

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No.3183 of 2010 (W)

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PETITIONER :

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RATHNAKUMARI.P.  
SECRETARY (UNDER ORDER OF REVERSION)  
THE TANUR SERVICE CO-OPERATIVE BANK LTD.NO.F 1629,  
TANUR, MALAPPURAM DISTRICT.

BY ADVS.SRI.M.SASINDRAN  
SRI.V.VENUGOPAL

RESPONDENTS :

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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),  
MALAPPURAM.
2. THE TANUR SERVICE CO-OPERATIVE BANK LTD.NO.F 1629,  
TANUR,  
MALAPPURAM – REPRESENTED BY ITS PRESIDENT.
3. SHOBHANAKUMARI,  
ACCOUNTANT, TANUR SERVICE CO-OPERATIVE BANK LTD. NO. F 1629,  
TANUR, MALAPPURAM.

R2 BY ADV. SRI.P.J.MATHEW  
R2 BY ADV. SRI.K.B.ARUNKUMAR  
R3 BY ADV. SRI.P.P.JACOB  
BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : COPY OF THE PROCEEDINGS DTD.17.6.1991 ISSUED BY THE PRESIDENT PROMOTING THE PETITIONER TO THE POST OF SECRETARY.
- EXT.P1(a) : COPY OF THE STATEMENT OF FIXATION APPROVED BY THE ASST.REGISTRAR IN RESPECT OF THE PAY REVISION IN THE YEAR 1992.
- EXT.P1(b) : COPY OF THE STATEMENT OF FIXATION APPROVED BY THE ASST.REGISTRAR IN RESPECT OF THE PAY REVISION IN THE YEAR 1995.
- EXT.P1(c) : COPY OF THE STATEMENT OF FIXATION APPROVED BY THE ASST.REGISTRAR IN RESPECT OF THE PAY REVISION IN THE YEAR 2000.
- EXT.P1(d) : COPY OF THE ORDER OF THE JOINT REGISTRAR DTD.13.8.2003.
- EXT.P2 : COPY OF THE NOTICE DTD.28.10.2009 ISSUED BY THE PRESIDENT OF THE SOCIETY TO THE PETITIONER.
- EXT.P3 : COPY OF THE REPLY DTD.26.11.2009 SUBMITTED BY THE PETITIONER.
- EXT.P4 : COPY OF THE ORDER DTD.19.12.2009 ISSUED BY THE PRESIDENT OF THE SOCIETY.

RESPONDENTS' EXHIBITS:-

- EXT.R2(a) : COPY OF AUDIT CERTIFICATE & AUDIT MEMORANDUM FOR THE YEAR 2004-2005.
- EXT.R2(b) : COPY OF THE REPORT SUBMITTED TO THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETY MALAPPURAM DTD.17.7.2008.
- EXT.R2(c) : COPY OF THE LETTER DTD.16.10.2000 SUBMITTED BY THE PETITIONER TO THIS RESPONDENT.

True copy

P.A to Judge

**ANIL K.NARENDRA, J.**

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**W.P.(C)No.3183 of 2010**  
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**Dated this the 1<sup>st</sup> day of July, 2015**

**JUDGMENT**

The petitioner was appointed as a Junior Clerk in Thanur Service Co-operative Bank Ltd. (hereinafter referred to as 'the second respondent Bank'), on 25.9.1980. While continuing as such she was given promotion as Secretary vide Ext.P1 proceedings issued by the second respondent Bank dated 17.6.1991. As seen from Ext.P1 she was temporarily promoted as the Secretary of the Bank and was asked to take charge from Sri.K.Viswanathan, who was the then Secretary of the Bank. Exts.P1(a), P1(b) and P1(c) are the pay fixation statement of the petitioner for the subsequent period, which would indicate that she was holding the post of Secretary of the second respondent Bank during the aforesaid period.

2. It is pertinent to note that Sri.K.Viswanathan was occupying the post of Secretary of the Bank on the strength of an exemption from educational qualification granted by the Department, which expired on 30.6.1990. He was promoted as

Secretary when one Ramankutty, who was working as Secretary of the Bank was suspended from service proposing disciplinary proceedings.

3. By Ext.P1(d) order dated 13.8.2003 issued by the Joint Registrar of the Co-operative Societies, Malappuram the first respondent herein, disciplinary proceedings initiated against the aforesaid Ramankutty was set aside. Since the said Ramankutty was no more his reinstatement in service was found impracticable. Therefore, it was ordered in Ext.P1(d) that, the legal heirs of late Ramankutty shall be disbursed with all service benefits due to him, treating as he had continued in service of the Bank with effect from 14.5.1991.

4. It is based on Ext.P1(d) order passed by the first respondent, the second respondent Bank issued Ext.P2 notice to the petitioner, stating that in view of Ext.P1(d) order passed by the first respondent the legal heirs of late Ramankutty are entitled for disbursement of his monetary benefits for the period from 14.05.1991, treating as he had continued in service. In such circumstances, when monetary benefits are disbursed to legal heirs of late Ramankutty,

there will be double payment for the post of Secretary, since the petitioner was holding the post of Secretary during the aforesaid period. Therefore, it was proposed in Ext.P2 that, the excess salary and allowances drawn by the petitioner during the aforesaid period will be recovered.

5. Pursuant to Ext.P2 notice, the petitioner submitted Ext.P3 objections contending that, since she has actually discharged the duties of Secretary during the aforesaid period, no recovery can be ordered against her. After considering Ext.P3 objection filed by the petitioner, the second respondent Bank issued Ext.P4 proceedings by which it was ordered that the petitioner who was holding the post of Secretary on the basis of a temporary promotion granted will be reverted to the post of Junior Clerk with effect from 1.7.1991 and will be promoted to the post of Accountant with effect from 19.12.2009. It is aggrieved by Exts.P2 and P4, the petitioner has approached this Court in this Writ Petition seeking a writ of certiorari to quash the aforesaid orders and for a declaration that the salary paid to her in the post of Secretary for the period she was working as such cannot be recovered.

6. A counter affidavit has been filed on behalf of the second respondent Bank contending that, the petitioner was promoted as Secretary temporarily, with effect from 1.7.1991, vide Ext.P1 order. The post of Secretary became vacant due to the reversion of Sri.M.T.Ramankutty on 13.5.1991, on taking disciplinary action against him. He approached this Court by filing O.P.No.10495 of 2003 and by judgment dated 28.3.2003 the first respondent was directed to consider the matter. By Ext.P3 order dated 13.8.2003 the first respondent held that decision No.5 taken by the Executive Committee of the second respondent Bank dated 12.5.1991 was in gross violation of Rule 198(2)(3) and (4) of the Kerala Co-operative Societies Rules and therefore, the Joint Registrar has rescinded the resolution invoking the powers under Rule 176 of the said Rule. By Ext.P1(d) the first respondent has directed the second respondent Bank to pay arrears of salary and other monetary benefits due to Ramankutty for the period from 12.5.1991 onwards. In compliance of Ext.P1(d) order passed by the first respondent, the second respondent Bank paid all service benefits to his legal heirs as if he had been continuing as Secretary from 13.5.1991 to 21.6.2003.

7. The specific stand taken by the second respondent Bank in its counter affidavit is that, since 2 persons cannot be paid salary of the Secretary for the very same period, i.e. from 15.5.1991 to 21.6.2003, audit objection was raised and it was based on that audit that the excess amount drawn by the petitioner for the aforesaid period, in the post of Secretary, was proposed to be recovered by issuing Ext.P2 notice. The second respondent Bank would contend that, in view of Ext.P1 order passed by the first respondent, there was no post of Secretary as on 1.7.1991 in which the petitioner can be appointed under regular vacancy and it was in such circumstances, she was reverted as Junior Clerk in Ext.P4 order, with effect from 1.7.1991, and promoted as Accountant, with effect from 19.12.2009. Relying on the Audit Report for the year 2004-05 produced as Ext.R2(a), the learned Standing Counsel for the second respondent Bank would contend that, the recovery against the petitioner is perfectly legal and no interference of this Court is warranted.

8. Heard the arguments of the learned counsel for the petitioner, the learned Government Pleader for the first respondent,

the learned Standing Counsel for the second respondent Bank and also the learned counsel for the 3<sup>rd</sup> respondent.

9. The question that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext.P2 notice issued by the second respondent and also Ext.P4 order passed by the said respondent.

10. A reading of Ext.P2 notice would show that, the petitioner was issued with the said notice to submit her objections, if any, to the proposal made therein to recover the excess amount drawn by her in the scale of pay of the Secretary of the Bank. The disciplinary proceedings initiated against Ramankutty was set aside by Ext.P1(d) order passed by the first respondent, as a result of which, the second respondent Bank was forced to disburse all consequential monetary benefits payable to the aforesaid Ramankutty, for the period from 13.5.1991 to 21.6.2003, as if he had continued as Secretary of the Bank for the aforesaid period. To the proposal made in Ext.P2 the petitioner submitted Ext.P3 objection. Neither the pleadings in the counter affidavit filed by the second respondent nor the documents on record would indicate as to whether a decision has

already been taken by the second respondent Bank on Ext.P2 notice, after considering Ext.P3 objection filed by the petitioner.

11. As far as Ext.P4 order is concerned, the specific case of the petitioner is that, the reversion ordered in Ext.P4 is without any prior notice and therefore, there is violation of principles of natural justice. A reading of Ext.P4 order would show that documents referred therein are Ext.P2 notice, the proposal for recovery of the excess amount already received towards salary and Ext.P3 objection submitted by the petitioner. Therefore, it is evident that the reversion of the petitioner in Ext.P4 is without any prior notice. But it has to be noticed that, the said reversion of the petitioner necessitated since the disciplinary proceedings initiated against Ramankutty was set aside by the first respondent in Ext.P1(d) order, by which the resolution adopted by the second respondent Bank was rescinded and it was directed to disburse salary and all consequential monetary benefits to him as if he had continued in the service of the Bank as Secretary for the period from 13.5.1991 to 21.6.2003.

12. Ext.R2(a) produced along with I.A.No.8119 of 2015 is the Audit Report for the financial year 2004-05. A reading of Ext.R2(a) Audit Report would show that, in view of Ext.P1(d) order passed by the first respondent a situation has arisen by which the second respondent Bank has to pay salary and other benefits payable to Secretary to two persons, namely, late Ramankutty and also to the petitioner in this writ petition. As per the Audit Report, that situation has to be avoided by making necessary arrangements. Ext.R2(b) letter dated 17.7.2008 of the second respondent Bank addressed to the first respondent would indicate further that, in compliance of the directions contained in Ext.P1(d) order the second respondent Bank has released a total sum of ₹.9,63,736/- to the legal heirs of late Ramankutty.

13. The fact that, for the period from 14.5.1991 to 21.6.2003 the petitioner occupied the post of Secretary on the strength of Ext.P1 order of promotion, by which she was provisionally promoted as the Secretary of the second respondent Bank is not in dispute. It is also not in dispute that, her provisional promotion as Secretary with effect from 14.5.1991, is a consequence of the disciplinary

proceedings initiated against Ramankutty and his consequential reversion from the post of Secretary. Initially that post was held by one Viswanathan, who was holding that post on the strength of exemption from educational qualification granted by the Department. When the period of exemption was to expire on 30.6.1991, he was reverted to the post of Junior Clerk and consequently the petitioner was promoted as Secretary of the second respondent Bank temporarily, with effect from 1.7.1991. As evident from Ext.P1(d), the disciplinary proceedings initiated against late Ramankutty was set aside and his legal heirs were ordered to be released salary and all consequential monetary benefits payable to him as if he had continued as Secretary of the Bank from 13.5.1991 to 21.6.2003. It was in such circumstances, the recovery as well as reversion were proposed against the petitioner by Exts.P2 and P4.

14. As far as the recovery proposed in Ext.P2 notice is concerned though the petitioner has submitted Ext.P3 objection, the second respondent Bank is yet to take a decision in the matter. As far as the reversion ordered in Ext.P4 is concerned there is nothing on record to indicate that the said reversion is with notice to the

petitioner and after giving her an opportunity to substantiate her contentions.

15. In such circumstances, the Writ Petition is disposed of with the following directions:-

1. The second respondent Bank shall consider Ext.P3 objection submitted by the petitioner to the proposal for recovery made in Ext.P2 and take a decision thereon within a period of three months from the date of receipt of a certified copy of this judgment, with notice to the petitioner and after affording her an opportunity of being heard.
2. Ext.P4 order passed by the second respondent Bank shall be treated as a proposal for reversion and the petitioner will be given an opportunity to file objections to the reversion proposed therein, which she shall file within a period of three weeks from the date of receipt of a certified copy of this judgment.

3. On receipt of such objections along with a certified copy of this judgment, the second respondent Bank shall consider the same and pass final orders on the proposal made in Ext.P4, within a period of 3 months from the date of receipt of such objections, with notice to the petitioner and after affording her an opportunity of being heard.

16. It would be open to the petitioner to rely on the judgment of the Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334** in support of her contention that no recovery can be effected. Needless to say that any order passed by the second respondent Bank, as directed above shall be a reasoned order meeting all the contentions raised by the petitioner.

Since the petitioner has already retired from service, all recovery proceedings pursuant to Ext.P2 shall be kept in abeyance till a decision is taken by the second respondent Bank as directed above.

**ANIL K.NARENDRAN, JUDGE**

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