

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 17905 of 2005 (F)  
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PETITIONER : -  
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KANAKARAY SERVICE CO-OPERATIVE BANK LTD. NO.3831,  
REPRESENTED BY ITS SECRETARY, VEMPALLY P.O.,  
KANAKARY, KOTTAYAM DISTRICT.

BY ADV. SRI. SHAJI THOMAS PORKKATTIL

RESPONDENTS :-  
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1. STATE OF KERALA REPRESENTED BY ITS SECRETARY,  
CO-OPERATION (C) DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM.
2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,  
KOTTAYAM.
3. A.T. THOMAS, EDATHAMKUZHIYIL,  
PATTITHANAM P.O., ETTUMANOOR.

R3 BY ADV. SRI. K.K. SATHEESH

R3 BY ADV. SRI. THOMAS T. KURICHYANI

R1 TO 2 BY GOVERNMENT PLEADER SRI. VINCENT K.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
15-09-2015 ALONG WITH W.P. (c) No.18843 OF 2009. THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

**PETITIONER'S EXHIBITS :**

EXHIBIT P1 : COPY OF THE SUSPENSION ORDER DATED 28.12.2000 ISSUED TO THE 3<sup>rd</sup> RESPONDENT.

EXHIBIT P2 : COPY OF THE SHOW CAUSE NOTICE DATED 04.01.2002 ISSUED BY THE 2<sup>nd</sup> RESPONDENT.

EXHIBIT P3 : COPY OF THE NOTICE DATED 13.12.2001 ISSUED TO THE 3<sup>rd</sup> RESPONDENT.

EXHIBIT P4 : COPY OF THE REPLY DATED 24.12.2001 SUBMITTED BY THE 3<sup>rd</sup> RESPONDENT.

EXHIBIT P5 : COPY OF THE MEMORANDUM OF APPEAL DATED 25.03.2002 SUBMITTED BY THE 3<sup>rd</sup> RESPONDENT.

EXHIBIT P6 : COPY OF THE ORDER No. C.R.P. (1) 6629/K.Dis DATED 29.09.2003 OF THE 2<sup>nd</sup> RESPONDENT.

EXHIBIT P7 : COPY OF THE ORDER G.O. (Rt) No.293/2005/Co-op DATED 29.4.2005 ISSUED BY THE 1<sup>st</sup> RESPONDENT.

EXHIBIT P8 : COPY OF THE APPEAL MEMORANDUM SUBMITTED BY THE PETITIONER TO THE 1<sup>st</sup> RESPONDENT DATED 14.11.2003.

**RESPONDENTS' EXHIBITS :** NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

**DAMA SESHADRI NAIDU, J.**

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**W.P.(c) No. 17905 of 2005**

**&**

**W.P.(c) No. 18843 of 2009**  
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Dated this the 15<sup>th</sup> day of September, 2015

COMMON JUDGMENT

Introduction:

The petitioner in W.P. (C) No.17905/2005 is a Co-operative Bank, whereas the 3<sup>rd</sup> respondent was its Manager, apart from being petitioner in W.P. (C) No.18843/2009. In fact, the 3<sup>rd</sup> respondent filed the second writ petition assailing the orders passed by the petitioner Bank pending the writ petition filed by itself : W.P. (C) No. 17905/2005.

2. Both the writ petitions essentially deal with the same issue; that is, the validity of disciplinary proceedings and the decision arrived at by the petitioner Bank in relation to the 3<sup>rd</sup> respondent. As such, this Court has deemed it appropriate to consider and dispose of both the writ petitions through a common judgment. For ease of reference and

convenience, the facts as have been pleaded and the parties as arrayed in W.P. (C) No. 17905/2005 are taken as the basis for narrative purpose.

3. To begin with, before adverting to the facts of the matter, to put the issues in both the writ petitions in perspective, it is to be observed that in these two writ petitions the Court is called upon to decide the following issues:

(i) Whether the Appellate forum under Section 83 (1) (j) of the Kerala Co-operative Societies Act should invariably give, in express terms, the liberty to the employer to re-enquire into the alleged misconduct of its employee once it has found that the earlier enquiry held by the employer has been vitiated?

(ii) Whether, when the matter concerning the validity of the disciplinary proceedings is pending consideration, the employer is further permitted to continue the proceedings from the stage interdicted by the appellate authority disregarding the principle of *sub judice* and render findings afresh?

#### **Facts in Brief:**

4. The facts in brief are that when the 3<sup>rd</sup> respondent was working in the respondent Bank as the Manager, he was subjected to disciplinary proceedings. To be more specific,

on 28.12.2000, the 3<sup>rd</sup> respondent was placed under suspension on an allegation of irregularities in the gold loan transactions in the branch under his management, resulting in a loss to the Bank to a tune of Rs.6,40,000/-.

5. Initially, based on the statutory inspection conducted by the Joint Registrar, the Government having noted serious mismanagement superseded the managing committee. That apart, in an enquiry conducted by the Secretary of the respondent Bank, it *prima facie* emerged that the 3<sup>rd</sup> respondent and another employee, a Clerk, were found to be responsible for the irregularities in the gold loan transactions.

6. In the light of the *prima facie* findings of the Secretary of the petitioner Bank, the management appointed an Enquiry Officer as part of the disciplinary proceedings. Based on the report submitted by the Enquiry Officer, the disciplinary committee issued Exhibit P3 notice to the 3<sup>rd</sup> respondent, who in turn submitted Exhibit P4 explanation. Having not been satisfied with the explanation submitted by the 3<sup>rd</sup> respondent, the disciplinary committee, based on the enquiry findings, imposed on the 3<sup>rd</sup> respondent a major

punishment of reduction in rank.

7. Though the 3<sup>rd</sup> respondent filed Exhibit P5 statutory appeal before the managing committee invoking Rule 198(4) of the Kerala Co-operative Societies Rules, the Managing Committee, through an order dated 11.04.2012, dismissed it. After a gap of five months, the 3<sup>rd</sup> respondent, invoking Rule 176 of the Rules, filed a petition before the Joint Registrar to rescind the resolution on the ground that he had not been afforded sufficient opportunity in the disciplinary proceedings.

8. Acting on the petitioner's complaint, the Joint Registrar, through Exhibit P6, rescinded the resolution passed by the Managing Committee. Aggrieved, the petitioner Bank, invoking Section 83(1)(j) of the Act, filed a statutory appeal, which, in fact, was rejected by the Government through Exhibit P7. Under these circumstances, assailing Exhibit P7, the petitioner Bank filed W.P. (C) No. 17905/2005.

9. The petitioner Bank's principal grievance is that at the time of either rescinding the resolution or at the time of dismissing the statutory appeal, the Joint Registrar or the

Government, as the case may be, has not expressly reserved the right of the petitioner Bank, the employer, to impose proper punishment on the basis of the enquiry report after providing an opportunity to the 3<sup>rd</sup> respondent. In that context, the first respondent, the Government, filed its counter affidavit placing on record that Government has never curtailed the power of the petitioner Bank to proceed further in the matter after providing an opportunity to the 3<sup>rd</sup> respondent.

10. As a matter of subsequent developments, it is evident that while the writ petition is pending, notwithstanding its pendency, the petitioner Bank issued Exhibit P7 notice to the 3<sup>rd</sup> respondent on 24.04.2009, in response to which the 3<sup>rd</sup> respondent submitted Exhibit P8 reply. Once again, having not been satisfied with the reply issued by the 3<sup>rd</sup> respondent, the disciplinary committee reimposed through Exhibit P9 the same punishment of reduction in rank with retrospective effect. Aggrieved, the 3<sup>rd</sup> respondent filed W.P. (C) No. 18843/2009.

11. The record further reveals that though the 3<sup>rd</sup> respondent filed W.P. (C) No.18843/2009 assailing Exhibit

P9 order of punishment on the ground that the disciplinary committee ought not to have proceeded further when the matter is *sub judice* in W.P. (C) No.17905/2005, strangely the very 3<sup>rd</sup> respondent himself pending his own writ petition chose to challenge Exhibit P9 by filing a statutory appeal. In fact, on 09.07.2009, the 3<sup>rd</sup> respondent filed Exhibit R3(a) appeal before the Managing Committee, the appellate authority. Nevertheless, the appellate authority dismissed the statutory appeal and communicated the order to the 3<sup>rd</sup> respondent through Exhibit R3(b).

### **Summary of Submissions:**

#### **Petitioner Bank's:**

12. Thus, having referred to the facts borne out by the record and also as emerged subsequent to filing of the writ petitions, the learned counsel for the petitioner Bank has submitted that so long as there is no judicial interdiction in W.P. (C) No.17905/2005, nothing prevented the petitioner Bank to proceed further with the disciplinary proceedings, especially in the face of the counter affidavit filed by the Government. He has further contended that only after affording sufficient opportunity to the 3<sup>rd</sup> respondent, the

disciplinary committee passed Exhibit P9 order reimposing the same punishment.

13. The learned counsel has also submitted that the 3<sup>rd</sup> respondent having initially challenged Exhibit P9 ought not to have further gone before the appellate forum abandoning his own writ petition. In other words, according to the learned counsel, since Exhibit P9 stood merged with an order passed by the appellate authority in Exhibit R3 appeal, the very W.P. (C) No.18843/2009 has become infructuous.

14. The learned counsel has eventually contended that because Exhibit P9 order was passed subsequent to the amendment of Section 69 of the Act, the remedy of the petitioner is to invoke the said provision and approach the Co-operative Arbitration Court. In support of his submissions, the learned counsel has placed reliance on **Raveendran v. State of Kerala**<sup>1</sup>.

**The 3<sup>rd</sup> Respondent's:**

15. *Per contra*, the learned counsel for the 3<sup>rd</sup> respondent has strenuously contended that the Joint Registrar initially has rightly rescinded the resolution through

which the disciplinary committee imposed punishment on the 3<sup>rd</sup> respondent. He has further submitted that the order of the Government in appeal under Section 83(1)(j) is also unexceptionable. According to him, for whatever reason once the petitioner Bank has laid challenge against the order of the Government in W.P. (C) No.17905/2005, it is impermissible for it to initiate further steps in the same disciplinary proceedings, especially in the face of the principle of *sub judice*.

16. The learned counsel has also, in the alternative, contended that Exhibit P9 in W.P. (C) No.18843/2009 is clearly unsustainable, for no punishment with retrospective impact could be passed only with a view to nullifying judicial or quasi-judicial directives, as have been passed in Exhibits P6 and P7 in W.P.(C) No.17905/2005.

17. Eventually, the learned counsel has also contended that so long as the challenge is maintained against Exhibit P9 order of the disciplinary committee, the 3<sup>rd</sup> respondent's further laying challenge against the same order before the appellate authority is of no consequence, inasmuch as the writ petition is still alive.

18. Trying to refute the petitioner's objection that no writ petition is maintainable against Exhibit P9 order assuming that it still survives, the learned counsel for the 3<sup>rd</sup> respondent has placed reliance on **Mathew v. Registrar of Co-operative Societies**<sup>2</sup> to contend that punishment imposed by the Society on its employee cannot be considered to be a dispute coming within the purview of Section 69 of the Act.

19. Heard the learned counsel for the petitioner, the learned counsel for the 3<sup>rd</sup> respondent, as well as the learned Government Pleader, apart from perusing the record.

**Issues:**

20. I have at the outset set out the scope of both the writ petitions and also the issues to be adjudicated upon. At any rate, those issues can be summarized thus:

(1) Whether the adjudicatory forum or tribunal has to give leave to the employer to re-enquire into the alleged misconduct of its employee once it has found that the earlier enquiry held by the employer has been vitiated, procedurally?

(2) Whether the petitioner Bank is estopped from proceeding further with the disciplinary proceedings when its writ

petition against the order of the appellate authority is pending?

(3) **Whether W.P. (C) No. 18843 of 2009** is still maintainable in the face of the fact that the petitioner therein has chosen to challenge the same order before the appellate forum, especially in the face of the principle of merger?

(4) Whether the 3<sup>rd</sup> respondent's writ petition is hit by the principle of alternative remedy?

### **Discussion:**

#### **Issues Nos.1 & 2:**

21. On the part of the petitioner Bank, the substantial grievance is that either the Joint Registrar or the Government, while nullifying the disciplinary orders passed by the disciplinary committee, ought to have preserved the liberty to the Bank to proceed further in the matter and decide the quantum of punishment, after providing an opportunity of hearing to the 3<sup>rd</sup> respondent. The Bank, in fact, filed the writ petition on that count.

22. On the other hand, one of the principal contentions on the part of the learned counsel for the 3<sup>rd</sup> respondent is that when the matter is *sub judice*, the petitioner Bank

ought not to have taken further steps in the disciplinary proceedings. In that context, it is quite revealing to examine the averments of the Government in its counter affidavit, a part of which, to the extent relevant reads as follows:

"It is submitted that the 1<sup>st</sup> or 2<sup>nd</sup> respondent was not against taking action against the concerned employees who were instrumental for causing loss to the Bank, the Bank has removed Sri.P.M. Anil Kumar from the service of the Bank by legal procedure. But in the case of the 3<sup>rd</sup> respondent the Bank authorities failed to take action against him properly. By rescinding the resolution the respondent did not curtailed the liberty of the committee to proceed with the disciplinary action against the 3<sup>rd</sup> respondent. Therefore the committee can proceed against the 3<sup>rd</sup> respondent at any stage."

23. Indeed, in no uncertain terms has the Government declared that its rescinding the resolution has not curtailed the liberty of the Committee to proceed with the disciplinary action against the 3<sup>rd</sup> respondent. Even if we were to assume that initially the liberty was not given and that the Government had not made the concession in its counter affidavit, still, in my considered view, the employer inherently would have the power to revive the process from the stage where any appellate or revisional authority found any irregularity. In other words, after setting the clock back, the disciplinary authority can always take further steps

by effectively curing the procedural defects pointed out by the said appellate or revisional authority.

24. In the present instance, the grievance of the 3<sup>rd</sup> respondent before the Joint Registrar was that while the disciplinary committee imposed punishment, no opportunity of hearing had been given to him. Accordingly, the petitioner Bank decided to cure the defect; consequently, it put the 3<sup>rd</sup> respondent on notice and later imposed punishment. The fact remains that the 3<sup>rd</sup> respondent has not sought any personal hearing, nor has he participated in the subsequent enquiry, despite his filing Exhibit P8 reply.

25. Though the learned counsel for the 3<sup>rd</sup> respondent has tried to rely on the principle of *sub judice*, a careful analysis of the issue reveals that his reliance on it may not be of much assistance to him.

26. P. Ramanatha Aiyar's *The Major Law Lexicon*<sup>3</sup> defines the Latin term 'sub judice' thus: Before a judge or Court; pending decision of a competent Court. In course of trial; under consideration.

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3 4<sup>th</sup> Ed. Vol.6, P.6507

27. Semantically speaking, *ante litem* motam is the period prior to the commencement of a controversy; *lis mota* denotes the period from the date of controversy till it results in a suit or other judicial proceeding; and *lis pendens* is the period that covers the period from the institution of the lis to its culmination.

28. The concept of *sub judice* is applied, usually, in the context of contempt of court. Innocent publication and distribution of matter not contempt. Publication of any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings pending at that time of publication attracts contempt. Section 3 of the Contempt of Courts Act, 1971 gives statutory recognition to the principle of *sub judice*.

29. *Lis pendens*, on the other hand, is a common law principle, albeit based on equity considerations, usually dealing with the issue of transfer of the real property. Section 52 of the Transfer of Property Act has given it statutory recognition. The doctrine, in fact, is the epitome of the maxim "*ut lite pendente nihil innovetur*" (during a

litigation nothing new should be introduced).

30. Going by the above lexical delineations, pendency of any *lis* or proceeding does not prevent the march of further and subsequent events, unless there is a judicial intervention in the nature of interim interdiction. Even otherwise, every step being taken by either of the parties *lis pendence* is not void. At best, any resultant position would only be subservient to the outcome of the *lis*. If the doctrine of *lis pendens* could be applied to incorporeal issues, it is aimed at preventing the march of subsequent events or developments turning out to the prejudice of either of the parties to the *lis*. The rights of the parties are to be adjudicated upon as they existed on the date of the commencement of the *lis*.

31. In the present instance, the petitioner, essentially guided by the disclaimer of the Government in its counter affidavit, proceeded further to cure the procedural defects in the disciplinary proceedings. It resumed at the stage where it is said to have committed an error of not providing sufficient opportunity to the delinquent, the 3<sup>rd</sup> respondent. It did put him on notice and pass Ext.P9 order, only after its

examining the 3<sup>rd</sup> respondent's Ext.P8 reply. As a result, the issue Nos.1 and 2 are held in favour of the petitioner Bank.

**Issue No.3:**

32. Insofar as the issue of assailing Exhibit P9 order is concerned, it is to be observed that initially the 3<sup>rd</sup> respondent filed W.P. (C) No.18843/2009. Later, he himself filed Exhibit R3(a) statutory appeal and invited an order, which, in fact, was communicated to him through Exhibit R3 (b). Nobody else than he himself has taken recourse to such a course of action. Once, on the initiation of an aggrieved person, the appellate authority has passed a valid order, the order appealed against, it is trite to observe, stands merged with the order passed in appeal. In other words, it is a matter of doctrine of merger and Exhibit P9 already stood merged with the order passed in appeal by the managing committee of the petitioner Bank.

33. At this juncture, the learned counsel for the 3<sup>rd</sup> respondent has drawn my attention to the observations of the appellate authority in Exhibit P9 that if the 3<sup>rd</sup> respondent is aggrieved by the order, he shall lay challenge against it before the appellate authority within thirty days.

According to the learned counsel, only based on the said observation has the 3<sup>rd</sup> respondent approached the appellate authority.

34. There can be no quarrel that a quasi-judicial authority is statutorily or otherwise mandated to specifying in the order explicitly the remedial steps the aggrieved person can take recourse to if he intends to impugn the order. It is equally unexceptionable that the aggrieved party can as well take recourse to the available remedy under statute, whether stated or not in the impugned order. Indeed, the 3<sup>rd</sup> respondent has filed Exhibit R3(a) appeal as a consequence.

35. All that this Court intends to observe is that in the light of the steps taken by the 3<sup>rd</sup> respondent, Exhibit P9 has lost its existence and stood merged with the order passed in appeal. As such, the only order that remains to be operative and required to be challenged is the order in appeal passed by the Managing Committee. Having said that, I am constrained to observe that in the light of the subsequent developments, W.P. (C) No.18843/2009 filed by the 3<sup>rd</sup> respondent has rendered itself infructuous. Thus, in the light

of the further steps taken by the 3<sup>rd</sup> respondent pending the writ petition, even the issue of either *sub judice* or *lis pendence* has lost its significance.

**Issue No.4:**

36. If we examine the issue from another perspective, there is, in my view, considerable force in the contention of the learned counsel for the petitioner Bank on the count of alternative remedy. According to him, subsequent to the amendment of Section 69 with effect from 02.01.2003, any order touching upon service disputes shall be challenged before the Co-operative Arbitration Court. The powers under the amended Section 69 are quite expansive and exhaustive. In fact, a learned Division Bench of this Court in **Raveendran** (*supra*) has categorically observed as follows:

"3. We are of the view, after the coming into force of Act 1 of 2000 with effect from 02.01.2003, the dispute in connection with the employment of officers and servants of different classes of societies specified in sub-s.(1) of S.80 including their promotion and *inter-se* seniority has to be decided by the Arbitration Court and not by the Joint Registrar or by the Government. The mere fact that this Court in a Writ Petition filed by the petitioners directed the Joint Registrar to decide the dispute cannot amount to conferring jurisdiction on the Joint Registrar to decide the dispute for which he has no jurisdiction. Judgment rendered by this Court would not confer any jurisdiction or authority on the Joint Registrar when legislature has conferred jurisdiction on the Arbitration Court. When this Court directs consideration of a matter by the Joint Registrar, the Joint

Registrar can decide that matter only in accordance with law. Legislature has conferred jurisdiction on the Arbitration Court to decide the question of seniority and promotion and therefore the order passed by the Joint Registrar is without jurisdiction. Learned single Judge has rightly allowed the Writ Petition and quashed the order passed by the Government confirming the order of the Joint Registrar."

37. At this juncture, it is also pertinent to examine the judicial precedents relied on by the learned counsel for the 3<sup>rd</sup> respondent. In **Mathew** (*supra*), a learned Division Bench of this Court did observe that punishments imposed by the Society on its employee could not be considered to be a dispute coming within the purview of Section 69 of the Act.

38. Indisputably, as has been fairly conceded by the learned counsel for the 3<sup>rd</sup> respondent, that judgment was rendered prior to the amendment of Section 69. So is the case with the judicial dictum laid down in **Christian College Co-operative Society v. Annamma John**<sup>4</sup> which also considered the unamended Section 69 of the Act. Under these circumstances, I have failed to persuade myself to find any merit in the contention of 3<sup>rd</sup> respondent. Accordingly, I hold that W.P. (C) No.17905/2005 has become infructuous in the light of the subsequent steps taken by the petitioner

Bank, especially in the light of the averments made by the Government in its counter affidavit.

39. Insofar as W.P. (C) No.18843/2009 is concerned, on the principle of doctrine of merger, Exhibit P9 no longer survives to be considered by this Court. On the other hand, even if it were to survive, in terms of amended Section 69, it is only the Co-operative Arbitration Court that has got the jurisdiction as a Court of first instance to adjudicate the service disputes. Thus, the writ petition has to fail even on the ground of alternative remedy as well.

40. As a matter of equity, this Court will be failing in its adjudication if it does not observe that notwithstanding the delay that has occurred up to this point of time, since the 3<sup>rd</sup> respondent has been pursuing his remedies *bonafide* before this Court, he is at liberty to approach the Co-operative Arbitration Court and file an appeal against the appellate order of the Managing Committee pursuant to Exhibit R3(a) appeal filed by the 3<sup>rd</sup> respondent. In such an event of the 3<sup>rd</sup> respondent's filing any arbitration case, the learned Arbitrator is expected to consider the issue of delay taking into account the attendant circumstances and pass

appropriate orders thereon. The fact, further, remains that the petitioner retired from service on 31.03.2011 having attained the age of superannuation, which factum may also have to be kept in mind by the Arbitration Court.

In the manner indicated above, both the writ petitions are disposed of. No order as to costs.

**DAMA SESHADRI NAIDU  
JUDGE**

DMR/-