IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 6738 of 2011 (N)

PETITIONERS:
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1. RAJAN K.,
RETIRED ASSISTANT SECRETARY,
ANGADIPPURAM SERVICE CO-OPERATIVE BANK,
ANGADIPPURAM P.O., MALAPPURAM DISTRICT.

2. E.T.VARGHEESE,
RETIRED ASSISTANT SECRETARY,
ANGADIPPURAM SERVICE CO-OPERATIVE BANK,
ANGADIPPURAM P.O., MALAPPURAM DISTRICT.

3. V.C.MATHEW,
RETIRED SECRETARY,
ANGADIPPURAM SERVICE CO-OPERATIVE BANK,
ANGADIPPURAM P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.P.N.MOHANAN
SMT.I.VINAYAKUMARI

RESPONDENTS:
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1. KERALA STATE CO-OPERATIVE EMPLOYEES'
PENSION BOARD, KALA NIVAS, T.C. 27/156,
157, NEAR AYURVEDA COLLEGE, KUNNUMPURAM,
P.B.NO.85, THIRUVANANTHAPURAM. 695 001
PH:0471 - 2475681.

2. ANGADIPPURAM SERVICE CO-OPERATIVE BANK
LTD.NO.P 581, REPRESENTED BY SECRETARY,
ANGADIPPURAM P.O.,
MALAPPURAM DISTRICT - 679 321.

R1 BY ADV. SRI. K.R. SUNIL
R1 BY ADV. SRI.K.R.SUNIL, SC
R2 BY ADV. SRI.U.K.DEVIDAS
R BY SRI.P.V.MOHANAN,SC,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	:	TRUE COPY OF THE SRO NO.486/2006 ISSUED BY THE GOVERNMENT.
EXT.P2	:	TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.28689/2008 DATED 01.12.2008.
EXT.P3	:	TRUE COPY OF THE COMMUNICATION DATED 25.08.2009.
EXT.P4	:	TRUE COPY OF THE CONTRIBUTION CALCULATION SHEET OF THE FIRST PETITIONER.
EXT.P5	:	TRUE COPY OF THE PENSION DOCKET.
EXT.P6	:	TRUE COPY OF THE CONTRIBUTION CALCULATION SHEET.
EXT.P7	:	TRUE COPY OF THE PENSION DOCKET.
EXT.P8	:	TRUE COPY OF THE CONTRIBUTION CALCULATION SHEET.
EXT.P9	:	TRUE COPY OF THE COMMUNICATION DATED 19.10.2009 OF THE PROVIDENT FUND COMMISSIONER.
EXT.P10	:	TRUE COPY OF THE REMITTANCE OF CONTRIBUTION IN RESPECT OF 3RD PETITIONER.
EXT.P11	:	TRUE COPY OF THE PENSION DOCKET OF THE 3RD PETITIONER.
EXT.P12	:	TRUE COPY OF THE SCHEME AMENDMENT BY SRO 1034/2010.
EXT.P13	:	TRUE COPY OF THE NOTICE DATED 16.06.2011 ISSUED TO THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R2(a)	:	TRUE COPY OF THE DEMAND NOTICE.
EXT.R2(b)	:	TRUE COPY OF THE LETTER DATED 07.02.2012 SENT BY THE SECOND RESPONDENT.
EXT.R2(c) series	:	TRUE COPY OF THE PERFORMA FOR CALCULATION OF PENSION FUND.

//TRUE COPY//

P.A. TO JUDGE

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 6738 of 2011

Dated this the 8th day of December, 2015.

JUDGMENT

Heard the learned counsel for the petitioners, the learned counsel for the respondent Bank, and the learned Standing Counsel for the Pension Board, apart from perusing the record.

2. The issue in this writ petition, at the behest of three retired employees, concerns the payment of monthly pension.

3. The first petitioner, having joined the service of the second respondent Bank as Assistant Secretary on 01.12.1976, retired on 31.01.2010, after his attaining the age of superannuation. At the time of the first petitioner's retirement, the respondent Bank paid to the first respondent Board his pension contribution of ₹4,23,395/-.

4. In the course of time, claiming that the respondent Bank was still liable to pay some more amount, the Pension Board initiated revenue recovery proceedings. Under those coercive circumstances, the respondent Bank has paid ₹3,83,825 to the Pension Board, said to be under protest. Thus, the respondent Bank has paid a total amount of ₹8,07,220/-.

5. Despite the fact that the respondent Bank has paid the amount as has been demanded by the Pension Board, it has, nevertheless, raised an objection that certain portion of the amount which accumulated in the provident fund account of the employee prior to the introduction of the Self Financing Pension Scheme was paid to the employee concerned. According to the respondent Bank, it is not liable to pay the amounts it paid under duress. It contends that if the Board desires, it should have recourse to the employee to whom the amount had already been paid.

6. The learned counsel for the petitioners has submitted that though the first petitioner is entitled to have pension from 01.02.2010, initially he was paid provisional pension from 01.11.2011 and later full pension from 01.04.2012. He further contends that the Pension Board is liable to pay arrears of full pension from 01.02.2010 to October, 2011 and also arrears from November, 2011 to March, 2012 after deducting the provisional pension already paid.

7. The learned Standing Counsel for the Pension Board has submitted that since it has received the amount from the respondent Bank, though it kept the said amount in suspense account in the light

of the interim direction granted by this Court on 19.03.2012, the Board is willing to recalculate the pension arrears due to the first petitioner and pay them in the course of time.

8. Insofar as the issue whether the respondent Bank was liable to pay the amount recovered by the Pension Board under revenue recovery proceedings, the learned counsel appearing for the respondent Bank has brought to my notice the judgments dated 02.02.2015 in W.P.(C) Nos. 5612 of 2014 and 5741 of 2014. He has submitted that this Court, under identical circumstances, earlier referred the issue to be decided by the Joint Registrar. He has also submitted that in those matters, the Joint Registrar, in compliance with the judgments of this Court, has rendered a finding that the respondent Bank is not liable to pay the amount. He has, of course, submitted that the Pension Board, aggrieved, has already filed an appeal.

9. Though the dates of retirement and the amounts of pension contribution vary, the rest of the aspects squarely apply to the petitioners 2 and 3 as well. This Court in this writ petition has been called upon to address the following issues:

1. Whether the respondent Bank is liable to contribute the

amount that has already been recovered by the Pension Board, perhaps, under duress i.e., by taking recourse to the revenue recovery proceedings.

2. Whether the Pension Board is liable to pay the arrears of pension as have been demanded by the petitioners.

10. Insofar as the first issue is concerned, this Court in the judgments dated 02.02.2015 in W.P.(C) Nos. 5741 of 2014 and 5612 of 2014 has already directed, under identical circumstances, the Joint Registrar to adjudicate the issue.

11. In tune with the judicial directive of this Court in the judgments referred to above, I direct that the respondent Bank shall file an appropriate application before the Joint Registrar, who is not made a party in the present writ petition. Once an application is filed, needless to observe, the Joint Registrar, Malappuram, shall consider the same and pass appropriate orders after hearing all the parties concerned, including the Pension Board.

12. Concerning the second issue, to the credit of the learned Standing Counsel, he has submitted that the Pension Board has already been seized of the issue. He has, however, contended that the Pension Board is not obligated to pay any arrears of pay. Drawing my attention to the proviso appended to clause 39(1)(b) of Kerala Co–

operative Societies Employees Self Financing Pension Scheme, 1994, the learned Standing Counsel has further contended that the Pension Board is required to pay full pension from the date it has received the entire amount lying in the Employees Provident Fund.

13. The learned Standing Counsel has also drawn my attention to the counter affidavit filed by the second respondent, the employer, which has stated that it has already paid the amounts to the employee. And they are liable to refund the same.

14. The learned counsel for the petitioners has, on the other hand, drawn my attention to the second proviso to clause 39(1)(a) to contend that the respondent Board is entitled to demand and recover the amount that had been withheld by the employer with 24% interest. According to him, the employees cannot be made to suffer on account of the employer not remitting the amounts on time.

15. Be that as it may, the fact remains that the Pension Board did receive the entire amount at two stages, if not at the earliest point of time. Further admittedly, it has been paying full pension to the petitioners from 01.04.2012.

16. As can be gathered from the rival contentions, I consider that the bone of contention is the period from the petitioners' date of

retirement till 31.03.2012, during which period they received only provisional pension. In other words, from the date of retirement to 01.11.2010 the petitioners have to receive full pension; from 01.11.2010 to 01.04.2012, they are entitled to the differential amount of pension taking into account the proportionate pension already paid.

17. The question is whether the Pension Board should pay the arrears of pension after recovering the amounts from the employer with 24% interest or that it should confine its liability to pay the full pension only from the date of its receiving the entire contribution from the employer.

18. In this context, I may have to reiterate certain admitted facts: (1) the Pension Board receipted a portion of the contribution very belatedly; (2) it initially for certain period did not pay any pension to the petitioner, but later paid provisional pension for some time, and finally started paying full pension from the date it received the full pension contribution; (3) the respondent bank, the employer, disputed its liability to pay the balance amount, but paid under protest; and (4) in the face of its contention that it had already paid the petitioners from the PF fund, now the issue as to who should

contribute is to be determined by the Joint Registrar.

19. Now, the issue still to be determined is, whether the Pension Board is liable to pay the petitioners full pension from the date of their retirement or only from the date of its receiving the balance contribution?

20. In my considered view, it is premature to pronounce on the said issue because the Pension Board is yet to pass orders concerning the entitlement of the petitioner in that regard.

21. In the facts and circumstances, I direct the Pension Board to determine the issue of the arrears of pension, keeping in view the dates of the petitioners' retirement and also the amounts it has received from the respondent Bank. The respondent Pension Board may expedite the process of paying arrears to the petitioners, if they are entitled to, and ensure payment at the earliest.

This writ petition is disposed of as above.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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