IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No. 1404 of 2015 (A)

PETITIONER : -

INDIRA P.K.,
W/O. NARAYANAN,
"AMBILY", THOTTEKKAD,
AMARAMBALAM P.O.,
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI

RESPONDENTS : -

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1. THE NILAMBUR CO-OPERATIVE URBAN BANK LTD.,
NO.F.1043, HEAD OFFICE, NILAMBUR,
MALAPPURAM-679 329,
REPRESENTED BY ITS SECRETARY.

2. STATE OF KERALA ,
REPRESENTED BY ITS SECRETARY TO CO-OPERATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 BY ADV.SRI.V.RAJENDRAN
R2 BY Sr. GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1404 of 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : COPY OF THE CERTIFICATE DATED.22.12.2014 ISSUED BY THE RESPONDENT BANK.

EXHIBIT P2 : COPY OF THE CERTIFICATE ISSUED BY THE RESPONDENT BANK DATED 22.12.2014.

EXHIBIT P3 : COPY OF THE WRITTEN REQUEST SUBMITTED BY THE PETITIONER DATED 2.12.2014 TO THE RESPONDENT BANK.

EXHIBIT P4 : COPY OF THE REPLY ISSUED BY THE RESPONDENT BANK TO THE PETITIONER DATED 5.12.2014.

EXHIBIT P5 : COPY OF THE JUDGMENT IN WPC NO.13396/2014.

EXHIBIT P6 : COPY OF THE CIRCULAR ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES, DATED 28.2.2007.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 1404 of 2015

Dated this the 23rd day of June, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent, as well as the learned Government Pleader, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, a retired employee of the first respondent Bank, was paid Rs.10,00,000/- towards gratuity at the time of his retirement, though in terms of the scheme joined by the respondent Bank with Life Insurance Corporation of India, the petitioner is entitled to an amount of Rs.15,95,804/-, as is evident from Exhibit P2. Having failed in her attempts to get the full gratuity amount, the petitioner has filed the present writ petition.

3. In the counter affidavit filed by the respondent Bank, the respondent Bank, to its credit,has conceded the claim of the petitioner, but cited the statutory constraint

under Rule 59 of the Kerala Co-operative Societies Service Rules, which limits the gratuity to Rs.10,00,000/-.

4. The learned counsel for the petitioner has submitted that the issue whether a retired employee is entitled to the entire amount of gratuity under the scheme provided by the Life Insurance Corporation has been settled by this Court through a catena of judgments. She has, in fact, made specific reference to **Retnavally v. Ambalapad Service Co-operative Bank** [2005 (3) KLT 320], **Nedupuzha Service Co-operative Bank Ltd v. Rugmini** [2011 (3) KLT 134] (DB) and also Exhibit P5 judgment, which is the latest in the series.

5. The learned counsel for the first respondent has submitted that, if Rule 59 of the Rules does not come in the way, the respondent Bank does not have any objection to pay the balance amount.

6. As has been rightly contended by the learned counsel for the petitioner, the issue is no longer *res integra.* At the earliest point of time in **Retnavally v. Ambalapad Service Co-operative Bank** [2005 (3) KLT 320], a learned single Judge of this Court has held that any withholding of

the amount provided under specific scheme by the Life Insurance Corporation for the benefit of the employee, in the name of limitation under Rule 59, is nothing but unjust enrichment for the employer, the respondent Bank. Later, in course of time, when intra court appeals have been filed in more than one matter, in **Nedupuzha Service Co-operative Bank Ltd v. Rugmini** [2011 (3) KLT 134], a learned Division Bench of this Court has categorically held that the employer cannot withhold the amount, but should pass it on to the retired employee. It has, tellingly, observed as follows:

> "5. We have already noticed that the terms of the L.I.C.'s Group Gratuity Scheme under the Policy offered by them are advantageous to the employees by virtue of the life insurance coverage and the guarantee even in the event of liquidation of the Society. However, we do not think the employers can claim the benefit of the Group Gratuity Policy taken by them for the benefit of the employees. The appellant Bank is only a trustee, which made arrangement with the L.I.C. by taking the policy and making payment of premium to provide gratuity and other benefits to its employees. All the benefits under the Policy are to the account of the employees and nothing is

> retained by the employer, which by making payment of the premium, discharges it's annual liability for gratuity to the employees covered under the Scheme. We therefore uphold the judgment of the learned Single Judge directing the appellant to pass on the benefits received from the L.I.C. to the respondent employees. W.A. No. 197/2010 is accordingly dismissed directing the appellant Bank to forthwith pass on the differential amount received from the L.I.C. towards the Group Gratuity Scheme to the respondent employees."

7. On 19.08.2014, a learned single Judge of this Court in Exhibit P5 judgment has reiterated the same proposition of law.

In the facts and circumstances, especially in the light of the ratio laid down by this Court in the above referred judgments, I do not think that any issue remains to be adjudicated upon. As a result, the writ petition is allowed, directing the respondent Bank to pay to the petitioner the balance amount along with the interest, as has been specified in Retnavally *(supra)* by this Court.

DAMA SESHADRI NAIDU
JUDGE

DMR/-