

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WA.No. 843 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN WP(C) 27052/2013 of HIGH COURT OF KERALA
DATED 25-03-2015

APPELLANT(S)/RESPONDENTS 2 &3:

1. V.R.BHASKARAN AGED 60 YEARS
S/O. ANANTHAN NAMBIAR
PRESIDENT KEEZHALLOOR SERVICE CO-OPERATIVE BANK LIMITED
HO ELAMPARA KANNUR PO, 670 595

2. KEEZHALLOOR SERVICE COOPERATIVE BANK LIMITED
HEAD OFFICE, ELAMPARA, KANNUR PO
670 595 REPRESENTED BY ITS PRESIDENT VR BHASKARAN

BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE

RESPONDENT(S)/PETITIONER/RESPONDENT:

1. RAJAN.N
S/O. KUNHIRAMAN, RAJA PUSHPA, THERUR
EDAYNNOOR PO, KANNUR 690 595

2. STATE OF KERALA REPRESENTED BY ITS SECRETARY
CO-OPERATIVE DEPARTMENT, SECRETARIAT, TRIVANDRUM

3. JOINT REGISTRAR (GENERAL)
CO-OPERATIVE SOCIETIES, KANNUR PO670001

R BY GOVERNMENT PLEADER
R BY SRI.BABU PAUL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.**

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W.A. No. 843 of 2015

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Dated, this the 4th day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Correctness and sustainability of the interim order dated 25.03.2015 passed by the learned single Judge in I.A. No. 4051 of 2015 in W.P.(C) No. 27052 of 2013 is under challenge at the instance of the Co-operative Bank, who happens to be the concerned respondents in the writ petition.

2. The sequence of events reveals that the first respondent herein, who was working as Secretary in the second respondent/Keezhalloor Service Co-operative Bank [hereinafter referred to as the 'Bank'], was proceeded against in respect of some delinquency, by way of disciplinary proceedings. On culmination of the proceedings, punishment of dismissal was imposed upon him as per Ext. P2 order dated 23.10.2013. Without pursuing the remedy as provided under the Statute, the employee rushed to this Court by

filing W.P.(C), with a prayer to set aside Ext. P2 and to re-instate him in service. When the matter came up for consideration before the learned Single Judge, an interim order was passed on 26.11.2013, directing the respondents in the writ petition to reinstate the writ petitioner in service. The reinstatement was effected by the society, since the efforts taken to have the verdict challenged by way of writ appeal did not turn to be fruitful. Accordingly, the first respondent was reinstated and was continued in service, till his retirement from service on 31.01.2013. After the retirement, the first respondent filed I.A. No. 16013 of 2013 seeking for a direction to disburse the retirement benefits. After hearing both the sides, the learned single Judge passed an interim order on 13.02.2015, directing the respondents to disburse the entire retirement benefits to the writ petitioner, including the gratuity amount of Rs. 9,45,279/- within a period of two months from that day; failing which interest shall be paid @ 12 % from 11.03.2014 i.e. the date on which the amount had become actually due. It was noted by the Bank that, huge liability was still to be cleared by the first respondent, to the Bank. In the said circumstance, the Bank filed I.A. No. 4051 of 2015 seeking for

clarification, whether the due amount could be set off against the amount ordered to be disbursed to the writ petitioner. The learned single Judge as per the order dated 25.03.2015 observed that no further clarity was required and that the attempt of the Bank was to delay the payment some or other way. Observing that the Bank had not chosen to disburse the gratuity amount of Rs.9,45,279/-, it was directed to be cleared with interest @ 12% from 11.03.2014. This made the Bank to approach this Court by filing this writ appeal.

3. Heard both the sides in detail.

4. Mr. Ramesh Chander, the learned senior counsel appearing for the appellants submits that there is a factual mistake with regard to the direction given by the learned single Judge in the order dated 25.03.2015. The amount of Rs. 9,45,279/- was ordered to be paid within two months from the date of the order i.e. 13.02.2015 and it was to expire only on 12.04.2015. Before expiry of such time, the Bank had filed I.A. No. 4051 of 2015 seeking for clarification whether the amount due from the writ petitioner could be set off against the amount payable by the Bank. That apart, when the present appeal came up for admission, the

Bench as per order dated 10.04.2015 had granted two weeks' time to disburse the gratuity amount. This being the position, there can not be any liability to pay interest as well.

5. The first respondent on the other hand submits that the stand taken by the Bank is only to harass the writ petitioner some way or the other. The challenge was raised before this Court against Ext. P2 order, for the reason that the 'Administrative Committee' had no power or competence to have dismissed the first respondent from service by virtue of the relevant provisions of law. The matter was heard elaborately and it was accordingly, that reinstatement was ordered as per the interim order dated 26.11.2013.

6. This Court does not find it necessary to go into merits of the case or the eligibility of the writ petitioner to have received the retirement benefits. The only aspect to be considered is whether the order under challenge is liable to be sustained, in the eye of law. For this, it is necessary to look into the earlier interim orders passed by the learned single Judge. Unless and until Ext.P2 dismissal order is invalidated or declared as unsustainable, no relief for reinstatement in service could be granted. Interim relief

sought for in the writ petition happens to be the main relief sought for vide '**prayer No. b**', which came to be granted by the learned single Judge vide order dated 26.11.2013, pursuant to which the writ petitioner came to be reinstated. Thereafter, as per the interim order dated 13.02.2015 in I.A. No.16013 of 2014, entire amount including the gratuity was ordered to be released. If for any reason, after final hearing, it is found that dismissal of the writ petition was correct and sustainable, he may not be eligible for gratuity. Without considering the eligibility in this regard, the gratuity amount was ordered to be disbursed, which in fact is part of the final relief sought for. It has been alerted by the Apex Court on many an occasion, including in **JT 1995 (3) SC 175 [Bank of Maharashtra Vs. Race Shipping & Transport Corporation Pvt. Ltd & Anr.]** and **1996 (1) SCC 681 [P.R. Sinha Vs. Inder Krishan Raina]**, that no final relief can be granted in the form of interim relief.

6. It is brought to the notice of this Court that the order under challenge is only the order dated 25.03.2015 in I.A. No. 4051 of 2015. It is also brought to our notice that, pursuant to the interim order passed by the learned single Judge and the

interim order dated 10.04.2015 in this appeal, the gratuity amounts stands disbursed to the petitioner. As such, this Court finds that nothing further requires to be considered on this aspect, but for holding that the direction given by the learned single Judge to satisfy interest at the rate of 12% p.a. from 11.03.2014 cannot survive. It is ordered accordingly. It is open for the parties to press for an early hearing of the writ petition. The consequences resulted by virtue of the interim orders already passed will be subject to the final verdict to be passed by the learned single Judge in the writ petition.

The Writ Appeal is disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd