

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

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WA.No. 1086 of 2015
IN WP(C).19194/2014

AGAINST THE JUDGMENT IN WP(C) 19194/2014 of HIGH COURT OF KERALA
DATED 02-02-2015

APPELLANTS/RESPONDENTS 1 & 2:

1. THE PALAKKAD DISTRICT CO-OPERATIVE BANK LTD
REPRESENTED BY ITS GENERAL MANAGER, P.B.NO.21
H.P.O. ROAD, SULTHANPET, PALAKKAD-678001.
2. THE MANAGING COMMITTEE OF THE PALAKKAD DISTRICT
CO.OPERATIVE BANK LTD.,
REPRESENTED BY ITS PRESIDENT, P.B.NO.21, H.P.O. ROAD
SULTHANPET, PALAKKAD-678001.

BY ADVS. SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENTS/PETITIONER/RESPONDENTS 3 &4:

1. SANKARANARAYANAN V.
RETIRED SHAROFF, PALAKKAD DISTRICT CO.OPERATIVE BANK
RESIDING AT SREEJAYA NIVAS, KALLUVAZHI
PALAKKAD DISTRICT-679514.
2. THE JOINT REGISTRAR OF CO.OPERATIVE SOCIETIES (GENERAL)
OFFICE OF THE JOINT REGISTRAR OF CO.OPERATIVE SOCIETIES
(GENERAL)
PALAKKAD-678001.
3. THE REGISTRAR OF CO.OPERATIVE SOCIETIES
THIRUVANANTHAPURAM-695001.

R1 BY ADV. SRI.P.N.MOHANAN
SR. GOVT. PLEADER SRI JOSEPH GEORGE - R2, R3

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W. A. No.1086 of 2015

Dated this the 10th day of August, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The direction given by the learned single Judge to the respondent Bank to step up the salary of the writ petitioner, to be on par with his junior by name Prabhakaran and to pursue consequential steps, is sought to be challenged by the Bank by filing this appeal. The main contention is that the orders passed by the departmental authorities which were pressed into service for giving the said direction, ought not to have been passed by the departmental authorities being barred by limitation and further in view of the fact that the writ petitioner was not actually entitled to have any relief as the so called anomaly was only by virtue of the option exercised by the writ petitioner and never due to any fault on the part of the Bank.

2. The sequence of events reveals that the writ petitioner entered the service of the Bank as a 'Peon' in the year 1978. Subsequently, he was promoted as 'Bill Collector' in the year 1986. The junior of the petitioner by name Prabhakaran, though joined service as Peon on the same date, i.e. 25/11/1978, he became a Bill Collector only on 25/11/1988. The writ petitioner retired from service on 30/01/2010; whereas his junior, Prabhakaran retired only on 31/12/2013. After retirement of the writ petitioner, he raised a claim before this Court as to the drawing of higher salary by the junior and sought the anomaly to be rectified by stepping up the salary. On raising a claim vide Ext.P2, proceedings were taken by the departmental authorities and Ext.P3 communication was issued by the third respondent directing the second respondent to look into the complaint and to take necessary steps, if there was any genuine grievance.

3. The second respondent forwarded the above proceedings to the appellant Bank as per Ext.P4 dated

02/06/2011, for remarks. This was followed by a reminder, by way of Ext.P5 dated 29/07/2011 issued by the third respondent and addressed to the second respondent (based on subsequent complaint as to the subsisting grievance). It is seen that the matter was examined by the appellant Bank, who sought for clarification from the third respondent vide Ext.P6 dated 17/10/2011; referring to the circumstances under which the junior, Prabhakaran happened to draw more salary than the writ petitioner. It was also sought to be clarified as to whether the anomaly could be rectified by the Bank. After considering the facts and circumstances, the third respondent passed Ext.P7 order on 07/03/2013 facilitating rectification of the anomaly by stepping up the salary of the writ petitioner. As implementation was not reported, Ext.P8 communication was issued by the second respondent to the Bank on 25/11/2013, asking to report compliance within fifteen days. This was followed by Ext.P9 as well on 13/05/2014. After ascertaining the factual situation from the respondent Bank, the second respondent

wrote to the third respondent as per Ext.P10 dated 30/05/2014 that the Bank had already taken necessary steps to do the needful; subject to the scrutiny by the concurrent auditor and that the amount due, if any, will be disbursed accordingly. Since nothing transpired in the positive, the writ petitioner approached this Court by way of writ petition as mentioned above.

4. A detailed counter affidavit was filed by the first respondent Bank explaining the facts and figures, particularly asserting that there was no lapse on the part of the Bank and that there was no anomaly which was liable to be rectified in accordance with law. During the course of hearing before the learned single Judge, it was brought to the notice of the Court that the Bank had passed a resolution bearing No.19 dated 26/03/2014 to step up the salary of the petitioner, on par with the junior and that it was only subject to the rider to have concurrence from the concurrent auditor. The factual position is stated as discernible from Ext.P10 communication of the third

respondent. It is further observed that the third respondent has given a clarification as sought for, and the concurrent auditor has given his concurrence as well. It was accordingly, that the respondents 1 and 2 were directed to pursue further steps for stepping up the salary of the writ petitioner on par with his junior.

5. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent, besides the learned Government Pleader appearing for the respondents 2 and 3.

6. During the course of hearing, the learned counsel for the appellant submits that the appellant Bank still stands by the version as put forth through their counter affidavit, that the writ petitioner was not actually entitled to have any benefit. The specific circumstances under which stepping up can be ordered are conspicuously absent in the instant case. The so called disparity was there for the past several years, and it was only after retirement of the writ petitioner, that he chose to project the claim by approaching the concerned

authorities. The learned counsel adds that the orders passed by the departmental authorities were unfortunately omitted to be challenged by the Bank and they have become final. The learned counsel also points out that the concurrent auditor gave sanction as per order dated 06/06/2013 referring to the proceedings of the Registrar and since the said proceedings having not been subjected to challenge, the Bank cannot challenge the same successfully at this distance of time. In the said circumstances, it is stated that, the matter has been considered by the Bank and steps are being taken to implement the direction; for which six weeks' time is sought for.

7. In the above facts and circumstances, this Court finds it fit and proper to grant six weeks' time to the Bank to implement the orders/directions and to disburse the due amount to the first respondent/writ petitioner. It is also made clear that, since there is serious dispute with regard to the eligibility of the first respondent/writ petitioner to obtain the benefit and various issues are raised with reference to

the jurisdiction of the authorities concerned, this Court leaves them open and makes it clear that the course now pursued will not be a precedent in other cases.

Appeal stands dispose of.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE