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

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WA.No. 1872 of 2014 () IN WP(C).5737/2014

AGAINST THEJUDGMENT IN WP(C) 5737/2014 of HIGH COURT OF KERALA DATED 24-07-2014

APPELLANT(S)/2ND RESPONDENT:

MANNAMCHERRY SOUTH DIARY DEVELOPMENT CO-OPERATIVE SOCIETY LTD.NO.A-97(D) APCOS
REPRESENTED BY ITS PRESIDENT
ARYAD NORTH P.O. ALAPPUZHA DISTRICT-688538.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA

RESPONDENT(S)/PETITIONER/RESPONDENTS 1,3 &4:
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1. **S.ASHOKAN**
   SECRETARY
   MANNAMCHERY SOUTH DIARY DEVELOPMENT CO-OPERATIVE SOCIETY LTD.NO.A-97(D)APCOS
   RESIDING AT 'PRIYADARSINIYIL', ARYAD NORTH PO
   ALAPUZHA-688 538.

2. **DEPUTY DIRECTOR**
   DISTRICT OFFICE, DIARY DEVELOPMENT DEPARTMENT
   EAST OF STONE BRIDGE, ALAPUZHA - 688 011.

3. **P.KOYA**
   PRESIDENT
   MANNAMCHERY SOUTH DIARY DEVELOPMENT CO-OPERATIVE SOCIETY `
   LTD.NO.A-97(D)APCOS
   ARYAD NORTH P.O ALAPUZHA-688538.

4. **G.RETNARAJAN**
   DIRECTOR
   MANNAMCHERY SOUTH DIARY DEVELOPMENT CO-OPERATIVE SOCIETY LTD.NO.A-97(D)APCOS
   ARYAD NORTH P.O ALAPUZHA-688538.

R2 BY GOVERNMENT PLEADER ADV. SRI.P.M.MOHAMMED SHIRAZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A.No.1872 of 2014

Dated this the 11th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

The verdict passed by the learned single Judge, granting a wider relief than the requisite extent as sought for in the writ petition, is sought to be intercepted by filing this appeal by the employer society.

2. It is seen from the proceedings, that the writ petitioner was proceeded against, by way of disciplinary action, in respect of some misconducts and he was suspended from service on 22.3.2011. A domestic enquiry was conducted, and later, he was reinstated in service on 1.2.2014. Alleging that no subsistence allowance was paid to the employee, he approached this Court by filing writ petition with the following prayers:-

> *"I. Direct 1st respondent to ensure that petitioner is able to discharge the duties of Secretary of the 2nd respondent society and restrain respondents 3 and 4 from interfering with discharge of official duties by the petitioner.*

II. *Direct respondents 2 to 4 to pay the arrears of subsistence allowance due to the petitioner forthwith,*

III. *Direct respondents 2 to 4 to hand over all records of the society and cash balance to the petitioner,*

IV. *Issue such other Writ, order or Direction as this Honorable court may deem fit and proper in the facts and circumstances of the case and*

V. *Direct respondents to pay costs of this proceeding to the High Court Legal Services Committee."*

3. When the matter came up for final hearing, before the learned single Bench on 24.7.2014, it was stated that the employee subsequently had retired from service on attaining the age of superannuation, on 30.6.2014 and that the terminal benefits were still to be paid to him. It was in the said circumstance, that relief was molded and the writ petition was disposed of on that day itself, directing the 2nd respondent in the writ petition to pay the balance amount of subsistence allowance as well as the terminal benefits to the writ petitioner at the earliest, at any rate within 3 months from the date of receipt of copy of the judgment.

4. When the matter came for consideration before this

Court on 10.7.2015, the learned counsel appearing for the appellant submitted that, the entire balance of subsistence allowance had been cleared by the appellant and that the subsisting grievance was only with regard to the direction given by the learned single Judge to satisfy the terminal benefits. It was pointed out that, huge liability was still to be cleared by the writ petitioner to the society and that the quantum of liability had to be fixed, which required much time. The learned counsel appearing for the 1st respondent submitted that, in spite of exonerating the delinquent employee from all the charges, no steps were taken by the appellant to deposit the contribution payable in respect of the Provident Fund to the concerned fund, so as to enable the employee to draw pension. The learned counsel for the appellant sought for time to put their version in black and white terms.

4. Pursuant to the above order,a statement dated 16.7.2015 has been filed by the appellant. Paragraph 6 of the statement reads as follows:-

> *" The appellant Society has no objection in passing a resolution to the District Co-operative Bank for release of the Provident Fund Contribution to the Co-operative Pension Board to enable the writ petitioner/1st respondent to receive pension from the Board. The appellant Society will pass a resolution for the said purpose within such time as may be*

fixed by this Hon'ble Court."

The learned counsel for the appellant submits, that the appellant is ready to pursue further steps and to pass a resolution, with regard to the grievance projected by the writ petitioner as to the release of the Provident Fund contribution to the Pension Board, so as to enable the writ petitioner to receive pension from the Board and further that the said exercise will be completed within one month.

5. With regard to the payment of retirement benefits ordered by the learned single Judge, we find that there is a dispute with regard to the actual extent of amount payable to the employee, with reference to the alleged liability. This was not a subject matter of the writ petition, as disernable from the prayers raised; which are extracted below:-

> *"I. Direct 1st respondent to ensure that petitioner is able to discharge the duties of Secretary of the 2nd respondent society and restrain respondents 3 and 4 from interfering with discharge of official duties by the petitioner.*
>
> *II. Direct respondents 2 to 4 to pay the arrears of subsistence allowance due to the petitioner forthwith,*
>
> *III. Direct respondents 2 to 4 to hand over all records of the society and cash balance to the petitioner,*

IV. Issue such other Writ, order or Direction as this Honorable court may deem fit and proper in the facts and circumstances of the case and

V. Direct respondents to pay costs of this proceeding to the High Court Legal Services Committee."

6. It is true, that reliefs can be molded by a Court, in so far as there is no serious dispute with regard to the eligibility or extent. By virtue of the subsequent developments, the writ petitioner retired from the service on 30.6.2014; but the extent of benefits payable to him stands disputed from the part of appellant/society; referring to the liability to be cleared by the appellant. This requires to be considered and adjudicated separately and as such, a relief which was not sought for in the writ petition could not have been granted by the learned single Judge.

7. In the above circumstance, the direction given by the learned single Judge to effect disbursement of the terminal benefits stands sets aside. Satisfaction of the entire balance subsistence allowance, in respect of the period covered by suspension is recorded. Similarly, the undertaking given by the appellant as to the steps proposed to be taken as stated in paragraph '6' of the statement dated 16.07.2015 for taking a

'resolution' and to transfer the Provident Fund amount to the Pension Board is also recorded. The appeal is disposed of without prejudice to the rights and liberties of the parties concerned with regard to the issues as mentioned above.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

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PA TO JUDGE

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