

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937**

**WP(C).No. 2701 of 2010 (K)**  
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**PETITIONER(S):**  
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**R.SUSEENDRANATHAN, S.K.PALAZHI,  
VAKKOM P.O., THIRUVANANTHAPURAM-695 308.**

**BY ADVS.SRI.VAKKOM N.VIJAYAN  
SMT.V.RENJU  
SRI.P.ANIYAN  
SMT.M.A.RAMITHA**

**RESPONDENT(S):**  
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- 1. VAKKOM FARMERS SERVICE CO-OPERATIVE BANK LTD.  
NO.542, VAKKOM P.O., THIRUVANANTHAPURAM  
REPRESENTED BY ITS, MANAGING DIRECTOR.**
- 2. THE ARBITRATION AND EXECUTION-I  
INSPECTOR (ARBITRATOR), OFFICE OF THE ASSISTANT  
REGISTRAR OF CO-OPERATIVE SOCIETIES, CHIRAYINKEEZHE  
THIRUVANANTHAPURAM.**
- 3. KERALA CO-OPERATIVE TRIBUNAL,  
THIRUVANANTHAPURAM.**

**R1 BY ADV. SRI.M.BALAGOVINDAN  
ADV. SMT.MINI GANGADHARAN  
R2 & 3 BY GOVERNMENT PLEADER SRI.E.M.ABDUL KHADIR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**VS**

**APPENDIX**

**PETITIONER(S)' EXHIBITS :**

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|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EXT.P1</b>  | <b>COPY OF THE RECEIPT DATED 11.3.2007</b>                                                                                                    |
| <b>EXT.P2</b>  | <b>COPY OF THE RECEIPT, UNDER WHICH THE AMOUNT OF RS.35,000/- WAS WITHHELD DATED 11.3.2007</b>                                                |
| <b>EXT.P3</b>  | <b>COPY OF THE ORDER NO.CRP (1) 6809/93 L.DIS DATED 14.12.1993</b>                                                                            |
| <b>EXT.P4</b>  | <b>COPY OF THE PROCEEDINGS UNDER WHICH THE AMOUNT WAS SANCTIONED BY THE 1ST RESPONDENT DATED 8.1.1995</b>                                     |
| <b>EXT.P5</b>  | <b>COPY OF THE ACCOUNT STATEMENT OF PETITIONER'S ACCOUNT NO.O.D.ACCOUNT NO.1-89/90 MAINTAINED WITH THE 1ST RESPONDENT BANK</b>                |
| <b>EXT.P6</b>  | <b>COPY OF THE JUDGMENT IN WPC NO.34326 OF 2007 DATED 10.12.2007</b>                                                                          |
| <b>EXT.P7</b>  | <b>COPY OF THE AWARD IN ARC 218/2008 PASSED BY THE 2ND RESPONDENT DATED 2.8.2008</b>                                                          |
| <b>EXT.P8</b>  | <b>COPY OF THE JUDGMENT IN A.P.NO.58 OF 2008 OF THE 3RD RESPONDENT DATED 19.10.2009</b>                                                       |
| <b>EXT.P9</b>  | <b>TRUE COPY OF THE LETTER NO.CRP(1) 8547 DATED 2.1.95 BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES TO THE 1ST RESPONDENT.</b>            |
| <b>EXT.P10</b> | <b>TRUE COPY OF THE LETTER NO.CRP(1) 4886/957 DATED 8.11.95 BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES TO THE PRESIDENT OF THE BANK</b> |
| <b>EXT.P11</b> | <b>TRUE COPY OF THE CARDIAC CATEGORISATION RECORD ISSUED FROM SREE CHITRA TIRUNAL INSTITUTE OF MEDICAL SCIENCE.</b>                           |
| <b>EXT.P12</b> | <b>TRUE COPY OF THE MEMO DATED 16.10.2004 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.</b>                                                 |
| <b>EXT.P13</b> | <b>TRUE COPY OF THE REPLY DATED 19.10.2004 SUBMITTED BY THE PETITIONER TO THE MEMO</b>                                                        |
| <b>EXT.P14</b> | <b>TRUE COPY OF THE LETTER DATED 26.8.2006 OF THE PRESIDENT OF THE BANK TO ONE MEMBER</b>                                                     |
| <b>EXT.P15</b> | <b>TRUE COPY OF THE APPEAL NO.58/2008 FILED BEFORE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM</b>                                       |
| <b>EXT.P16</b> | <b>TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER IN THE ABOVE APPEAL.</b>                                                       |

**RESPONDENT(S)' EXHIBITS :**  
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- EXT.R1(a)      TRUE COPY OF DECLARATION GIVEN BY THE PETITIONER TO THE  
FIRST RESPONDENT BANK FROM 1999 TO 2004**
- EXT.R1(b)      TRUE COPY OF THE RECEIPT DATED 3.8.2002**
- EXT.R1(c)      TRUE COPY OF THE RECEIPT DATED 23.9.2003**
- EXT.R1(d)      TRUE COPY OF THE COMMUNICATION DATED 3.10.2007**
- EXT.R1(e)      TRUE COPY OF THE AUDIT CERTIFICATE AND AUDIT MEMORANDUM  
OF 2000-2001 DATED 26.5.2004**

**/TRUE COPY/**

**PA TO JUDGE**

**VS**

**A.M.SHAFFIQUE, J.**

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**W.P.(C).No.2701 of 2010**  
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Dated this the 11<sup>th</sup> day of November, 2015

**JUDGMENT**

Petitioner challenges Exts.P7 and P8 by which the petitioner's claim for refund of an amount of Rs.35,000/- and claim for Rs.10,115/- as uniform allowance has been rejected by the Arbitrator appointed under the Co-operative Societies Act, which was later confirmed by the Co-operative Tribunal.

2. Petitioner has filed a complaint, inter alia contending that he retired from the first respondent Society on 31.05.2006 and he was eligible for gratuity amount of Rs.1,85,835/-. He alleges that from the said amount, Rs.35,000/- has been recovered, which is illegal and he has no liability to pay the said amount. It is further contended that though an amount of Rs.10,115/- has been allocated to him, as uniform allowance, it was not disbursed and rejected as per the proceedings dated 19.01.1995. Petitioner claimed the aforesaid amount with

interest at the rate of 12% per annum.

3. It was contended on behalf of the Society that the Society was running in loss and the bonus payable was only 8.33%, whereas 20% bonus was paid. Audit objection was raised regarding the over payment of bonus and it was agreed by the petitioner that the excess bonus paid could be recovered from him. Accordingly, after disbursing the gratuity amount of Rs.1,85,835/-, by a separate proceedings, Rs.35,000/- was recovered from the petitioner's account in terms of Ext.P2. It is stated that in so far as the petitioner had given proper receipt for the gratuity amount of Rs.1,85,835/- and the said amount has been remitted in his account, the entire payment of gratuity has been made and it is thereafter that proceedings was taken for recovering Rs.35,000/- as sundry advance. In regard to the claim for uniform allowance as Rs.10,115/-, it was contended that the petitioner was not wearing uniform and therefore the amount allocated in his account has been later withdrawn and which was communicated to him as early as in 1995

and thereafter he had not made any claim for the said amount.

4. The Arbitrator after having considered the matter in detail, dismissed the claim of the petitioner, upholding the stand taken by the authorities. It was also observed that the petitioner had manipulated the records as well.

5. Though the petitioner preferred an appeal before the Tribunal, the Tribunal confirmed the view expressed in the matter by the authorities. This writ petition is filed, inter alia contending that the authorities below have completely erred in permitting recovery of Rs.35,000/- from the gratuity amount due to the petitioner and that his entitlement for uniform allowance was wrongly rejected.

6. Counter affidavit has been filed by the respondent Society, supporting the stand taken by the authorities below. It is also contended that the petitioner is not entitled for any discretionary relief under Article 226 of the Constitution of India, as there is a clear finding by

the Arbitrator that the petitioner is a person who has produced forged documents before the said authority which has been clearly mentioned by the Arbitrator in the order at Ext.P7.

7. Heard the learned counsel for the appellant and the learned counsel for the Co-operative society.

8. The learned counsel for the appellant relied upon Section 4 and 13 of the Payment of Gratuity Act 1972 and the judgments of the Division Bench of this Court in ***Fertilizers and Chemicals Travancore Ltd. v. Sebastian K. John & Others [2014(1)KLJ 209]***, ***Kunju Mohammed V.A. v. KSFE Ltd. and Others [2009(4) KHC 185]*** and ***State Farms Corporation of India v. Mathai [2008(2)KLT 112]***, contending that no amount can be recovered from the gratuity amount.

9. Still further, it is contended that when the uniform allowance was originally granted, there is no justification in taking the same back. It is also submitted by the learned counsel for the petitioner that the petitioner claims the uniform allowance only upto the year

1994.

10. On the other hand, relying upon the materials produced before this Court, it is argued by the learned counsel for the first respondent that as far as the recovery of excess bonus paid, petitioner himself has given a declaration in terms of R1(a) dated 14.05.2004, R1(b) dated 03.08.2002 and R1(c) dated 23.09.2003 that the excess bonus received by him could be recovered from him. Further it is contended that Ext.P1 itself would indicate that the entire amount of gratuity was paid to the petitioner for which he had signed the receipt. It is argued that the petitioner's claim was that the amount of Rs.35,000/- was recovered from the gratuity. It is argued that it is not so. No recovery was effected from the gratuity, whereas after paying the gratuity amount a sum of Rs.35,000/- was recovered from the bank account of the petitioner.

11. The first question involved in this writ petition is whether an amount of Rs.35,000/- recovered from the gratuity amount of the petitioner is justifiable or

not. There cannot be any dispute regarding the fact that in terms of Section 4 and 13 of the Payment of Gratuity Act, 1972, no attachment could be made from the gratuity amount payable to the employee. The judgments in regard to this aspect is very clear and as rightly argued by the learned counsel for the appellant. But the question is whether any such recovery has been effected by the Co-operative Society. Documents produced as Ext.P1 would indicate that an amount of Rs.1,85,835/- has been given as gratuity, for which the petitioner has given a receipt in writing on 11.03.2007. Under such circumstances, it cannot be contended that the entire amount of gratuity has not been paid to the petitioner. The learned counsel for the petitioner however relied upon Ext.P2 dated 11.03.2007 stating that it is from the said amount that Rs.35,000/- has been recovered. It is settled principle of law that once an amount has been deposited in a bank account of the employee concerned, it ceases to have the character of gratuity amount. In such event nothing prevents him from effecting payment from the

said amount towards any dues to the Bank. Ext.P2 would indicate that Rs.35,000/- has been received by the bank from the sundry advance. It does not indicate that any recovery has been effected by the Society from the gratuity amount due of the petitioner. Gratuity amount apparently is paid in terms of Ext.P1 receipt and once it ceases to have the character of gratuity amount, nothing prevents the Society for recovering the said amount or the petitioner paying the said amount to the Society voluntarily. The learned counsel for the petitioner would however submit that at the time when the recovery was effected, there was no fixation of liability. In fact going by Ext.R1(a) to (c), it is clear that the petitioner himself has given a declaration that the excess amount received as bonus could be recovered from him. It is therefore apparent that it is a voluntarily payment and therefore the contention urged on behalf of the petitioner is totally unsustainable.

12. The next contention is with reference to the claim for uniform allowance. Both the authorities namely

the Arbitrator as well as Co-operative Tribunal has confirmed the fact that the non payment of uniform allowance was not arbitrary or illegal in any manner. They have confirmed the view taken by the Society that the petitioner was not wearing the uniform, as a result of which, he is not entitled to claim the uniform allowance. When such a view had been taken by the authorities concurrently, I do not think that this Court should exercise the power of judicial review to unsettle such findings in the above case.

In the result, the petitioner is not entitled for any relief sought for in the writ petition and accordingly it is dismissed.

Sd/-  
**A.M.SHAFFIQUE**  
**JUDGE**

VS