

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WA.No. 1145 of 2014 ()

WP(C) 23591/2011 of THIS HONOURABLE COURT

APPELLANTS/PETITIONERS :

- 1. ACHAMMA KOSHY, TC NO.12/6634,
KUNNUKUZHY, THIRUVANANTHAPURAM.**
- 2. JOSHNU KOSHY TC NO.12/6634,
KUNNUKUZHY, THIRUVANANTHAPURAM.**

**BY ADVS.SMT.JEENA JOSEPH
SRI.G.D.PANICKER**

RESPONDENTS :

- 1. STATE BANK OF TRAVANCORE
HEAD OFFICE, POOJAPPURA, THIRUVANANTHAPURAM-695 012.**
- 2. THE TRUSTEES,
STATE BANK OF TRAVANCORE PROVIDENT FUND, POOJAPPURA
THIRUVANANTHAPURAM-695 012.**

R1 & R2 BY SRI.P.RAMAKRISHNAN

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 1145 of 2014

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Dated this the 28th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the Bank.

2. This writ appeal has been filed against the judgment and order dated 20th June 2014, passed in Writ Petition No.23591 of 2011, by which order the writ petition filed by the appellants has been dismissed. Brief facts of the case which need to be noted for deciding the writ appeal are;

The husband of the 1st appellant and the father of the 2nd appellant was a subscriber of the Provident Fund under the State Bank of Travancore Employees Provident Fund, who died on 25th February, 1995. After the death

of Mr.Varghese Koshy, the member, the appellants were informed by the Bank that since the deceased did not make any nomination in respect of terminal benefits, they have to obtain a succession certificate to claim the amount. The appellants approached the Sub Court, Thiruvananthapuram, with OP (Succession) No. 159 of 1995. The succession certificate was granted only on 31st March 2011, authorizing the 1st appellant to collect provident fund due from the Bank. The 1st appellant submitted the certificate to the Bank and the Bank released the amount of ₹ 2,43,495/- towards the provident fund by Ext.P5. The Bank had paid the interest only for a period of six months. Ext.P6 representation dated 17th June, 2011 was submitted for interest. When no response was given, the writ petition was filed by the appellants praying for following reliefs:

- “(i) Issue a writ of mandamus or such other writ, order or direction directing the respondents to pay interest from 25.02.1995 (the date of death of Sri.Varghese Koshy) till 17.06.2011 (the date of payment on the provident fund dues

to the petitioners) at 12% per annum with half yearly rests to the petitioners.

(ii) Award the cost of this proceedings”

3. The Bank filed counter affidavit in the writ petition and reliance was placed on Regulation 16 of the State Bank of Travancore Employees Provident Fund Regulations and it was submitted on behalf of the Bank that after the death of a member, interest shall accrue only for a period upto six months. Hence, there was no entitlement for interest after six months from the date of death of member. The learned Single Judge accepted the said contention and dismissed the writ petition. Writ appeal has been filed challenging the said judgment of this Court.

4. Adv. Jeena Joseph, learned counsel for the appellants, in support of the appeal, contended that the appellants being the member of “family” within the meaning of the Regulation, even though there was no nomination, they were entitled to receive payment as per

Regulation 20 and in the present case, the Bank could not have asked the appellants to submit the succession certificate and the time taken in submission of succession certificate was due to the Court proceedings whereas the appellants had immediately filed proceeding OP (Succession) No.159 of 1995. Hence, the appellants could not be denied the interest for the aforesaid period, during which the amount was lying in the Bank. It is submitted that the delay in payment was on account of unauthorised action of the Bank in asking the appellants to obtain succession certificate. Hence, the Bank has to pay the interest for delayed payment.

5. Learned counsel for the Bank reiterated his submission that under Regulation 16, the interest shall cease after expiry of six months from the death of member. He further submitted that under Regulation 20, the last proviso, the Bank is entitled to require a person claiming payment to produce probate, letters of

administration or a succession certificate. Hence, the Bank's action was justified and no error has been committed by the Bank in making payment of interest for a period of six months only.

6. We have considered the submission of learned counsel for the parties and perused the records.

7. There is no dispute between the parties regarding the facts and events that followed. The payment of the provident fund as well as the interest for a period of six months is also admitted. The only issue to be considered is as to whether the appellants were rightfully denied the payment of interest during the aforesaid period. There are statutory regulations namely, the State Bank of Travancore Employees Provident Fund Regulation, which are in force with effect from 1st October, 1969, governing the payment of provident fund and allied matters. Regulations 16 and 20 which are relevant for the present case are quoted as below:

16. Interest on all sums standing in the books of the Fund to the credit of a member shall cease at the expiry of six months from the date he ceases to be a member.

INTEREST TO CEASE SIX MONTHS AFTER THE TERMINATION OF SERVICE OF DEATH OF MEMBER

20. On the death of a member the full amount standing to his credit in the fund irrespective of the period for which the member may have served after making any deduction authorised under these Regulations shall become payable as under:

PAYMENT ON DEATH OF A MEMBER

- (i) when the member leaves a family:
 - (a) If a nomination made by the member in accordance with these Regulations in favour of a person or persons of his family subsists, the amount as stated above or the part thereof to which the nomination relates, shall become payable to the nominee or nominees in the proportion specified in the nomination;
 - (b) If no such nomination in favour of a person or persons belonging to the family of the member subsists or if such nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall notwithstanding any nomination purporting to be in favour of any person or persons other than a person

or persons belonging to his family, become payable to the persons belonging to his family in equal shares.

Provided that no share shall be payable to-

- (i) sons who have attained legal majority;
- (ii) sons of a deceased son who have attained legal majority;
- (iii) married daughters whose husbands are alive;
- (iv) married daughters of a deceased son whose husbands are alive;

if there is any member of the family other than these specified in clause (i), (ii), and (iv);

provided further that the widow or widows and the child or child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the member and if in a case where had he survived the member he would have been excluded from a share under clause (1) of the first proviso, he had not been so excluded.

(ii) When the member leaves no family:

- (a) If a nomination made by him in accordance with these Regulations in favour of any person or persons subsists, the amount as stated above or the part thereof to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination;
- (b) If no nomination made in accordance with these Regulations

subsists, the amount as stated above shall become payable to any person appearing to the Trustees to be entitled to the same.

Provided that where the amount payable exceeds Rs.5,000/-, the person claiming payment shall, unless he is a nominee being a dependant as defined in clause (c) of Section 2 of the Provident Funds Act, 1925, be required to produce probate, letters of administration or a succession certificate in accordance with the provisions of Section 4 of the said Act.”

8. Regulation 19 contains an explanation which defines the family for the purposes of Regulations 19 and 20. It is useful to quote the explanation, which is to the following effect:

EXPLANATION In this Regulation and in Regulation 20, 'family' means the wife or wives, or husband, and children of a member and the widow or widows and children of a deceased son of a member.

Provided that if a member proves that his wife has been judicially separated from him or has ceased under the customary law of the community to which she belongs to be entitled to maintenance she shall no longer be deemed to be a member of the family unless the member subsequently indicates by express notification in writing to the Trustee that she shall continue to be so regarded.

Provided further that if a member by notification in writing to the Trustees expresses her desire to exclude her husband from the family, the husband shall no longer be

deemed to be a member of the family unless the member subsequently cancels formally in writing her notification excluding him.”

9. The submission which needs to be considered is as to whether the appellants were entitled to receive payment without requiring to produce the succession certificate as has been directed by the Bank. Regulation 20 contains two Sub Regulations, i.e, Sub Regulations (i) and (ii). Sub Regulation (i) begins with “when the member leaves a family”, whereas Sub Regulation (ii) begins with “when the member leaves no family”. The family has been defined in Regulation 19 as quoted above. The present is a case where, th 1st appellant, wife and the 2nd appellant, son had come up for the payment. Thus the present was the case where the case was to be governed by Regulation 20 (i) and Sub Clause (b). Sub Clause (b) deals with a situation when there was no nomination.

10. Learned counsel for the Bank has laid

emphasies on the proviso to Sub Regulation (ii), which provided that where the amount payable exceeds ₹ 5,000/-, the person claiming payment shall, unless he is a nominee being a dependant as defined in Clause (c) of Section 2 of the Provident Funds Act, 1925, be required to produce probate, letters of administration or a succession certificate. The proviso, on the plain reading of the Regulation shall be applicable when the member leaves no family. The object and purpose of proviso is amply clear that when a person leaves no family any person claiming payment should be required to produce probate, letters of administration or succession. This provision was made to safeguard the interest of the Bank from making the payment of any person who does not belong to family without proper succession of his entitlement. The said proviso has no application with regard to the payment to a person belonging to the family of the deceased. In the above view of the matter, we are

of the considered opinion that present was the case where Bank was not required to direct the appellants to produce the succession certificate. The Bank actually directed for production of succession certificate, which took six years time. The Bank itself cannot take benefits of its unauthorised direction in denying the payment of interest to the appellants. The appellants were clearly denied the payment of interest on the amount which was required to be paid immediately after the death. The claim was made within six months from the date of death. Hence, during that said period the interest was payable and since the Bank did not make the payment within six months from the date of death, the liability of interest has to be fastened on the Bank.

11. In view of the foregoing contentions, we are of the view that the judgment of the learned Single Judge, dismissing the writ petition cannot be sustained. The appellants have clearly made out the claim for payment of

interest on the amount, which was actually paid on 17.06.2011. The Bank is liable to pay interest during the said period, until the date on which the amount was paid to the appellants. The Bank may calculate the admissible interest on the said amount of provident fund and make the payment to the appellants within a period of three months from the date of receipt of a copy of this judgment.

Accordingly, the appeal is allowed with the aforesaid directions.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE**

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