

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).NO. 11126 OF 2012 (M)

PETITIONER:

M.K. SHOBHANA, AGED 49 YEARS,
D/O MADHAVAN, RAJ NIVAS, P.O. MUNDALLUR,
PERLASSERY, KANNUR.

BY ADVS.SRI.M.RAMESH CHANDER
SRI.ANEESH JOSEPH

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
AGRICULTURAL (DAIRY) DEPARTMENT, TRIVANDRUM-695 001.
2. THE DIRECTOR OF DAIRY DEVELOPMENT,
TRIVANDRUM-695001.
3. THE EDAKKAD KSHEERA VYAVAAYA CO-OPERATIVE SOCIETY LTD.
NO. C.20 (D), THOTTADA, KANNUR, REPRESENTED BY ITS
SECRETARY-670007.

R3 BY ADV. DR.K.P.PRADEEP
R3 BY ADV. SRI.K.N.VIKRAMATHITHYAN PILLAI
RR. BY ADV. GOVERNMENT PLEADER, SRI. V.K. RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 11126 OF 2012 (M)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF THE JUDGMENT IN O.P.NO.3492 OF 1999 DATED
11.2.1999.

EXHIBIT P2: TURE COY OF THE ORDER NBO. H2.14200/99/ARDIS OF THE
SECOND RESPONDENT DATED 28.8.2000.

EXHIBIT P3: COPY OF THE ORDER NO.G2/13672/08 OF THE SECOND
RESPONDENT DATED 1.8.2008.

EXHIBIT P4: COPY OF THE ORDER NO. CO-OP.(G) NO.1237/09/AGRL. OF THE
FIRST RESPONDENT DATED 16.7.2008.

EXHIBIT P5: COPY OF THE STATEMENT FILED THE MANAGING COMMITTEE OF
THIRD RESPONDENT.

EXHIBIT P6: COPY OF THE STATEEMNT FILED BY PETITIONER BEFORE 2ND
RESPONDENT DATED 19.8.2009.

EXHIBIT P7: COPY OF THE STATEMENT FILED BY THE PRESIDENT/SECRETARY
OF 3RD RESPONDENT DTED 20.8.2009.

EXHIBIT P8: COPY OF THE ORDER G2/17104/08 OF THE 2ND RESPONDENT
DATED 5.11.2009.

EXHIBIT P9: PHOTOSTAT COPY OF TH EJUDGMENT IN WPC 33836/2009.

EXHIBIT P10: COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED
4.4.2012.

EXHIBIT P11: COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED
27.4.2012

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.11126 of 2012

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Dated this the 13th day of November, 2015

J U D G M E N T

The petitioner was working as a Clerk in the 3rd respondent society. While working so, she was put in charge as Secretary for three years, 1989, 1990 and 1991. Thereafter, she was suspended on 14.11.1992 and reinstated in the service in the year 2002. Subsequently, she resigned from the service of the respondent society in the year 2002 and she is now working as Secretary in-charge of another society. While so, the 3rd respondent society issued notice to the petitioner to refund an amount of Rs.20,592.40 on the sole ground that no proper vouchers were maintained in the society regarding the payment of enhanced rate to its members for the years 1989, 1990 and 1991. The above liability was made against the petitioner on the

-: 2 :-

basis of audit report. According to the petitioner, the said proceedings were initiated against her, in retaliation of personal grudge and animosity maintained by the then Secretary, who did not produce the vouchers, which were properly maintained and kept in the society, before the Auditors. Apart from the vouchers, there are so many documents such as Ledger, Day-book, Bonus Register, Register etc., which would show that the petitioner, as the Secretary had disbursed the enhanced rate to the members of the society, without fail. In short, the liability was caused to be imposed on the petitioner due to the failure on the part of the then Secretary to produce the vouchers, which were maintained and kept in the society, at the time when the concurrent Auditors audited the accounts of the society. Feeling aggrieved, though, he had preferred Writ Petition No.33836 of 2009 before this Court and this Court specifically directed the

-: 3 :-

Appellate Authority to examine other corresponding documents, such as Registers, Day Book, Bonus Register, Ledger etc., to find out, whether the petitioner had disbursed the enhanced rate to the members even if, the vouchers are not available on record, without observing the specific direction issued by this Court in Ext.P9 judgment, the 2nd respondent has passed Ext.P10 order, in a perfunctory manner, without application of mind on any of the documents specifically directed to be verified. Therefore, Exts.P10 and P11 orders passed consequentially are liable to be set aside. This is the grievance projected in this Writ Petition.

2. Heard the learned counsel for the petitioner and learned counsel for the respondent.

3. The main thrust of the arguments advanced in this case is that Exts.P10 and P11 are passed in defiance of the specific direction of this Court in Ext.P9 judgment.

-: 4 :-

Going by Ext.P9 judgment, it is seen that this Court has made certain observations and directions thereunder, which read as follows:

"I am of the view that a further opportunity has to be given to the petitioner to redress her grievances. When the day-book, ledger and other documents of the said Society clearly indicate that the payment had been effected merely in the absence of vouchers the Secretary should be met with the liability is a matter to be considered. It is also the contention of the petitioner that the beneficiaries had no complaint regarding the non-receipt of bonus. Under these circumstances, it is necessary that he 2nd respondent should consider such circumstances also and take a decision objectively. It is not a case where any loan had been retained by the Society on account of any negligence by the Secretary. As the facts disclose that there was no claim by any of the beneficiaries and therefore it has to be assumed that the beneficiaries had received the bonus. Under these circumstances a compassionate approach is to be taken in the matter".

-: 5 :-

4. Going by Ext.P10 order, which is said to have been passed in compliance with the direction of this Court in Ext.P9 judgment, it is seen that the 2nd respondent has not observed any of the directions, which are specifically directed to be observed by the 2nd respondent, in the order to be passed in appeal. This Court specifically observed that in addition to the vouchers, there may have corresponding Ledger, Day-book, Bonus Register etc., which would show the disbursement of enhanced rate to the members of the society and those documents have to be considered in the absence of vouchers, in the determination of the liability. But, it is seen that even though, the sequences of events are seen narrated in eight pages in Ext.P10 order, the determination process on the question in controversy is seen confined to four lines only. Needless to say, the 2nd respondent has failed to observe the

-: 6 :-

specific directions issued by this Court, in its letter and spirit.

5. In the above analysis, Exts.P10 and P11 will stand set aside and the 2nd respondent is directed to pass Orders afresh, strictly in observance with the directions in Ext.P9 judgment passed by this Court, within a period of three months from the date of receipt of a copy of this judgment.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge