IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 1502 of 2010 (K)

PETITIONER(S):

THE CORPORATION OF TRIVANDRUM,
VIKAS BHAVAN, TRIVANDRUM, REPRESENTED
BY ITS SECRETARY.

BY ADVS.SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K.MANOJKUMAR

RESPONDENT(S):
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1. **THE KERALA LOK AYUKTHA, TRIVANDRUM,**
   LEGISLATIVE COMPLEX, VIKAS BHAVAN, TRIVANDRUM -33,
   REPRESENTED BY ITS REGISTRAR.

2. **THE SECRETARY, DEPARTMENT OF LOCAL SELF**
   GOVERNMENT, SECRETARIAT, TRIVANDRUM.

3. **THE DIRECTOR OF URBAN AFFAIRS,**
   PUBLIC OFFICE, TRIVANDRUM.

4. **K.C.KAMALU, RESIDING AT TC NO.26/780,**
   CHEMPAKA NAGAR, OOTTUKUZHY, TRIVANDRUM.

R1 TO R3 BY GOVERNMENT PLEADER SRI.S.JAMAL
R4 BY ADV. SRI.RAJIT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 1502 of 2010 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: ATRUE COPY OF GOVERNMENT ORDER NO.1583/07/LSGD TVM. DTD.2.6.2007

EXT.P2: ATRUE COPY OF THE COMPLAINT NO.1105/2008 BEFORE THE LOK AYUKTA, THIRUVANANTHAPURAM DTD.4.10.2008.

EXT.P3: ATRUE COPY OF THE ORDER IN COMPLAINT NO.1105/2008 BEFORE THE LOK AYUKTA, THIRUVANANTHAPURAM DTD.9.1.2009.

EXT.P4: ATRUE COPY OF THE STATEMENT FILED BY 3RD RESPONDENT DTD.19.3.2009.

EXT.P5: ATRUE COPY OF THE ADDITIONAL STATEMENT FILED BY RESPONDENTS 2 AND 3 DTD.4.9.2009.

EXT.P6: ATRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE 3RD RESPONDENT DTD.31.3.2009.

EXT.P7: ATRUE COPY OF THE ORDER IN IA.NO.139/2009 IN COMPLAINT NO.1105/2008 DTD.8.12.2009.

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): TRUE COPY OF NO DUES CERTIFICATE DTD.21.2.2009 ISSUED BY THE THIRUVANANTHAPURAM GOVERNMENT EMPLOYEES CO-OP. SOCIETY LTD.NO.43.

EXT.R4(b): TRUE COPY OF PROCEEDINGS NO.5746/RS/0809 DTD.2.3.2009 OF THE THIRUVANANTHAPURAM SERVICE CO-OP. BANK LTD. NO.T.131.

EXT.R4(c): TRUE COPY OF CLOSING CERTIFICATE DTD.23.7.2009 ISSUED BY NEDUMANGADU TALUK LOCAL BODIES EMPLOYEES CO-OP. SOCIETY.

EXT.R4(d): A TRUE COPY OF THE REPRESENTATION DTD.4.3.2009 SUBMITTED BY THIS RESPONDENT BEFORE THE PETITIONER.

EXT.R4(e): A TRUE COPY OF THE RECEIPT ISSUED TO THE PETITIONER.

EXT.R4(f): TRUE COPY OF THE RELEVANT EXTRACT OF THE PENSION PAYMENT ORDER OF SRI.V.VELAYUDHAN.

EXT.R4(g): TRUE COPY OF RELEVANT EXTRACT OF G.O.(P) 226/03/FIN DTD.21.4.2003.

EXT.R4(h): TRUE COPY OF G.O.(P) 669/03/FIN DTD.20.12.2003.

EXT.R4(i): TRUE COPY OF G.O.(P) 390/04/FIN DTD.25.8.2004.

EXT.R4(j): TRUE COPY OF CIRCULAR NO.52/04/FIN DTD.3.9.2004.

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P.(C) No. 1502 of 2010 (K)

Dated this the 30th day of June, 2015

JUDGMENT

The petitioner challenges Exts.P3 order of the Lok Ayukta.

2. The 4th respondent's husband was an employee of the petitioner Corporation. The deceased employee had absented himself unauthorisedly from 12.11.2001 to 8.4.2002. Hence, the Secretary of the petitioner Corporation placed the employee under suspension from 9.4.2002. The suspension was later revoked on 7.12.2002 and the employee was allowed to rejoin duty on 12.3.2003. The employee thereafter superannuated on 31.10.2003, but, however, was not paid pension during his life time. He died on 27.3.2008.

3. The pension due to the employee was paid only on 30.5.2009, pursuant to Ext.P3 order by the Lok Ayukta, on an application filed by his wife, the 4th respondent herein.

Ext.P7 is an order passed by the Lok Ayukta in an application filed by the Government seeking a review of the order at Ext.P3, wherein the Director of Urban Affairs was exonerated from the liability to pay interest as directed in Ext.P3. By Ext.P7 the 3rd respondent was absolved of the interest liability and the petitioner Corporation was made solely responsible for the same. At the outset it is to be noticed that there is no challenge against Ext.P7.

4. After the superannuation of the petitioner on 31.10.2003, the petitioner was not paid pension till he expired on 27.3.2008 or even later. It was then that the 4th respondent, his wife and the legal heir of the employee, approached the Lok Ayukta with Ext.P2 application. The Lok Ayukta, by order dated 9.1.2009, Ext.P3, specifically recorded that the respondents had again prayed for time. No objections were even placed on record before the Lok Ayukta. The Lok Ayukta, hence, relying on various Supreme Court decisions, directed that the entire retirement benefits

due to the deceased would be paid to the 4th respondent with interest at 10% per annum from 1.1.2004 till the date of payment. The period of two months from 1.11.2003 to 31.12.2003 was fixed as the grace period required for the respondents to fix the pensionary benefits of Sri.Velayudhan. Ext.P3 was not challenged by the petitioner and the entire amounts due as retirement benefits are said to have been paid on 30.5.2009. The learned counsel appearing for the 4th respondent disputes the submission that the entire amounts were paid. That need not now be considered since the Writ Appeal is a challenge by the Corporation against Ext.P3 order. In any event, the interest as directed in Ext.P3 was not paid and the respondents before the Lok Ayukta jointly were liable for that liability, as per Ext.P3.

5. The Corporation also did not think it fit to challenge Ext.P3 order within a reasonable time. Later, the Director of Urban Affairs filed a review and by Ext.P7 Order

the liability was fixed on the Corporation and the Director of Urban Affairs was absolved from the liability to interest. It was then the petitioner filed the above writ petition, by then, a year later. By the time Ext.P7 was passed, considerable time had passed from Ext.P3 and Ext.P3 had obtained an amount of finality. Even looking at the reliefs prayed for in the writ petition, there is no challenge against Ext.P7 order.

6. The learned Senior Counsel appearing for the petitioner would contend that the default, in fact, was on the State and that the same has been explained in the objection filed at Ext.P6. The learned counsel appearing for the 4th respondent however would seek to sustain the order of interest, that too the liability being cast on the petitioner Corporation.

7. The specific reference made is to Ext.P6 additional written statement filed by the Corporation before the Lok Ayukta. Admittedly, the same was filed after Ext.P3

order dated 09.1.2009. Pausing for a moment, at the risk of repetition it is to be noticed that the employee retired on 31.10.2003 and expired on 27.3.2008. The wife of the employee filed a complaint before the Lok Ayukta (Ext.P2) on 04.10.2008 and till 09.01.2009 no objections were filed; when the Lok Ayukta passed Ext.P3 order. On 19.03.2009, as directed by the Lok Ayukta, an action taken report was filed by the petitioner as found in Ext.P4. A further statement was filed at Ext.P5 on 04.09.2009 reporting the sanction of the DCRG as also the fact that the liability of the employee is much more. No challenge was made to Ext.P3 or the interest liability mulcted thereon. Only when I.A. No.139/2009 was filed by the 3rd respondent, to absolve him of the liability to interest, was a written statement filed, produced at Ext.P6. On the filing of the I.A. the lis was only between the petitioner herein and the 3rd respondent. The issue to be adjudicated was only as to who has to bear the interest ordered in Ext.P3.

8. The contention raised in Ext.P6 is that the Government had regularised the period of 161 days in which the petitioner had remained absent and later was suspended by the Secretary of the Corporation only by Ext.P1 dated 2.6.2007. However, the same is belied by the admissions in Ext.P6. Admittedly, the Health Officer has the responsibility to verify the service book of the employee and transmit it to the pension department. He had forwarded the papers to the pension department and the same, in paragraph 6, is said to have been returned on 25.7.2006 for reason of the pension papers not containing the signature of the employee. In the teeth of the specific admission that it is the responsibility of the Health Officer of the Corporation to verify the service book of an employee and transmit it to the pension department, the fact that the employee was not asked to put his signature in the pension book would specifically indicate that the officer of the Corporation had been negligent in transmitting the pension

papers.

9. Further, the reason for delay, projected in paragraph 5, is the delay in regularising the service as per Ext.P1. The said contention cannot be countenanced since long before that, the pension papers were sent by the Health Officer and were returned for reason of the pension papers not containing the signature of the employee. Extr.P1 is dated 2.6.2007, the pension papers are said to have been returned on 25.07.2006. Even before Ext.P1 order was issued by the Court, the pension papers were forwarded. The delay on the part of the Government, if any was not the reason for the delay in payment. It is also stated that, on the return of the pension papers on 25.7.2006; on 28.7.2006 itself the papers were forwarded to the Deputy Director. The pension papers were again returned to the Department for not having included the input sheet in the pension book and for reason of the details with regard to regularisation of the suspension being not

available.

10. A reading of Ext.P1 would also indicate that the Secretary of the petitioner Corporation had already passed proceedings, regularising the period, which was spend on unauthorised absence and suspension, as Earned Leave and Half Pay Leave. Hence, there is no substance in the contention that the Corporation was waiting for the regularisation order of the Government, as evidenced by Ext.P1. The failure to include the input sheet and to add the details with regard to the regularisation, again is by reason only of the negligence of the officers of the Corporation.

11. Even, at the time when the 4th respondent filed an application before the Lok Ayukta for grant of pension, the petitioner had dragged its feet and had not responded to the application, till Ext.P3 was passed on 09.01.2009. It was only after the order at Ext.P3 was passed, the 4th respondent was paid the pension dues eligible to her deceased husband, on 30.05.2009.

12. In view of the specific findings of this court that the additional written statement filed by the petitioner Corporation, clearly indicates the negligence on the part of the officers of the Corporation, this Court does not find any reason to interfere with the order of the Lok Ayukta. Ext.P3 also is an order passed on 09.01.2009, which is challenged only by the above writ petition dated 15.1.2010, after more than one year. The written statement said to have been filed was later to the order passed at Ext.P3. Ext.P3 was a final order passed by the Lok Ayukta and the additional written statement is one filed in an I.A. filed by the 3rd respondent to absolve him from the liability to pay interest. As noticed earlier, no lis existed between the petitioner and the 4th respondent in the I.A. Hence, on the cause of action occasioned by Ext.P7, the petitioner cannot challenge Ext.P3. There is also no specific challenge raised against Ext.P7 in the above writ petition. The petitioner, on the basis of the orders passed in the I.A. filed by the 3rd

respondent, turns around and seeks to challenge Ext.P3 order. The challenge is grossly delayed and on merits too is unsustainable.

The writ petition hence would stand dismissed for all the above reasons. The 4th respondent has been unnecessarily dragged to this Court. The petitioner hence, shall pay Rs.5,000/- (Rupees five thousand only) as costs to the 4th respondent.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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