IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 3068 of 2011 (G)

PETITIONER:

N.RAVINDRA KURUP, “UTHRADAM” VENKAVILA,
PAZHAKUTTY P.O., NEDUMANGAD, THIRUVANANTHAPURAM,
(RETIRED SECRETARY, PALODE CO-OPERATIVE
AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD.,
T 86 - PALODE, THIRUVANANTHAPURAM.

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, CO-OPERATION (B), DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD, TC, NO.27/156,
157, KALANIVAS, CHINMAYA LANE,
NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM 695 001,
REPRESENTED BY ITS SECRETARY.

3. PALODE CO-OPERATIVE AGRICULTURAL &
RURAL DEVELOPMENT BANK LIMITED NO.T/862, PALODE,
NEDUMANGAD, THIRUVANANTHAPURAM 695 001.

R3 BY ADV. SRI.RAM MOHAN.G.
R3 BY ADV. SRI.G.P.SHINOD
R2 BY ADV. SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD
R1 BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER
R BY SRI.P.V.MOHANAN,SC,K.ST.CO.OP.EMP.PENSI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	:	TRUE COPY OF THE CERTIFICATE DATED 31.05.2004 ISSUED BY THE PRESIDENT OF RESPONDENT NO.3 BANK INDICATING THE SERVICE PARTICULARS OF THE PETITIONER.
EXT.P2	:	TRUE COPY OF THE RESOLUTION DATED 24.05.2004 PASSED BY THE MANAGING COMMITTEE OF RESPONDENT NO.3 BANK.
EXT.P3	:	TRUE COPY OF THE RESOLUTION DATED 30.05.2005 PASSED BY THE MANAGING COMMITTEE OF THE RESPONDENT NO.3 BANK.
EXT.P4	:	TRUE COPY OF RESOLUTION DATED 31.07.2006 PASSED BY THE MANAGING COMMITTEE OF RESPONDENT NO.3 BANK.
EXT.P5	:	TRUE COPY OF THE RESOLUTION DATED 31.01.2008 PASSED BY THE MANAGING COMMITTEE OF THE RESPONDENT NO.3 BANK.
EXT.P6	:	TRUE COPY OF THE JUDGMENT DATED 20.01.2005 PASSED BY THE HON'BLE COURT IN W.P.(C) NO. 21705/2004.
EXT.P7	:	TRUE COPY OF THE CIRCULAR DATED 22.01.2009 ISSUED BY RESPONDENT NO.2.
EXT.P8	:	TRUE COPY OF THE COMMUNICATION DATED 26.09.2009 ISSUED BY RESPONDENT NO.2.
EXT.P9	:	TRUE COPY OF THE JUDGMENT DATED 02.11.2010 PASSED BY THIS HON'BLE COURT IN W.P.(C) NO. 9110/2009.
EXT.P10	:	TRUE COPY OF THE DEMAND NOTICE DATED 11.11.2010 AND THE STATEMENT THAT ACCOMPANIED THE SAME.
EXT.P11	:	TRUE COPY OF THE ORDER DATED 30.11.2010 ISSUED BY RESPONDENT NO.2.
EXT.P11(a)	:	TRUE COPY OF THE NOTIFICATION DATED 08.11.2010.
EXT.P12	:	TRUE COPY OF THE ORDER DATED 21.12.2010 ISSUED BY RESPONDENT NO.2.

RESPONDENTS' EXHIBITS:

EXT.R3	:	TRUE COPY OF THE JUDGMENT DATED 20.07.2012 PASSED BY THIS HON'BLE COURT IN WRIT APPEAL NO.741 OF 2012.
EXT.R3(a)	:	TRUE COPY OF THE ORDER DATED 27.09.2012 PASSED BY THIS HON'BLE COURT IN I.A. NO.671 OF 2012 IN WRIT APPEAL NO.741 OF 2012.
EXT.R3(b)	:	TRUE COPY OF THE JUDGMENT DATED 27.06.2012 PASSED BY THIS HON'BLE COURT IN WRIT APPEAL NO.1216 OF 2012.
EXT.R3(c)	:	TRUE COPY OF THE ORDER DATED 23.03.2010 PASSED BY THIS HON'BLE COURT IN IA. NO.2579 OF 2010 IN W.P.(C) NO. 9110 OF 2009.
EXT.R3(d)	:	TRUE COPY OF THE LETTER NO.30/2010 DATED 05.05.2010 ISSUED BY THE THIRD RESPONDENT TO THE SECOND RESPONDENT.
EXT.R3(e)	:	TRUE COPY OF THE LETTER NO.35/2010 DATED 12.05.2010 ISSUED BY THE THIRD RESPONDENT TO THE ACCOUNTS OFFICER, EPF ORGANISATION, REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.
EXT.R3(f)	:	TRUE COPY OF LETTER NO.PB/LO/3988/2010 DATED 17.05.2010 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER OF WHICH A COPY IS SERVED ON THE THIRD RESPONDENT.
EXT.R3(g)	:	TRUE COPY OF THE LETTER DATED 05.06.2010 ISSUED BY THE PETITIONER TO THE THIRD RESPONDENT REQUESTING THE THIRD RESPONDENT TO FORWARD HIS APPLICATION TO THE SECOND RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

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DAMA SESHADRI NAIDU, J.

W.P. (C) No. 3068 of 2011 (G)

Dated this the 16th day of December, 2015.

JUDGMENT

The petitioner, having worked as a Secretary, retired from the service of the third respondent Bank on 31.05.2004. The respondent Bank, in the course of time, passed Exts.P2 to P5 resolutions proposing to join the Self Financing Pension Scheme.

2. Since the respondent Bank had already been part of the scheme under Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ('the Central Scheme'), the petitioner, being a retired employee, filed a writ petition and invited Ext.P6 judgment: This Court directed the Government to consider the case of the respondent Bank whether it could be given exemption so that it could join the Self Financing Pension Scheme in the interest of those employees who desire to join the said scheme.

3. In that context, the Government issued SRO No.486/2006 dated 19.06.2006, which is a general circular granting exemption to all the Co-operative Banks covered by the Central Scheme to exercise their option to join the Self Financing Pension Scheme.

Consequently, the Pension Board issued Ext.P7 circular mandating that the persons who retired on or after 30.06.2006 alone should be entitled to join the scheme.

4. Assailing the cut-off date in Ext.P7 circular, by which he could not be qualified, the petitioner filed a writ petition. However, pending the writ petition, the Pension Board issued Ext.P8 circular removing the stipulation as regards the cutoff date. Taking Ext.P8 modified circular into account, this Court rendered Ext.P9 judgment, directing the Pension Board to process the petitioner's application for pension.

5. Initially, the Pension Board issued Ext.P10 demand notice to the respondent Bank to remit its contribution along with interest. And, later, it passed Ext.P11 order granting pension to the petitioner only prospectively, i.e., from 01.12.2010. The prospective grant of pension was presumably on the grounds that a proviso was added through Ext.P11(a) to clause 39(1)(b) that the benefit of pension should be extended only prospectively. In that context, the Pension Board passed Ext.P12 order denying to the

petitioner any arrears of pension. Aggrieved, the petitioner has approached this Court.

6. The learned counsel for the petitioner has submitted that the impugned Ext.P12 order passed by the Pension Board denying arrears of pension to the petitioner is essentially based on the newly added proviso to Clause 39 of the scheme. He has submitted that this Court has on more than one occasion held that the said proviso is only prospective. In other words, the proviso came onto the statute book on 10.11.2010, whereas the petitioner stood retired by 31.05.2004.

7. The learned counsel has strenuously contended that the petitioner ought to have been granted pension from the date of his retirement. He further contends that if any delay had occurred in getting the scheme implemented or applied to the petitioner, he could not be penalised for the said delay. In that context, the learned counsel has also submitted that the employees who retired from all other Co-operative Societies have been extended the benefit of retroactive pay of the pension.

8. The learned counsel has eventually submitted that he is willing to deposit through the employer the amount to be demanded by the Pension Board; that is, the amount along with the statutory interest so that the Pension Board could pay the petitioner the arrears as well.

9. The learned Standing Counsel, equally vehemently, has submitted that the Pension Board has not charged any interest from 2004, the year the petitioner retired, till 2010, the year the Pension Board received the contribution from the employer. He has submitted that soon after his retirement, the petitioner withdrew the money from the Provident Fund Account and utilised it.

10. According to the learned Standing Counsel, the petitioner having deposited in 2010 the amount accumulated in 2004, could not now demand the arrears of pension. Whether in terms of the proviso added to clause 39 or otherwise, it is mandatory, contends the learned Standing Counsel, on the part of the Pension Board to pay pension only from the date it received the contribution from the employer. In that context, he has contended that since the Board

received the amount only in November 2010, it started paying pension from 01.12.2010.

11. Heard the learned counsel for the petitioner, the learned Government Pleader, the learned Standing Counsel for the Pension Board, and the learned counsel for the respondent Bank, apart from perusing the record.

12. Indeed, the Self Financing Pension Scheme was introduced in 1994. As regards the societies covered by the Central Scheme, they were not brought under the new scheme. As can be seen from the counter affidavit filed by the respondent Bank, many employees have been caught on the horns of a dilemma: Whether they should join the Self-Financing Scheme or remain with the Central Scheme.

13. According to the learned counsel for the respondent Bank, all the employees of the respondent bank, including those retired, save the petitioner, opted to continue with the Central Scheme. Only has the petitioner chosen to take advantage of the new scheme.

14. Be that as it may, in view of the representations from

certain quarters, the Government issued G.O.(MS) No.44/2006/LPR dated 19.06.2006 permitting those societies that are under the Central Scheme to opt for the Self-Financing Scheme if they chose to.

15. In the light of the Government Order referred to above, the Pension Board issued Ext.P7 circular mandating that persons who retired on or after 30.06.2006 alone were entitled to join the scheme. Nevertheless, later it issued Ext.P8 circular reviewing the said stipulation and thereby enabling all the employees who retired on or after 03.06.1993 to be eligible to opt for the scheme.

16. In the present instance, the petitioner like many other employees who retired before 2006, withdrew the provident fund as soon as he retired. In the light of the subsequent developments, he opted for the new scheme and accordingly sought monthly pension. As a result, the employer having processed the petitioner's application eventually remitted his contribution in response to the demand made by the Pension Board. To be more specific, the employer paid the Pension Board an amount of ₹4,90,193/-, which

being the amount accumulated up to the date of the petitioner's retirement in his EPF account. It is pertinent to observe that the employer Bank, in fact, collected the said amount from the petitioner and remitted it to the Pension Board.

17. Now the bone of contention is whether the Pension Board is liable to pay arrears of pension, apart from the monthly pension, which it has, at any rate, been paying from the date of its receiving the contribution.

18. Notwithstanding the forceful submissions of Sri. Subhash Chand, the learned counsel for the petitioner, I regret my inability to be persuaded by his point of contention. In the first place, when the Self Financing Scheme was brought into force, it was not applied to the petitioner's employer automatically. In fact, save the petitioner, all other employees, including those who retired, opted to remain with the Central Scheme. Only at the request of the petitioner did the employer forward his application and then remit the amounts demanded by the Pension Board. It was especially after collecting the said amount from the very petitioner.

19. What cannot be lost sight of is the fact that the petitioner withdrew the amount from the EPF Account and used it for his own purposes until he felt that his interest would be better served if he could opt for pension. Only then did he choose to repay the amount to the Pension Board, albeit through the employer. Even without reference to the proviso added to clause 39, I am of the considered opinion that the Pension Board cannot be compelled to pay arrears. For, admittedly, it had not collected any amount in whatever form, including the penal interest, from either the petitioner or the employer Bank for the period between the date of the petitioner's retirement and the date of actual contribution.

20. Not being oblivious of the fact that the petitioner is willing to pay the differential amount, I may still have to observe that just to ensure that the petitioner should have the arrears, which have not been basically provided for, this Court cannot resort to a contrivance: a contrivance, so to say, that there could be a demand by the Pension Board de hors a statutory mandate, and that on payment of the amount, the Board could pay the arrears. It is

fraught with policy as well as administrative pitfalls or difficulties, as has been contended by the learned Standing Counsel.

21. To keep it straight and simple, from the date of his retirement till recently, i.e., until the Bank contributed the amounts to the Pension Board, the petitioner had the advantage of retaining the funds. For the said period, it is unconscionable and impermissible to compel the Pension Board to pay any arrears to the petitioner. Since it has been paying the pension from the very next month after its receiving the pension contribution, I do not see anything blameworthy in the conduct of the Pension Board.

In the facts and circumstances, this writ petition stands dismissed. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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