IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

WA.No. 641 of 2015 () IN WP(C).10377/2014

AGAINST THE JUDGMENT IN WP(C) 10377/2014 of HIGH COURT OF KERALA DATED 05-01-2015

APPELLANT(S)/PETITIONERS:
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1. SAMOOHYA KSHWMA CO-OPERATIVE SOCIETY LTD.
   NO.E-779, REPRESENTED BY ITS SECRETARY
   NANDYATTUKUNNAM, NORTH PARAVUR, ERNAKULAM DISTRICT.

2. THE BOARD OF DIRECTORS OF THE SOMOOHYA KSHEMA CO-OPERATIVE
   SOCIETY LTD. NO. E 779,
   REPRESENTED BY ITS PRESIDENT, NANDYATTUKUNNAM
   NORTH PARAVUR, ERNAKULAM DISTRICT.

   BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA
   REPRESENTED BY THE SECRETARY TO GOVERNMENT
   CO-OPERATION (C) DEPARTMENT, GOVERNMENT SECRETARIAT
   THIRUVANANTHAPURAM-695001.

2. THE REGISTRAR OF CO-OPDERATIVE SOCIETIES,
   THIRUVANANTHAPURAM-695001.

3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL),
   ERNAKULAM, ERNAKULAM DISTRICT, PIN-682030.

4. K.P. BEENA,
   W/O. VIJAYAN, NANDYATTUKUNNAM, NORTH PARAVUR
   ERNAKULAM DISTRICT.

   R BY GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI
   R4 BY ADV. SRI.A.JAYASANKAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R.RAMACHANDRA MENON
&
P.V.ASHA, JJ

W.A. No.641 of 2015
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Dated this the 6th day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON ,J

Implementation of the Pay Revision ordered as per Ext.P2 for the year 2004, is the subject matter of dispute in this appeal preferred by the employer society.

2. The appellants are the petitioners in the writ petition, who sought to challenge Ext.P9 Order dated 10.02.2014 passed by the Government/1st respondent, in the appeal preferred by the 4th respondent herein against Ext.P7 order dated 20.01.2013 passed by the 2nd respondent. The 4th respondent herein was working as a Secretary to the petitioner/appellant society which is stated as doing some charitable operations, and not any profit – oriented activities, but for serving the society at large. Pay revision was ordered by the Government as per Ext.P2 G.O. bearing No. 220/05 Co-op dated 23.5.2005, wherein, a stipulation was made as to the Clause No.20 to the effect that it would be open to the concerned society to seek for exemption before the competent authority, subject to the availability of contingencies reasons mentioned therein. The plight of the petitioner society, according to them, did not enable them to satisfy the financial burden pursuant to the Pay Revision for the years 2004 and 2009, and it was accordingly that, Ext.P3 and P4

resolutions were taken by the Board on 05.02.2007 and 18.03.2008 seeking to approach the Registrar for obtaining exemption. It is stated that the proceedings were preferred before the second respondent and they were pending.

2. While so, alleging non - implementation of the Pay Revision benefits, the 4th respondent, who had retired from the service by that time, approached this Court by filing W.P.(C) No.21881/2012, seeking to direct the Joint Registrar to consider the representation preferred by her for taking appropriate steps. The said case was disposed of, as per Ext.P6 judgment dated 08.10.2012, directing the Joint Registrar to consider and pass appropriate orders on the representation preferred by the said petitioner. It was accordingly, that the matter was considered and Ext.P7 order was passed by the Joint Registrar on 20.1.2013, whereby, the resolution No.73 dated 14.09.2010 taken by the society to keep the implementation of the Pay Revision in abeyance till the proceedings pending consideration before the Joint Registrar, seeking for exemption was approved.

3. Since, the 4th respondent did not get any positive results in settling the grievance, she approached the Government/1st respondent, by filing an appeal, wherein, Ext.P8 written statement, was filed from the part of the appellants herein. The matter was examined by the 1st respondent and after a detailed analysis of the factual position, Exhibit P9 order was passed on 10.2.2014, directing

payment of the '2004 pay revision benefit' to the employee, simultaneously directing the Registrar to consider and finalize the application preferred by the Board of the society seeking for exemption in respect of '2009 pay revision benefits'. The said order passed by the Government was sought to be challenged by filing a writ petition before this Court by the petitioners/appellants, raising many a contention.

4. After hearing both the sides, learned single Judge of this Court observed that the exemption envisaged under Clause 20 of the Ext.P2 circular, was subject to the working condition of the society and also the financial stability. It was also observed that the petitioner society was running on profit for the years from 2000 to 2009 and in 2010 - 2011. After making a reference to the condensed audited balance sheet extracted in the counter affidavit filed by the employee and also to the fact that another person was appointed as Secretary with a consolidated salary of Rs.10,000/- per month, on retirement of the 4th respondent employee on 31.12.2010, it was held that the society was working properly and was having financial stability. However, considering the fact that Ext.P4 and P5 were still pending consideration before the Joint Registrar, in respect of the Pay Revision, for the years 2004 and 2009, a direction was given to the concerned respondent to have it finalized on merits with notice to the parties. It was also observed that, such an exercise was to be done untrammeled by any of the

observations contained in the impugned orders.

5. The learned counsel appearing for the appellants submits that when the learned single Judge had directed the Joint Registrar to consider and pass appropriate orders on Exts.P3,P4 and P5 applications for exemption from implementing Pay Revision for 2004 and 2009, there was a further observation in paragraph 5 to the effect that there was no reason to interfere with Ext.P9 order passed by the Government. As per Ext.P9 order, there is a positive direction to disburse the benefit in respect of 2004 of pay revision and as such, nothing further may remain to be considered by the Registrar. The learned counsel for the 4th respondent submits that, pursuant to the verdict passed by the learned single Judge, the matter has already been considered by Joint Registrar and orders have been passed directing to implement the pay revision in respect of the year, 2004 while granting exemption in respect of 2009. The factual position in this regard is stated as correct by the Senior Government Pleader appearing for the respondents 1, 2 and 3. The learned counsel for the petitioner points out, that such an order came to be passed in respect of the year 2004, only by virtue of Ext.P9 order passed by the Government, which has been virtually upheld by the learned single Judge by passing the judgment under challenge.

6. After hearing both the sides, this Court finds that in view of the subsequent developments, nothing further remains to be

considered by this Court in the appeal, as Ext.P4 and P5 preferred by the appellant society have already been considered and finalized by the competent authority. If, the appellants are aggrieved of the orders passed by the said authority, it is always open for them to challenge the same by way of appropriate proceedings before the appropriate forum. In view of the turn of events, the direction given by the Government as per Ext.P9 and the observation made by the learned single Judge to the effect that Ext.P9 order was liable to be sustained will not have much significance or consequence. It is open for the appellants to challenge the orders passed on Ext.P4/P5 if aggrieved, on all grounds. All the issues are left open. Writ appeal stands disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
P.V. ASHA
JUDGE

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PA TO JUDGE

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