

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WA.No. 2541 of 2015 () IN WP(C).34920/2014

**AGAINST THE ORDER/JUDGMENT IN WP(C) 34920/2014 of HIGH COURT OF KERALA
DATED 19-10-2015**

APPELLANT(S)/PETITIONER:

**THE MOONILAVU SERVICE CO-OPERATIVE
BANK LTD NO.K 163, MOONILAVU, KOTTAYAM DISTRICT
REPRESENTED BY ITS SECRETARY**

**BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH**

RESPONDENT(S)/RESPONDENTS:

- 1. M.T.THOMAS
S/O. LATE THOMAS, MUTHALAKUZHI HOUSE, PLASSANAL P.O
PANNAKKAPALAM, ERATTUPETTA, KOTTAYAM DISTRICT 686 579**
- 2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL),
KOTTAYAM 686 001.**
- 3. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO CO-OPERATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001**

**R1 BY ADV. SRI.SHAJI THOMAS
R1 BY ADV. SRI.BINU PAUL
BY SR GOVERNMENT PLEADER SRI.P.IDAVIS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-12-2015,
ALONG WITH WA. 2598/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 2541 & 2598 of 2015

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Dated this, the 9th day of December, 2015

J U D G M E N T

Shaffique, J.

These appeals have been filed by the Moonilavu Service Co-operative Bank Limited challenging common judgment dated 19/10/2015 in WP(C) Nos.34920/14 and 1153/2015.

2. WP(C) No.34920/2014 has been filed by the appellant whereas WP(C) No.1153/2015 has been filed by the 1st respondent in WA No.2541/2015.

3. WP(C) No.34920/14 has been filed by the Bank challenging Exts.P6 and P7 orders directing the Bank to disburse certain amounts to the 1st respondent based on Ext.P5 order. By Ext.P5 order, the Government considered the appeal filed by the Bank against the order passed by the Joint Registrar and while rejecting the claim of the 1st respondent in certain aspects directed the Bank to pay certain amounts to the 1st respondent. However, nothing has been done in the matter and ultimately the

1st respondent approached the Government, which passed Ext.P6 order. Ext.P7 order is passed by the Joint Registrar pursuant to Ext.P6 order. By virtue of Ext.P6 order, the following direction had been issued;

"Your attention is invited to the reference cited above. According to you the Moonilavu Service Co-operative bank is still working on loss and the salary arrears of Sri.Thomas is not liable to be disbursed. As per the audit report for the year 1998-99 an amount of Rs.54,192/- is liable to be recovered from the Chief Executive/Secretary and on commutation of leave surrender an amount of Rs.79105/- is due to the above said person and deducting Rs.54,192/- the balance amount of Rs.24193/- kept in the suspense account is to be released immediately. Besides the above an amount of Rs.67,223/- deposited by the said person to the pension Board which ought to have been paid by the bank is also liable to be returned and appropriate steps in that regard shall be taken immediately."

4. The 1st respondent had filed WP(C) No.1153/15 challenging Ext.P5 to the extent that it did not grant all the benefits claimed by the 1st respondent/petitioner and for implementing Exts.P6 and P7.

5. Learned Single Judge after considering the rival contentions, by the aforesaid common judgment, dismissed the writ petition filed by the Bank whereas the writ petition filed by the 1st respondent was disposed of directing the Bank to disburse the monetary benefits in terms of Ext.P5 Government Order dated 4/7/2007 to the petitioner employee within a period of one month from the date of receipt of a certified copy of the judgment. The amounts due to the 1st respondent is covered by Exts.P6 and P7 produced in WP(C) No.34920/14.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the 1st respondent.

7. The main contention urged by the learned counsel for the appellant is that they are not liable to pay an amount of ₹67,223/-, which is deposited by the 1st respondent to the Pension Board. It is contended that the 1st respondent had taken a loan of 90% of the amount from the Pension Board and he was only remitting the said amount back to the Board and therefore the Bank has no obligation to pay the said amount to the 1st respondent. Learned counsel argued that such a contention was

taken before the Government also.

8. But it is relevant to note that Ext.P5 order had been passed by the Government after taking into consideration all the aspects involved in the matter when an appeal was filed by the Bank challenging the order passed by the Joint Registrar. Ext.P6 is only a continuation of Ext.P5 since the Bank did not take any steps to pay the amount as directed in Ext.P5 to the 1st respondent. The contention of the appellant that they had no obligation to pay the amount which was remitted by the 1st respondent to the Pension Board cannot be accepted as the Government who had passed Ext.P5 had clearly indicated in Ext.P6 that the said amount has to be paid by the Bank.

9. Under such circumstances, when the Government who had passed Ext.P5 had correctly understood the scope and effect of the said order, we do not think that the Bank was entitled to challenge the same in this proceedings. Learned Single Judge had also after an elaborate consideration of the factual and legal aspects of the matter had come to a finding that Exts.P6 and P7 had been issued pursuant to Ext.P5 and it is not open for the Bank

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to challenge the consequential order passed pursuant to Ext.P5.

10. We do not find any ground to exercise the appellate jurisdiction to set aside the judgment of the learned Single Judge.

Accordingly, the writ appeals are dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp9/12/2015

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PS to Judge