

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

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WA.No. 1234 of 2015 (H) IN WP(C).16879/2012

APPELLANT/1ST RESPONDENT:

THE VALLIKUNNAM INDUSTRIAL CO-OPERATIVE
SOCIETY LTD .NO.S IND(A) 56
REPRESENTED BY ITS SECRETARY, VALLIKUNNAM P.O
MAVELIKKARA, ALAPPUZHA DISTRICT, PIN 690 501

BY ADV. SRI.R.GOPAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2:

1. B.LEELA BAI AMMA
W/O. K VASUDEVAN PILLAI, REVATHI, KOYPPALLIL HOUSE
VAYANAKOM, NJAKKANAL P.O, OACHIRA
KOLLAM .
2. THE DEPUTY REGISTRAR
DISTRICT INDUSTRIAL CO-OPERATIVE SOCIETY
ALAPPUZHA 688 001
3. THE GENERAL MANAGER
INDUSTRIES AND COMMERCE CENTRE, ALAPPUZHA 688 001

BY ADV. SRI.T.R.HARIKUMAR
BY SR. GOVERNMENT PLEADER SRI.JOSEPH GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W. A. No.1234 of 2015

Dated this the 12th day of August, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The liberty sought for to set off the amount already disbursed by the first respondent towards leave surrender benefits, as against the terminal leave surrender benefits payable to the writ petitioner is sought to be projected as the cause of action for this appeal preferred by the Society/ employer.

2. The first respondent was working as the Secretary of the appellant Society, having joined the service way back on 23/05/1983. She retired from service, on attaining the age of superannuation on 31/03/2009. The first respondent was a member of the Contributory Provident Fund Scheme as well. While working so, she had made a sum of ₹13,13,380/- as

'Fixed Deposit' with the appellant Society. The writ petitioner was eligible to have retirement benefits under various heads, such as, a sum of ₹2,80,035/- towards gratuity, ₹1,93,040/- towards earned leave surrender etc. Despite the retirement, since the due amounts were not paid, the first respondent/writ petitioner was constrained to approach this Court by filing W.P.(C) No.16879 of 2012.

3. A counter affidavit was filed on behalf of the Society virtually conceding the liability, but for pleading the poor pecuniary circumstances and also as to the decision taken by the Society to find out the ways and means sparing to sell the properties of the Society. The amounts liable to be given to the first respondent towards retirement benefits coming to a total of ₹4,73,075/- and the extent of Fixed Deposit of ₹13,13,380/- were never disputed by the Society. Based on the undisputed facts and figures, the writ petition was

disposed of by the learned single Judge, directing the respondents 2 and 3 to effect disbursement of the retirement benefits of ₹4,73,075/- (Rupees four lakh seventythree thousand and seventy five only) to the writ petitioner/first respondent as expeditiously as possible, at any rate, within three months. The writ petitioner was set at liberty to take appropriate steps in accordance with law, to get the amount of ₹13,13,380/- deposited as Fixed Deposit in the Society.

4. In the course of further proceedings, the Society found that the writ petitioner/first respondent had already encashed leave surrender of 28 days for the period from 1987 to 2001 and another extent of 28 days in the year 2007. Since the maximum extent of leave surrender can only be 300 days in the entire service, the amount already obtained by the writ petitioner/first respondent as

mentioned above, was liable to be set off/adjusted from the total amount of ₹1,93,040/- payable under this head. Met with the situation, the Society filed a Review Petition No.1036 of 2014 and since there was delay of 105 days, it was sought to be condoned by filing C.M. Application No.417 of 2014, seeking to condone the delay of 105 days in filing the Review Petition. After hearing both the sides, the learned Judge observed that the explanation offered by the Society to condone the delay was not acceptable and hence, interference was declined. Accordingly, the application to condone the delay was dismissed and in turn, the Review Petition was also dismissed. This made the Society to approach this Court by filing the present appeal.

5. When the matter came up for admission before this Court on 25/06/2015, the first respondent sought for permission to file an affidavit as to whether the leave

surrender benefit for the period as aforesaid during the period from 1987 to 2001 and in the year 2007 had actually been received by her or not. Subsequently, on 09/07/2015, it was asserted by the learned counsel for the first respondent that no such benefit was ever obtained by the first respondent/writ petitioner. This led to the order passed by this Court on that day, which is extracted below:

“The learned counsel for the first respondent submits that an affidavit dated 09/07/2015 has been filed pursuant to the direction given by this Court on 25/06/2015. It is also pointed out that no benefits towards leave surrender have been obtained by the first respondent for the years 1987 to 2001 and 2007.

Learned counsel appearing for the appellant seeks for time to get instructions.

List the matter for further consideration on 16/07/2015.”

Subsequently, an affidavit was filed by the first respondent/writ petitioner on 09/07/2015, referring to her eligibility to have the earned leave of 300 days encashed, in connection

with the service. As given in paragraph 4 of the said affidavit, the total eligibility under this head is ₹1,93,040/-. Nothing is mentioned in the affidavit as to whether she had obtained part of the benefit for the years 1987 to 2001 and for the year 2007, but for a vague reference in paragraph 2 that the plea mooted by the Society in this regard was unsustainable. This led to another interim order dated 24/07/2015 in the following terms:

“The learned counsel for the first respondent seeks for further time to file a specific affidavit in terms of the interim order already passed by this Court as to whether she has received the Leave Surrender benefit in respect of the period from 1987 to 2000 and for the year 2007.

Post after ten days.”

6. Pursuant to the above direction, an additional counter affidavit dated 12/08/2015 has now been filed, wherein the first respondent/writ petitioner has conceded that she had accepted amounts towards 28 days of leave

surrender for the period from 23/05/1983 to 28/02/1987 and in respect of 45 days for the period from 01/03/1987 to 29/02/1988. The maximum eligibility of the first respondent/writ petitioner towards leave surrender benefit can only be for a total of 300 days in the entire service and if any portion has already been encashed, it is liable to be adjusted against the total amount payable. The stand/contention raised by the Society to the said extent is liable to be accepted and this Court holds accordingly.

7. It is brought to the notice of this Court that the Society is still finding it difficult to find out source to satisfy the liability. The learned counsel for the Society submits that a decision has already been taken to dispose of a portion of the property by way of public auction and that sanction of the departmental authorities has already been sought for, which is still pending. Unless sanction is obtained, further proceedings cannot be completed in a time bound manner submits the learned counsel.

8. We heard the learned Senior Government Pleader as

well, who is appearing on behalf of the respondents 2 and 3 in the above context. There is no dispute with regard to the eligibility of the first respondent/writ petitioner to get the due amount, who came out after rendering nearly 25 years of long service. The factual position that the Society is having immovable assets is also not in dispute. This being the position, it is for the Society and the other respondents concerned to see that the actual amount liable to be disbursed to the first respondent/writ petitioner is caused to be disbursed at the earliest, more so in view of the fact that the writ petitioner retired from the service nearly six years ago, in 2009.

9. In the above circumstances, the appellant Society is permitted to set off the amount disbursed to the first respondent/writ petitioner towards part of leave surrender benefits for the period as mentioned above from the total sum of ₹1,93,040/- payable towards terminal leave surrender benefits and the balance amount shall be disbursed along with the retirement benefits as ordered by the learned single

Judge without further delay.

10. This Court does not find it necessary to drive the first respondent to pursue other appropriate steps for realisation of the amount effected by way of 'Fixed Deposit', as there is no dispute with regard to the quantum or eligibility and further, in view of the stand taken by the Society that the amount cannot be paid unless a portion of the property belonging to the Society is caused to be sold in public auction. In the said circumstances, it will be for the respondents 2 and 3 to consider the matter in the right perspective and to give necessary sanction or take appropriate steps to cause the disbursement of the due amounts to the first respondent by way of appropriate means/steps. The proceedings in this regard shall be finalised, causing disbursement of the due amount at the earliest, and, at any rate, within four months from the date of receipt of a copy of this judgment. The verdict passed by the learned single Judge as per judgment dated 30/07/2014 in W.P.(C) No.16879 of 2012 will stand modified to the said

extent.

The appeal is allowed to the said extent.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE