**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE SMT. JUSTICE P.V.ASHA**

**THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937**

**WP(C).No. 1338 of 2014 (N)**
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**PETITIONER(S):**
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**E.MURALEEDHARAN**
**VAZHAYOOR SERVICE CO-OPERATIVE BANK, LTD.NO.D 1898**
**AZHINILAM POST, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.N.MOHANAN**
**SMT.I.VINAYAKUMARI**
**SRI.C.P.SABARI**

**RESPONDENT(S):**
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1. **VAZHAYOOR SERVICE CO-OPERATIVE BANK**
   **LTD.NO.D 1898, REPRESENTED BY ITS SECRETARY**
   **AZHINILAM POST, MALAPPURAM DISTRICT 673633.**

2. **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (AUDIT)**
   **MALAPPURAM- 676505.**

3. **THE DIVISIONAL MANAGER, P & GS,**
   **LIFE INSURANCE CORPORATION OF INDIA**
   **CALICUT PIN 673001.**

**R3 BY ADV. SRI.T.V.AJAYAKUMAR**
**R1 BY ADV. SRI.M.SASINDRAN**
**R1 BY ADV. SRI.M.ANUROOP**
**BY SRI.S.EASWARAN**
**BY GOVERNMENT PLEADER SRI. REFEEK V.K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 1338 of 2014 (N)

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## APPENDIX

PETITIONER(S)' EXHIBITS

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EXT.P-1: A TRUE COPY OF THE AUDIT NOTE DATED 31.7.2012 OF THE YEAR 2010-2011

EXT.P-2: A TRUE COPY OF THE LETTER DATED 20.12.2011 OF THE FIRST RESPONDENT

EXT.P-3: A TRUE COPY OF THE REPLY DATED 4.1.2012 OF THE PETITIONER

EXT.P-4: A TRUE COPY OF THE LETTER DATED 25.1.2012 OF THE FIRST RESPONDENT

EXT.P-5: A TRUE COPY OF THE LETTER DATED 4.2.2012 OF THE FIRST RESPONDENT

EXT.P-6: A TRUE COPY OF THE LETTER DATED 22.9.2012 OF THE FIRST RESPONDENT

EXT.P-7: A TRUE COPY OF THE LETTER DATED 6.9.2013 OF THE FIRST RESPONDENT

EXT.P-8: A TRUE COPY OF THE JUDGEMENT REPORTED IN 2005(3) KLT 320.

EXT.P-9: A TRUE COPY OF THE JUDGEMENT DATED 11.4.2013 IN WPC NO.8018/2012

EXT.P-10: A TRUE COPY OF THE JUDGEMENT DATED 11.6.2012 WPC NO.34260/2012

RESPONDENT(S)' EXHIBITS

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EXT.R1(A): COPY OF THE MASTER POLICY ALONG WITH THE COST AND BENEFIT SCHEDULE SEND BY THE LIFE INSURANCE CORPORATION TO THE 1ST RESPONDENT BANK.

EXT.R3(A) COPY OF THE LETTER DATED 9.4.2010 OF THE 1ST RESPONDENT ADDRESSED TO THE SENIOR BRANCH MANAGER LIC DIVISIONAL OFFICE, KOZHIKODE.

EXT.R3(B): COPY OF THE CLAIM FORM DATED 7.4.2010.

EXT.R3(C): COPY OF THE DISCHARGE RECEIPT ISSUED BY THE 1ST RESPONDENT.

EXT.R3(D): COPY OF THE LETTER DATED 18.2.2010 OF THE SECRETARY OF THE 1ST RESPONDENT BANK ADDRESSED TO THE MANAGER OF THE LIC DIVISIONAL OFFICE.

EXT.R3(E): COPY OF THE RESOLUTION NO.8 DATED 13.2.2010 PASSED BY THE DIRECTOR BOARD OF THE BANK.

EXT.R3(F): COPY OF THE REPLY DATED 4.3.2010 OF THE 3RD RESPONDENT.

EXT.R3(G): COPY OF THE LETTER DATED 26.3.2010 OF THE 1ST RESPONDENT.

/TRUE COPY/

SKV P.A. TO JUDGE

P.V.ASHA, J.

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W.P.(C). No.1338 OF 2014

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Dated this the 18 th day of June, 2015

JUDGMENT

The petitioner is challenging the communications Exts.P1, P2, P4, P6 and P7 based on which the petitioner has been requested to refund a sum of Rs.2,27,575/- along with interest within a period of 15 days.

2. The petitioner retired from Vazhayoor Service Co-operative Bank on 30.4.2010 while working as its Secretary. The gratuity is paid to the employees, at the time of a retirement, in terms of Employees Group Gratuity Cash Accumulation Scheme, started by the Bank. The bank remits contributions with the LIC and LIC collects the same and make payment towards gratuity.

3. In the case of the petitioner the LIC issued a cheque for a sum of Rs.5,77,575/-, on his retirement, towards gratuity . In Ext.P1 audit report for the year 2010-2011, an objection was raised, saying that the petitioner was paid gratuity over and above his eligibility for a sum of

Rs.3,50,000/-. Even though, the petitioner submitted his replies pointing out his eligibility for getting the enhanced amount, the 1st respondent bank, on the basis of audit objection, directed the petitioner to refund the excess amount drawn by him, as per Exts.P2, P4, P6 an P7 letters.

4. 1st respondent co-operative Bank as well as the LIC have filed separate counter affidavits. As per the counter affidavit filed by the Bank, the 1st respondent bank has entered into an agreement with LIC and started Group Gratuity Cash Accumulation Scheme, bearing MP.No.414761 with date of commencement on 15.10.2003, in tune with Section 62 of the Kerala Co-operative Societies Act read with Rule 59 of the Co-operative Societies Rules, in order to ensure payment of gratuity to its employees. Thus on the basis of master policy, Ext.R1(a), the LIC will pay the gratuity on the retirement/death of employees of the society, for which the Bank remits contribution to the LIC. The LIC paid the gratuity based on intimation from the Bank and the Bank directed the petitioner to refund the excess based on audit objection.

5. In the counter affidavit of LIC it is stated that at the time commencement of the scheme for payment of gratuity, there was a cealing of Rs.3,50,000/-fixed in tune with the provisions of Payment of Gratuity Act. But it was removed with effect from 30.3.2010. Gratuity claim is being settled by the LIC as per the claim intimation received from the 1st respondent Bank, the Master Policy Holder. The quantum of gratuity at the time of retirement of employee is decided by the employer and whenever claim intimation is received from the bank, LIC settles the claims as per the rules of the scheme from the accumulated gratuity fund available in the name of the bank. They have further stated that the LIC issued a cheque for a sum of Rs.5,77,575/-, on 29.4.2010, based on Ext R3(a) and R3(b) of the Bank.

6. The LIC has stated the 1st respondent Bank had by its resolution dated 13.2.2010 and letter dated 18.2.2010, [(Ext.R3(d) and (e)] had requested LIC to remove the cealing of gratuity limit and accordingly they were required to remit a sum of Rs. 2,00,000/-. It is stated therein that if the master policy holder wants to remove the ceiling of

Rs.3,50,000/- they were requested to pay an amount of Rs.2,00,000/-, being the difference between the service cost up to the next renewal date i.e., 15.10.2010. Based on that the 1st respondent Bank issued a cheque on 26.3.2010 for an amount of Rs.2,00,000/- as per Ext.R3(g). It was thereafter that gratuity due to petitioner was settled based on intimation of the bank in which they claimed a sum of Rs. 5,77,575/- for which the bank issued discharge receipt also.

7. The ceiling of Rs.3,50,000/- for gratuity was enhanced by way of amendment brought about in the Gratuity Act. It was consequent to this amendment that ceiling was raised on the basis of the request of the Bank. The objection raised in the audit cannot be sustained as the cealing limit of Rs.3,50,000/- has already been removed from 30.3.2010, as stated by the LIC. Petitioner has been paid the gratuity for which he is eligible in accordance with the terms settled between LIC and the Bank, in terms of the provisions in the Group Gratuity Cash Accumulation Scheme. In view of Ext.P5 judgment also petitioner is

entitled to even higher rate of gratuity, in tune with the contribution made to LIC by the Bank. Therefore the audit objection as well as the direction to refund the sum of Rs.2,27,575/- will not stand.

8. Under the above circumstances, Exts.P2, P4, P6 and P7 are hereby quashed. It is declared that the petitioner is not liable to refund any amount towards the gratuity he has already received from the LIC.

9. Even though the petitioner has sought further relief for revision of gratuity on the ground that the pay was subsequently revised under the 1st respondent bank, Learned Counsel for the 1st respondent bank pointed out that the petitioner is not eligible for revision of gratuity as no further contribution has been made. Thus petitioner will not be entitled to any further revision in gratuity.

Accordingly this writ petition is disposed of.

Sd/-
P.V.ASHA, JUDGE

SKV