

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 11978 of 2009 (N)

PETITIONER : -

C.PUSHPAM, AGED 52 YEARS, W/O MUTHAYYAN,
ASSISTANT SECRETARY,
THE ALUVA DESABHIVARDHINI SERVICE CO-OPERATIVE BANK LTD.
NO. 946, BYE PASS ROAD, ALUVA- 683 101,
RESIDING AT RUGMA, DESOM.P.O, ALUVA.

BY ADVS.SRI.M.PAUL VARGHESE
SRI.DESI MATTHAI

RESPONDENTS : -

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF CO-OPERATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. KERALA STATE CO-OPERATIVE EMPLOYEES' PENSION BOARD,
KERALA NIVAS, TC 27156, 157, CHINMAYALANE, KUNNUMPURAM,
TRIVANDRUM-1, REPRESENTED BY ITS SECRETARY.
3. THE ALUVADESABHIVARDHINI SERVICE CO-OPERATIVE BANK LTD. NO.
946, BYE PASS ROAD, ALUVA- 683 101,
REPRESENTED BY ITS SECRETARY.

R3 BY ADV.SRI.M.M.MONAYE

R3 BY ADV.SRI.M.K.GINASH

R1 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

R2 BY ADV.SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD

BY SRI.P.V.MOHANAN,SC,K.ST.CO.OP.EMP.PENSION BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : COPY OF THE ORDER DATED 29.5.1982 OF THE JOINT REGISTRAR OF CO-OP SOCIETIES, ERNAKULAM.

EXHIBIT P2 : COPY OF THE ORDER DATED 10.11.1986 OF THE JOINT REGISTRAR OF CO-OP. SOCIETIES ERNAKULAM.

EXHIBIT P3 : COPY OF THE REPRESENTATION DATED 20.8.1988 SUBMITTED BY THE PETITIONER.

EXHIBIT P4 : COPY OF THE DECISION No. 619 DATED 12.8.2008 ALONG WITH THE COVERING LETTER DATED 25.8.2008 OF THE 3rd RESPONDENT TO THE 2nd RESPONDENT.

EXHIBIT P5 : COPY OF THE LETTER OF REJECTION DATED 5.9.2008 ISSUED BY THE 2nd RESPONDENT.

EXHIBIT P6 : COPY OF THE CIRCULAR No.2/2009 12.2.2009 OF THE 2nd RESPONDENT.

EXHIBIT P7 : COPY OF THE RESOLUTION No. 621 DATED 12.8.2008 OF THE COMMITTEE OF THE 3rd RESPONDENT.

EXHIBIT P8 : ENGLISH TRANSLATION OF EXHIBIT P7.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 11978 of 2009

Dated this the 21st day of August, 2015

JUDGMENT

The issue in the writ petition is whether the benefit of Provident Fund should be extended to an employee retroactively, i.e., beyond the date when she joined the then existing Contributory Provident Fund Scheme.

2. On 01.09.1981 the petitioner joined the service of the third respondent Society as a Secretary on a consolidated pay. In due course, she got her appointment approved with effect from 08.05.1981, through Exhibit P1 proceedings dated 29.05.1982.

3. Later, with a view to pursuing higher studies, the petitioner went on leave from 01.04.1986 to 20.03.1988 on an undertaking that she would rejoin her service in a lower cadre. Accordingly, after exhausting her sanctioned leave, the petitioner did rejoin the service on 21.03.1988 as a

Junior Clerk.

4. As the record bears out, the petitioner, having served the third respondent society in different capacities, eventually in 2014 retired as an Assistant Secretary after attaining the age of superannuation. When her pension claim was settled, the initial period of her service from 01.09.1981 to 21.03.1988 had not been included. Aggrieved, the petitioner submitted Exhibit P3 representation, in response to which the third respondent Society passed Exhibit P4 resolution accepting the petitioner's claim.

5. Though the third respondent Society forwarded the Exhibit P4 resolution with a positive recommendation to include the petitioner's initial period of service, the second respondent, the Pension Board, however, through Exhibit P5 Order rejected the claim. Under these circumstances, the petitioner has filed the present writ petition.

6. The learned counsel for the petitioner has submitted that in terms of Section 61 of the Kerala Co-operative Societies Act (the 'Act' for brevity), read with Rule 58 of the Kerala Co-operative Societies Rules (the 'Rules' for brevity), the third respondent Society has initially established the

Contributory Provident Fund. He has also submitted that in 1993 when the self-financing pension scheme was introduced, the third respondent society took advantage of it and joined the said scheme. As a result, all the existing employees, including the petitioner, have been extended the benefit of pension under the self-financing scheme.

7. The singular contention of the learned counsel for the petitioner is that the petitioner had been in service since 1981. She cannot, for whatever reason, be denied the benefit of having her service from 01.09.1981 to 21.03.1988 reckoned for the purpose of pension. The petitioner's going on a sanctioned leave would not, according to the learned counsel, amount to any break in service.

8. On the other hand, the learned Standing Counsel for the second respondent Board has, in fact, not contradicted the factual position as presented by the learned counsel for the petitioner. He has, nevertheless, submitted that in terms of Clause 19 of Co-operative Societies Employees' Pension Scheme, 1994, the qualifying service shall be reckoned from the date when the employee joined the Contributory Pension Fund Scheme. An employee's actual date of joining the

service, contends the learned Standing Counsel, has nothing to do with the reckoning of the period for extending the pensionary benefit.

9. According to the learned Standing Counsel, the inspecting officer has found that the petitioner joined the then existing Contributory Provident Fund Scheme only from 21.03.1988. In other words, the petitioner is deemed to have joined the Contributory Provident Fund Scheme only from the date of her rejoining the service after availing herself of the sanctioned leave for educational purposes. In support of his submissions, the learned Standing Counsel has placed reliance on ***Purushothaman v. Kerala State Co-operative Employee's Pension Board***¹.

10. Heard the learned counsel for the petitioner, the learned Standing Counsel for the Employees' Pension Board, and the learned Government Pleader, as well as the learned counsel for the third respondent.

11. As has been rightly contended by the learned Standing Counsel for the second respondent Pension Board, there is no factual controversy; the issue, in fact, lies in a

narrow compass.

12. The bone of contention is whether the petitioner is entitled to the benefit of pension under the Self-Financing Scheme retroactively from the date of her joining the service, i.e. from 01.09.1981, rather than from 21.03.1988, when she actually joined the Contributory Pension Scheme, the then existing scheme.

13. Since there is no break in service despite the petitioner's going on leave, in the ordinary circumstances, the petitioner's service could have been reckoned from the date of her initial appointment. However, Clause 19 imposes a condition concerning the manner of reckoning the qualifying service. It is profitable to extract, to the extent relevant, Clause 19, which reads as follows:

"19. Qualifying Service: - Qualifying service for granting pension under the Scheme shall be -

(1)(a) in the case of an employee who was in the service of a society on the date of application of this Scheme to that society the length of service commencing from the date of joining the Contributory Provident Fund:

[Provided that the qualifying service shall be limited to the period for which the employer's contribution towards the Provident Fund has been fully paid by the Society in respect of that employee. [In the case of part-time contingent employees, commission agents, employees not in the regular posts, but who were absorbed in regular service, qualifying service shall be reckoned by counting 50% of the part-time/other services.]

Provided further that where the employee was a subscriber to any pre-existing Provident Fund Scheme implemented in that society and contribution made thereon has been transferred to the Pension Fund, such period will also qualify for pension.

..."

14. It is evident that if the petitioner had joined the then existing contributory pension scheme in 1981 itself, she would have been entitled to the benefit of pension even under self-financing scheme retroactively, for the leave cannot be treated as a break in service. The petitioner has, nevertheless, failed to demonstrate before the Court that she joined the contributory pension scheme at the very inception. On the other hand, the contention of the learned Standing Counsel is that the petitioner joined the Contributory Pension Fund only on 21.03.1988; that is, on her readmission to service as a Junior Clerk. It has, in fact, not been seriously controverted by the learned counsel for the petitioner.

15. The principal contention of the learned counsel for the petitioner, still, remains that the third respondent Society has approved the claim of the petitioner and passed a resolution. According to him, the second respondent ought to have abided by the recommendations. I am afraid the

said contention cannot be countenanced.

16. Clause 19 of the Scheme clearly mandates that the reckoning period of service for the benefit of a pension under the self-financing scheme shall be the date when the said person joined the Contributory Provident Fund Scheme, rather than his or her very entry into the service. This Court in ***Purushothaman*** (supra) has held as follows:

“Clause (1)(a) of paragraph 19 stipulates that in the case of an employee who was in the service of a society on the date of application of the Scheme to that society, the length of service commencing from the date of joining the Contributory Provident Fund shall be the qualifying service for the purpose of grant of pension. The first proviso however stipulates that the qualifying service shall be limited to the period for which the employer's contribution towards the provident fund has been fully paid by the society in respect of that employee. The Pension Scheme came into force with effect from 03.06.1993. The petitioners entered service in the second respondent bank long before that date. Therefore, in accordance with the stipulations contained in clause (1)(a) of paragraph 19 of the Pension Scheme, the length of service which the petitioners had commencing from the date of joining the Contributory Provident Fund alone can be treated as service qualifying for pension...”

17. In the light of the clear statutory mandate and also the binding judicial pronouncement of this Court referred to above, I do not see any merit in the case, and accordingly dismiss the writ petition as devoid of merit. No order as to costs.

It is made clear that as regards the petitioner's claim for the admitted monthly pension under the self-financing scheme from 21.03.1988, she is, without a doubt, entitled.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-