

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WA.No. 530 of 2015 () IN WP(C).33923/2014

AGAINST THE JUDGMENT IN WP(C)33923/2014 of HIGH COURT OF KERALA DATED
29-01-2015

APPELLANT/PETITIONER IN W.P. (C) :-:

ISSAC.C.V., AGED 61 YEARS
S/O.VARGHESE, CHANDANAPARAMBIL HOUSE, KOONAMMAVU P.O.
KOTTUVALLY VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT
PIN - 683 518, CHIEF MANAGER (RETIRED)
KERALA STATE FINANCIAL ENTERPRISES LIMITED
(LOAN UNIT ERNAKULAM).

BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.P.S.SYAMKUTTAN

RESPONDENTS/RESPONDENTS IN W.P. (C) :-:

1. KERALA STATE FINANCIAL ENTERPRISES LTD.,
BHADRATHA, THRISSUR, PIN - 680 020
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE MANAGING DIRECTOR,
KERALA STATE FINANCIAL ENTERPRISES LTD., BHADRATHA
THRISSUR, PIN - 680 020.

R1 & 2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1 & 2 BY ADV. SRI.P.GOPINATH
R1 & 2 BY ADV. SRI.P.BENNY THOMAS
R1 & 2 BY ADV. SRI.K.JOHN MATHAI
R1 & 2 BY ADV. SRI.JOSON MANAVALAN
R1 & 2 BY ADV. SRI.KURYAN THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

**THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.**

W.A.No.530 of 2015

Dated this the 29th day of October, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. This appeal is filed by the writ petitioner. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent which is a Government Company.

2. The petitioner appellant retired from service on 31.3.2007 while working as the Chief Manager of the Company. He came to this Court earlier filing W.P.(C) No.34192 of 2009 complaining that gratuity amount and terminal leave surrender benefits were not released. The establishment put the defence that he had sanctioned a special car loan to one Lawrence Joseph and ultimately, it turned out that the said transaction was a fraudulent one. That writ petition was decided on 30.8.2013 through Ext.P8 judgment quashing the establishment's decision against the petitioner and leaving the establishment to take a fresh decision, if sustainable under law and under the relevant provisions governing service conditions, after adhering to all procedures and principles of natural justice. A time limit was fixed. Alleging that no action follows, the petitioner invoked the provisions of the Contempt of Courts Act. That issue was closed by the learned

single Judge on the premise that no case of contempt arose. As a result, the writ petition in hand is filed. By that time, all that remained to be released is the leave surrender value. The establishment objected to the writ petition raising the very same plea regarding the loan sanctioned to Lawrence Joseph. The learned single Judge held that the terminal benefits have to be released however, safeguarding the interest of the establishment. The petitioner was imposed with the condition to execute a bond with two sureties for the leave surrender benefits. This appeal is only as to the legality of the imposition of such condition by the learned single Judge.

3. Hearing the learned counsel for the appellant/petitioner and the learned standing counsel for the establishment, we would revert to the directions in W.P.(C) No.34192 of 2009 which were clear to the effect that no action could be taken except under the relevant provisions governing service conditions. Obviously, that is the only mode in which action could be taken. Nothing is pointed out by the establishment as to the existence of any particular rule or bi-lateral authorisation under which the amounts due to the petitioner towards the surrender value could have been appropriated by the establishment on the premise that a loan disbursed by him on behalf of the establishment had become sticky or was not recoverable. It was therefore that the learned single Judge had rightly left open the right of the establishment to proceed against the appellant/petitioner for

recovery of general damages and issued the direction for payment, clarifying that it will not be deemed as an exoneration of the appellant/petitioner from paying any liability otherwise found in accordance with due procedure established by law. That being so, the insistence to furnish security by executing bond with two sureties could not have been made. The power of the Corporation to effect any such restraint does not arise. All that could be done is for the Corporation to seek appropriate remedy and recover amounts if any that could be recovered from the appellant/writ petitioner in accordance with law.

In the result, this writ appeal is allowed vacating the direction in clause (i) that the appellant/petitioner has to execute bond with two sureties to receive the leave surrender benefits. Consequentially, it is ordered that leave surrender benefits shall be disbursed to the petitioner/writ appellant without any condition as to bond. The other directions in the impugned judgment will stand, however that, the time limit for satisfying the judgment of the learned single Judge will stand extended by one month from today.

Sd/-
Thottathil B. Radhakrishnan, Judge

Sd/-
Anu Sivaraman, Judge

al/-

True copy

P.S to Judge