adverted to, from 02.05.1994 to 31.03.1999 the third respondent's service was reckoned as Leave without Allowance; the rest of the period i.e. from 01.04.1999 to the date of his reinstatement, it was treated as Leave with Allowance. Perhaps, as a vindication of its stand and also in establishing its *bona fides*, before the first respondent could make any demand, the petitioner Bank on 20.08.2001 paid an amount of Rs.1,17,820/-. Later, in the light of additional demand made by the first respondent in Exhibit P6, it took recourse to certain judicial proceedings, which resulted in Exhibit P9 notice. Having paid the amount under protest, once again the petitioner Bank filed the present writ petition.

15. The bone of contention in the present writ petition is whether the petitioner is liable to pay any penal interest at 24% on account of what is said to be delay on its part in remitting the accumulated pension contribution *vis-a-vis* the third respondent.

16. At the outset, it is the contention of the learned Standing Counsel that in the writ petition the petitioner has not made out any grievance concerning the levy of penal interest at 24%. He has submitted that there is no plea to the said effect found in the pleadings. In reply, the learned counsel for the petitioner has drawn my attention to Exhibit P11 and also the pleadings in general. It is evident both from Exhibit P11 and pleadings in the writ petition that the petitioner has persistently challenged Exhibit P9 on the ground that there is no justification on the first respondent's part to levy any interest for the period when the third respondent had been under removal from service.

17. It is pertinent to observe that there is no specific mention of either 12% or 24%, but, on the whole, the contention is to the effect that no interest ought to have been charged. On that count, I disallow the submission of the

learned Standing Counsel that there was no challenge at all in the writ petition concerning the levy of 24% interest.

18. Before proceeding further, it is profitable to examine the statutory parameters of the Scheme, especially Clause 38 and 39(1)(a), which reads as follows:

"38. Recovery of amount due from a Society - If any amount due from a society to the Pension Fund under this Scheme is in arrears, the secretary or any other officer authorized by him in this behalf shall, after due enquiry, ascertain the amount of arrears and if the society fails to clear the arrears within the time as may be specified in the notice issued thereon, issue a certificate for that amount with interest at the rate of 24% p.a. till date or Rs.500 whichever is higher, from the date of such notice to the Collector of the District in which the demand arose and the Collector on receipt of such certificate shall proceed to recover the amount with interest in the same manner as arrears of Public revenue due on land.

.....

39. Special provision for transfer of accumulations from the Contributory Provident Funds: - (1) With effect on and from the date of application of this Scheme to a society -

(a) the portion of the employer's contribution with interest accrued thereon standing to the credit of the employees in the contributory provident fund established by that society shall be transferred and credited by the society to the pension fund under this scheme;

.....

19. A perusal of the above-extracted clauses makes it clear that Clause 38 is attracted when the employer commits default under the Self-Financing Scheme. Insofar as Clause 39 (1)(a) is concerned, it concerns itself with the accumulated amounts under the Contributory Provident Fund Scheme. Thus, every employer has been mandated statutorily to remit the amounts to the first respondent within one year from the date of the employer's accepting the Scheme or from the date of the commencing of the Scheme, as the case may be.

20. In the present instance, peculiar are the circumstances: initially by the time the petitioner Bank opted for the Scheme, the third respondent had already been removed from service. Since he had not been borne on the cadre of the Bank, there was no occasion for the petitioner Bank to contribute any amounts towards his pension benefits. Once he was reinstated in 2001, without any further delay the petitioner Bank, even before there could be a demand from the first respondent, paid the amounts as per its calculations.

21. Subsequently, aggrieved by the quantification in Exhibit P6, the petitioner took recourse to judicial proceedings which eventually culminated in Exhibit P9 revised demand

notice on the first respondent's part. Further, both Exhibits P8 and P9 clearly revealed that from 05.1994 to 03.1995 interest was levied at 12%, and then from 04.02.1999 to 30.11.2004, it was levied at 24%.

22. As can be seen from Clause 39(1)(a), the question of mulcting the employer with any penal interest at 24% would come into play in the face of default committed by the said employer. In the present instance, it can hardly be said that the petitioner has committed any default.

23. Having observed thus, this Court hasten to add that the fund was initially lying with the petitioner Bank, which indisputably had the contributory pension scheme with the third respondent being its member. Had the third respondent continued in service, the petitioner would have been obligated to remit to the Pension Board the accumulated amounts pertaining to the third respondent's account along with other contributions when the petitioner opted for the new scheme. Though there was a retroactive reinstatement of the petitioner, we cannot say that the petitioner Bank would have anticipated such a situation and continued to remit the amount even when the third respondent was under removal. It is only fair to hold

that as soon as the third respondent had been reinstated, the petitioner had to remit the amounts, which, in fact, it did.

24. In the facts and circumstances, I find justification on the part of the first respondent to charge interest at 12% on accumulated amount all through up to its actual remittance by the petitioner. Thus, for the period beginning from 04.02.1999 to 30.11.2004 charging of 24%, i.e. 12% over and above what could have been the usual interest the amount carried cannot be sustained.

25. At this juncture, the learned Standing Counsel has submitted that in the light of the present direction by this Court, inevitably, the first respondent would be revising the pensionary benefit of the third respondent and it would be proportionally scaling down the pension to be paid to the third respondent. In response, this Court is to observe that the respondent Board is expected to follow the statutory norms in that regard. If scaling down is to be the natural corollary to its not charging 24% interest, it may do so. Though this Court is desirous of hearing the third respondent's version in this regard, none appears on his behalf, despite the fact that the third respondent has representation on record. Accordingly,

this Court is not in a position to ascertain the grievance of the third respondent on that count.

26. It is made clear that whatever amount paid by the petitioner in excess to the first respondent, in the light of the direction presently given, it shall be repaid to the petitioner at the earliest.

With the above observations, this writ petition stands disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-