

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No.10310 of 2010 (K)

PETITIONER :

**A.T.ANNAMMA, W/O.THOMAS PHILIPPOSE,
ANANTHAKKATTU HOUSE, THOLIKKODE P.O.,
PUNALLOOR-691333.**

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS :

- 1. KERALA STATE CO-OP. EMPLOYEES PENSION BOARD,
THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.**
- 2. REGISTRAR OF CO-OP. SOCIETIES,
THIRUVANANTHAPURAM.**
- 3. THE PATHANAPURAM SERVICE CO-OP.
BANK LTD., NO.3656, PATHANAPURAM
KOLLAM DISTRICT.**

**R1 ADV. SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD
R2 BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R3 BY ADV. SRI.V.PHILIP MATHEW**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No.10310 of 2010 (K)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1 : TRUE COPY OF JUDGMENT 23.07.1991 IN OP 8599/1988

**EXT.P2 : TRUE COPY OF LETTER NO.PB/PPO/464/KLM/09 DATED
19.03.2009 FROM 1st RESPONDENT**

**EXT.P3 : TRUE COPY OF LETTER NO.240/08 DATED 11.6.2009 FROM
3rd RESPONDENT**

**EXT.P4 : TRUE COPY OF THE REPORT DATED 24.8.2009 OF
ASST.REGISTRAR, PUNALLOOR.**

**EXT.P5 : TRUE COPY OF REPORT OF THE JOINT REGISTRAR, KOLLAM,
DATED 14.9.2009**

**EXT.P6 : TRUE COPY OF COMMUNICATION DATED 19.11.2009 SENT BY
1st RESPONDENT TO 2nd RESPONDENT.**

**EXT.P7 : TRUE COPY OF LETTER NO.EM(2)21360/2009 DATED 07.01.2010
FROM 2nd RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

VS

C.K. ABDUL REHIM, J.

W.P.(C)No.10310 of 2010

Dated this the 20th day of March, 2015

JUDGMENT

The petitioner joined service of the 3rd respondent Bank as 'Cashier-cum-Clerk' with effect from 01/11/1976. Her service was terminated by the 3rd respondent Bank with effect from 16/07/1977 consequent to a disciplinary proceedings initiated against her. The punishment imposed was challenged in an industrial dispute raised by the trade union representing her. Through award dated 11/01/1988 in ID 15/82 passed by the Labour Court, Kollam, the petitioner was directed to be reinstated along with back-wages and other attendant benefits. The 3rd respondent Bank had challenged the award in a writ petition filed before this court. In Ext. P1 judgment this court disposed of the writ petition upholding the award. This court observed that the petitioner must be deemed to have been in service continuously from 01/11/1976 onwards and she shall be

paid salary taking note of the service, as if she has been in service from 01/11/1976 till 31/07/1991. It is further directed that the petitioner shall be given seniority in the cadre from 01/11/1976. The 3rd respondent Bank was directed to take effective steps to re-fix salary of the petitioner taking into consideration of the service from 01/11/1976 and to make payment of the salary, without any delay.

2. Issue involved in this writ petition is regarding membership of the petitioner in the "Kerala State Co-operative Employees Self Financing Pension Scheme". According to the petitioner, when an application was made to enroll herself as a member under the scheme, the date of entry into service was erroneously shown as 01/08/1991 instead of 01/11/1976. Therefore the petitioner is now being paid monthly pension reckoning her service, only from 01/08/1991. Claim of the petitioner is that based on reinstatement ordered with back wages and based on the findings contained in Ext.P1 judgment of this court, she ought to have been

considered as continued in service from 01/11/1976. Consequently it is claimed that the monthly pension should have been allowed under the scheme reckoning her service period from 01/11/1976 onwards.

3. The petitioner had approached various authorities seeking rectification of the above said anomaly. In Ext.P2 the 1st respondent Board had declined her request observing that, as per clause 19(1)(a) of the scheme the qualifying service of an employee starts only from the date of joining the 'Contributory Provident Fund', subject to condition of the employer remitting full contribution for the said period to the Pension Board. The 1st respondent had pointed out that, as per details submitted at the time of admission of the petitioner to the scheme, it is revealed that 'Contributory Provident Fund' in the name of the petitioner had started only on 01/08/1991. It is pointed out that, in the 'pension docket' submitted along with the application it was specifically indicated that the period up to 31/07/1991 has not been reckoned as qualified service. Hence it is informed that, what was

sanctioned as pension in favour of the petitioner is the eligible amount and service rendered by her up to 31/07/1991 cannot be considered as qualifying service.

4. It is evident that the petitioner made a representation before the 3rd respondent requesting to correct the anomaly. But the Secretary of the 3rd respondent Bank had issued Ext.P3 proceedings rejecting her claim finding that the petitioner had relinquished her claims for the period from 01/11/1976 up to 01/08/1991. It is stated in Ext.P3 that the petitioner has not worked from 16/07/1977 to 01/08/1991 and hence she is not eligible to claim any monetary benefits including pension for the said period. The break in service cannot be counted as qualifying service for the purpose of pension, is the conclusion. It is further mentioned that the petitioner herself had opted to claim pension only for the period after 01/08/1991 and she has not paid any contribution of the pension for the period prior to 01/08/1991. According to the Secretary of the 3rd respondent Bank the petitioner had made a conscious

agreement for accepting an amount of Rs.25,000/- towards arrears of wages till the reinstatement. It is pointed out that, there is mention about such an agreement in Ext.P1 judgment. By voluntarily accepting the said amount in lieu of arrears of salary and other monetary benefits, the petitioner had waived her right to get any other amount or benefit for the said period, is the contention.

5. It is evident that, aggrieved by Ext.P3 the petitioner had approached the 2nd respondent seeking for necessary directions to the 3rd respondent Bank to pay the contributions due for the period from 01/11/1976 onwards. The Assistant Registrar of Co-operative Societies, Punalur had forwarded a report in this regard to the Joint Registrar, Kollam. The Joint Registrar in turn had forwarded another report to the 2nd respondent. Exts.P4 and P5 are respectively the copies of such reports submitted. It was indicated that, by virtue of Ext.P1 judgment this court had declared that the petitioner should be considered to have continued in service from

01/11/1976 till 31/07/1991 and she must be given seniority and other benefits based on such service along with salary for the said period. Hence the authorities have reported that, direction need to be issued to the 3rd respondent to pay all the benefits due to the petitioner for the said period in question. It is further evident that the Registrar had also called for a report from the 1st respondent. But the 1st respondent had re-iterated the stand through Ext.P6 report that qualifying service can be reckoned only from the date of joining the 'Contributory Provident Fund (CPF)'. Since CPF with respect to the petitioner had started only with effect from 01/08/1991, period of service up to 31/07/1991 cannot be reckoned for the purpose of pension under the scheme, is the stand taken. It was also pointed out that there is no provision enabling payment of contribution with retrospectivity, after joining the scheme. However, after considering Exts.P4 to P6 reports the 2nd respondent had issued Ext.P7 rejecting the request made by the petitioner pointing out that, in the application for membership

submitted by the petitioner before the 1st respondent the date of joining of CPF was shown only as 01/08/1991 and in the 'pension docket' it was specifically mentioned that service till 31/07/1991 cannot be reckoned as qualifying service. Hence it is concluded that the qualifying service of the petitioner for the purpose of pension can be reckoned only from 01/08/1991. It is aggrieved by Ext.P7, this writ petition is filed.

6. In the counter affidavit filed on behalf of the 3rd respondent it is mentioned that as per clause 19(6) of the 'Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994' the period of break in service cannot be counted for reckoning qualifying service, for the purpose of pension. According to the 3rd respondent since the petitioner was aware that she is not entitled to get benefits for the period prior to 01/08/1991, she had not opted for pension for such period. But clause 19(6) of the scheme would apply only if there is break in service. In the case at hand it is evident that by virtue of award passed by the Labour Court, as well as by virtue of

Ext.P1 judgment, it was declared that the petitioner is entitled for reinstatement with back-wages. In Ext.P1 judgment this court had categorically found that service of the petitioner from 01/11/1976 need to be considered for the purpose of seniority and that she should be deemed as continued in service from the said date onwards. Therefore the contention that there occurred break in service in the case of the petitioner, cannot be accepted. Another contention raised by the 3rd respondent is that the petitioner had consciously and voluntarily waived her rights with respect to back wages on accepting payment of an amount of Rs.25,000/-. It is pointed out that there is mention in Ext.P1 judgment about such a settlement. It is contended that petitioner was estopped from claiming any benefits for the said period, depending on the findings contained in Ext.P1 judgment. Further it is contended that the benefits claimed by the petitioner in the application for membership as well as in the 'pension docket' were restricted only from 01/08/1991 and such steps taken voluntarily by the petitioner is irreversible.

7. In the counter affidavit of the 1st respondent it is contended that as per the details submitted at the time of admission to the scheme, the date of enrollment in the CPF was on 01/08/1991. In the 'pension docket' it was specifically pointed out that the period up to 31/07/1991 cannot be reckoned as qualifying service. Hence the eligibility of the petitioner for monthly pension under the scheme was correctly reckoned and paid. Going by the provisions contained in the scheme the eligibility cannot be altered from the date of membership in the CPF is the contention.

8. While considering the rival contentions, this court is of the opinion that the 1st respondent cannot be found fault with in accepting the application for membership along with the 'pension docket' and in reckoning service of the petitioner from 01/08/1991, as qualified for payment of monthly pension. This is especially because, in the details furnished to the 1st respondent Board it was categorically mentioned that membership of the petitioner in the CPF started only from 01/08/1991. But the

question remains as to whether the 3rd respondent Bank is liable to make pension contribution reckoning service of the petitioner from 01/11/1976. By virtue of the award passed by the Labour Court which is confirmed in Ext.P1 judgment, the break in service was ordered to be regularised and it was declared that the petitioner is eligible for all service benefits as if she had continued in service without any break. Therefore there is merit in the claim made by the petitioner that the 3rd respondent Bank ought to have treated the petitioner as an employee enrolled in the CPF with effect from 01/11/1976. On that basis there is an obligation on the part of the 3rd respondent for payment of pension contribution due to the CPF, with respect to the petitioner, with effect from the said date onwards. If the 3rd respondent Bank is made liable for payment of such contribution, naturally membership of the petitioner in the new pension scheme under the 1st respondent Board need to be rectified, despite the details contained in the application for membership and 'pension docket' submitted. This is

because, entitlement of petitioner for all service benefits during the broken period has been declared by this court in Ext.P1 judgment. However, this is a matter which need to be looked into by the 2nd respondent, in order to issue appropriate direction to the 3rd respondent Bank. This court is of the considered opinion that while issuing Ext.P7 proceedings the 2nd respondent had not gone deep into the matter in the above said perspective. Hence this court is of the opinion that interest of justice can be achieved by directing the 2nd respondent to consider the matter afresh and to take an appropriate decision, based on the observations contained herein above.

9. Under the above mentioned circumstances, this writ petition is allowed and Ext.P7 is hereby quashed. The 2nd respondent is directed to reconsider the matter, after affording fresh opportunity of personal hearing to the petitioner and the 3rd respondent Bank. An appropriate decision on the issue shall be taken as to whether the society need to be directed to pay pension contributions with respect to the petitioner from

01/11/1976 onwards. A decision in this regard shall be taken at the earliest possible, at any rate within a period of two months from the date of receipt of copy of this judgment.

10. Needless to observe that, if the 2nd respondent takes a decision favourable to the petitioner and directs the 3rd respondent to make payment of the contribution for the disputed period, the 1st respondent shall accept such contribution and shall make necessary corrections with respect to date of enrollment of the petitioner in the CPF, subject to collection of permissible charges for delayed payment from the 3rd respondent society. In such case, the monthly pension payable to the petitioner shall be recomputed accordingly.

**Sd/-C.K. ABDUL REHIM
JUDGE**