

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 7728 of 2014 (M)

PETITIONER :

**JIJU P., LAB ASSISTANT,
SASIMALA KSHEEROLPADAKA SAHAKARANA SANGHAM LTD.NO.W.22(D),
ANAND PATTERN CO-OPERATIVE SOCIETIES, (APCOS),
POOVATHINKAL HOUSE, SASIMALA P.O., PULPPALLY, WAYANAD.**

BY ADV. SRI.P.P.JACOB

RESPONDENTS:-

- 1. SASIMALA KSHEEROLPADAKA SAHAKARANA SANGHAM LTD. NO.W.22(D)
ANAND PATTERN CO-OPERATIVE SOCIETIES (APCOS),
P.O.SASIMALA, PULPPALLY, WAYANAD,
PIN - 673 579, REPRESENTED BY ITS SECRETARY.**
- 2. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT,
DAIRY DEVELOPMENT OFFICE, KALPPATTA, WAYANAD - 673 579.**

R1 BY ADV. SRI.P.N.MOHANAN

R2 BY SR GOVERNMENT PLEADER SRI.P.K.ABDUL RAHAMAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE PHOTOCOPY OF THE G.O.P.NO.210/2008/AGI. DATED 15.12.2008.
- EXHIBIT P2. TRUE PHOTOCOPY OF THE ORDER ISSUED BY SECOND RESPONDENT DATED 23.06.2011 FIXING PAY SCALE OF FIRST PETITIONER VIDE NO.B/499/10(1).
- EXHIBIT P3. TRUE PHOTOCOPY OF THE ORDER ISSUED BY SECOND RESPONDENT REVISING THE PAY SCALE OF THE FIRST PETITIONER DATED 16.09.2011 VIDE NO.B/499/10(1).
- EXHIBIT P4. TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY THE SECOND RESPONDENT DATED 21.02.2012.
- EXHIBIT P5. TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C)227/12 DATED 20.11.2012.
- EXHIBIT P6. TRUE PHOTOCOPY OF THE ORDER VIDE NO.B/418/12 DATED 08.03.13 OF THE FIRST RESPONDENT.
- EXHIBIT P7. TRUE PHOTOCOPY OF THE ORDER DATED 05.04.2013 ISSUED BY THE FIRST RESPONDENT.
- EXHIBIT P8. TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT DATED 02.07.2013.
- EXHIBIT P9. TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 26.12.2013.
- EXHIBIT P10. TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT DATED 16.11.2013.
- EXHIBIT P11. TRUE PHOTOCOPY OF THE ORDER OF THE SECOND RESPONDENT TO THE FIRST RESPONDENT DATED 20.01.2014.
- EXHIBIT P12. TRUE COPY OF THE RELEVANT PORTION OF THE STATEMENT OF ACCOUNT FOR THE YEAR 2009-10
- EXHIBIT P13. TRUE COPY OF THE RELEVANT PORTION OF THE STATEMENT OF ACCOUNT FOR THE YEAR 2010-11
- EXHIBIT P14. TRUE COPY OF THE RELEVANT PORTION OF THE STATEMENT OF ACCOUNT FOR THE YEAR 2011-12
- EXHIBIT P15. TRUE COPY OF THE RELEVANT PORTION OF THE STATEMENT OF ACCOUNT FOR THE YEAR 2012-13

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EXHIBIT P16. TRUE COPY OF THE RELEVANT PORTION OF THE STATEMENT OF
ACCOUNT FOR THE YEAR 2013-14

EXHIBIT P17. TRUE COPY OF THE RELEVANT PORTION OF THE BUDGET FOR THE
YEAR 2014-15.

RESPONDENT(S)' EXHIBITS

EXHIBIT R1(A). COPY OF THE NOTIFICATION SRO NO.478/96 ISSUED BY THE
GOVERNMENT.

/TRUE COPY/

P.S.TO.JUDGE

sts

A.M. Shaffique, J.

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W.P (C) No. 7728 of 2014

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Dated this, the 26th day of February, 2015.

J U D G M E N T

Petitioner has approached this Court complaining about the inaction on the part of the respondents in not effecting payment of D.A. and other benefits in terms of Ext. P7.

2. The facts involved in the writ petition would disclose that the petitioner claimed various benefits as per Ext. R1(a) Government Order dated. 15.12.2008. But, since orders were not passed, the petitioner had to approach this Court and based on the judgment dated 20.11.2012 in W.P (C) No. 227/2012, final orders were passed by the Deputy Director as per order dated 8.3.2013 directing various benefits to be granted to the petitioner. On that basis, further orders had been passed fixing the pay scale of the petitioner along with various benefits in terms of Ext. P7 dated 5.4.2013. Column 15 of Ext. P7 indicates that the petitioner is entitled for D.A. as per Rule 189 of the Co-operative Societies Rules, which, in effect, directs D.A. to be granted in par with all Government employees.

3. Since no payment has been effected pursuant to Ext. P7, the petitioner has approached this Court.

4. Counter affidavit has been filed by the 1st respondent stating that the society is a milk society, which

is exempted from Rule 189 (2) & (3) of the Kerala Co-operative Societies Rules as per SRO No. 478/96. Further, it is stated that the society is running in loss and specific reference is made as to why D.A is not payable to the petitioner.

5. Counter affidavit is also fled by the 2nd respondent inter alia stating that as per G.O(P) No. 210/2008 dated 15.12.2008, Government specified that the managing committee is responsible to fix the rate of DA according to the financial position of the society. It is stated that when a complaint was received, necessary clarification was sought for and Ext. P10 direction was issued in the light of Government Order dated 15.12.2008. It is stated that there is no discretion while fixing D.A. to the petitioner. Further, it is stated that the society had complied with Ext. P7 order in view of Government Order dated 15.12.2008.

6. Though it is contended by the learned counsel for the society that by virtue of Ext. R1(a) notification they are not liable to pay D.A, in so far as Ext. P7 order has become final, the society cannot take such a view. No challenge is made to Ext. P7 so far. Under such circumstances, there is no basis to contend that D.A. is not payable to the petitioner.

7. The learned counsel for the petitioner also

relied upon the judgment of this Court in **Cochin Co-operative Hospital v. Annamma**, 1998(1) KLT 801, wherein this Court had observed that Rule 189 is applicable not only to classified society but to all co-operative societies registered under the Kerala Co-operative Societies Act.

8. In the light of the aforesaid circumstances, this writ petition is disposed of as under:

There will be a direction to the 1st respondent to comply with payment of D.A. as provided under Ext. P7 within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.M. Shaffique, Judge.

Tds/