

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 11560 of 2012 (T)

PETITIONER(S):

**U.SURESH KUMAR, AGED 53 YEARS
MEMBER, KERALA PUBLIC SERVICE COMMISSION
THIRUVANANTHAPURAM
RESIDING AT "GITHANJALI", COURT ROAD
VANCHIYOOR, THIRUVANANTHAPURAM - 35.**

**BY ADVS.SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.RENJITH THAMPAN (SR.)**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695001.**
- 2. THE ACCOUNTANT GENERAL (A&E),
KERALA, THIRUVANANTHAPURAM - 695039.**
- 3. THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM PALACE P.O.
THIRUVANANTHAPURAM - 695004.**

**R1 BY ADV. STATE ATTORNEY
R3 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R1 BY GOVERNMENT PLEADER SRI. V.K. REFEEK**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 9.06.2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-**

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1 TRUE COPY OF G.O.(P)NO.316/2010/GAD DATED 14/9/2010.
- EXT.P2 TRUE COPY OF THE LETTER DATED 4/11/2010 OF THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P3 TRUE COPY OF STATE BANK OF TRAVANCORE (EMPLOYEES) PENSION REGULATIONS, 1995.
- EXT.P4 TRUE COPY OF LETTER DATED 22/11/2010 OF THE PETITIONER TO THE SENIOR ACCOUNTS OFFICER IN THE OFFICE OF 2ND RESPONDENT.
- EXT.P5 TRUE COPY OF PAY SLIP DATED 3/12/2010 ISSUED BY 2ND RESPONDENT.
- EXT.P6 TRUE COPY OF LETTER DATED 6/12/2010 OF THE PETITIONER TO THE SENIOR ACCOUNTS OFFICER IN THE OFFICE OF 2ND RESPONDENT.
- EXT.P7 TRUE COPY OF LETTER DATED 14/3/2011 OF THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P8 TRUE COPY OF G.O.(MS) NO.413/2010/GAD DATED 27/12/2010.
- EXT.P9 TRUE COPY OF PAY SLIP DATED 21/3/2011 ISSUED BY 2ND RESPONDENT.
- EXT.P10 TRUE COPY OF REPRESENTATION DATED 31/5/2011 SUBMITTED BEFORE THE GOVERNMENT.
- EXT.P11 TRUE COPY OF LETTER NO.ESTT.II(1)40300/2004/GW DATED 24/8/2011 OF THE 3RD RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P12 TRUE COPY OF LETTER NO.41258/SPL.E1/11/GAD DATED 8/12/2011 OF THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS

- EXHIBIT R3(A): TRUE COPY OF LETTER TO THE ACCOUNTANT GENERAL DATED 12.8.2011.

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No. 11560 OF 2012

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Dated this the 9th day of June, 2015

JUDGMENT

The petitioner, a member of Kerala Public Service Commission (hereinafter referred to as 'PSC') has approached this Court aggrieved by the fixation of his pay at a reduced rate, on the ground that he is drawing pension. The payment of salary and other benefits of the members of PSC are governed by Kerala Public Service Commission (Composition & Conditions of Service of Members and Staff) Regulations, 1957 (hereinafter referred to as 'Regulation' for short). Regulation 4 deals with the salary and allowances of Chairman and members.

2. The petitioner voluntarily retired from the State Bank of Travancore (hereinafter referred to as 'SBT') on 17.4.2007, after rendering service there, from 12.10.1981 onwards. On 14.9.2010, he was appointed as member of PSC, as per Ext.P1 order, under Article 316(1) of the

Constitution of India. At the time when petitioner was appointed, the pay admissible to a member of PSC was Rs.20500/-. But petitioner's pay was fixed after deducting the pension drawn by him from SBT. In Ext.P5 pay slip, his substantive pay as on 17.9.2010 was shown as Rs. 7905/-in the place of Rs.20500/-. By Ext.P8 order-i.e, G.O.(MS) No.413/2010/GAD/27.12.2010, Government revised the pay and allowances of Members of PSC as Rs.70,290/-, with effect from 1.1.2006. But petitioner continued to get his pay after effecting the deduction. Based on this revision, petitioner's pay was fixed as per Ext.P9, reckoning his substantive pay as Rs.57387/- in the place of Rs.70290/-, as on 17.9.2010.

3. Aggrieved by the fixation of pay at reduced rate, the petitioner had submitted Ext.P6 representation before the Accountant General, Thiruvananthapuram on 6.12.2010, pointing out that he was drawing pension only because he sacrificed the Contributory Provident Fund credited in his account till his retirement, which was payable at the time of his retirement. He pointed out that the Pension Corpus Fund was created by the SBT, out of the Contributory Provident

fund credited to the Provident Fund Account of the employees, who had the option either to draw the entire amount at the time of retirement or to opt for pension scheme by sacrificing the same. Therefore he pointed out that the pension he was getting was not from the Consolidated Fund of India but from the Provident Fund which had accumulated and transformed as pension fund. The petitioner pointed out that the pension he was drawing in such circumstances was not liable to be deducted while computing his pay. That representation was rejected by Ext.P7 by the Deputy Accountant General on 14.3.2011 saying that since the petitioner was in receipt of pension from SBT, which is substantially owned by State Bank of India, a state owned Public Sector Undertaking, his salary was regulated in tune with Regulation 4(1)(ii), which provides for the categories of persons whose salary payable by the Commission would be reduced by an amount equivalent to their retirement benefits. It was stated that the category of persons mentioned therein includes persons under any other body wholly or substantially owned or controlled by the Government.

4. Thereupon petitioner approached the Government by way of Ext.P10 representation, wherein he explained that the pension which he was receiving was in terms of State Bank of Travancore (Employees) Pension Regulation, 1995 and therefore the deduction of the same from his salary was not permissible. He pointed out that he was not getting pension from the funds of SBT; it is not a statutory pension; the corpus of funds for pension is the contribution to the Provident Fund, as can be seen from Regulation 7 of the SBT Employees Pension Regulation; the fund is administered by a Board of Trustees constituted under the Regulations; moreover he was not receiving pension from a body owned or controlled by Government and hence the pension, he was getting from the SBT was not one liable to be deducted, under Regulation 4(2)(ii) of the Regulations; in fact the petitioner was entitled to get the entire amount which accumulated in the Provident Fund Account, on his retirement. Instead of that, that amount is deposited and it is out of those funds that pension is being paid. Ext.P10 was forwarded to Government by the PSC along with a letter

dated 24.8.2011 – Ext.P11 recommending the request made by the petitioner, pointing out that the petitioner was not getting a statutory pension. But that representation was also rejected by the Government as per Ext.P12 by 8.12.2011. It is in this background that the petitioner has approached this court.

5. Government have filed a counter affidavit reiterating the stand adopted in Ext.P7 as well as Ext.P12 stating that the case of the petitioner comes under Regulation 4(2)(ii) and that the petitioner is drawing pension from SBT, which is evident from Ext.P4 certificate issued by Chief Manager and it is based on that letter a sum of Rs.12903/- [10,749/- towards pension drawn and 2154.11 towards gratuity drawn (3,50,000x12/13.54)] was deducted while fixing his pay. It is further stated that SBT being a subsidiary of State Bank of India which is controlled by the Government of India, it should come under Regulation 4(2) (ii) of the PSC Regulations.

6. I heard Sri. Ranjith Thampan, the learned Senior Counsel appearing for the petitioner, Sri. P.C.Sasidharan, learned Standing Counsel for the PSC and Sri. Abdul Salam,

the learned senior Government Pleader.

7. Sri. Ranjith Thampan argued that Regulation 4(2) (ii) provides for deduction of pension while fixing the pay, only in a case, where the member is one who retired from service under the Government, a local body, a university or private college or aided school or any other body wholly or substantially owned or controlled by Government or who is in receipt of retirement benefits from such authorities. At the same time, he points out, Regulation 4(2)(i), provides for fixing the pay and allowances of the members who were at the time of their appointment holding a post under Government of India or Government of a State. Referring to both these provisions learned Senior Counsel submits that expressions employed in both these provisions are distinct and different i.e, while Regulation 4(2)(i) refers to the authorities owned or controlled by Government of India or Government of a State, Regulation 4(2)(ii) employs the expression "Government" alone. Therefore it is argued that SBT cannot be considered as an authority under the Government. It is not a local body or a University or a private college or an aided school or any other body fully

or substantially controlled by Government. In order to substantiate his contention, he refers to Section 2(15) of the interpretation and General Clauses Act, 1925, which defines 'Government' to mean as follows :

Government-['Government', 'the Government' or 'State Government'-

- (a) as respects anything done before the commencement of the Constitution, shall mean the Government of Travancore or Cochin or Travancore-Cochin, as the case may be;
- (b) as respects anything done after the commencement of the constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean the Government of the State of Travancore-Cochin; and
- (c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean the Government of the State of Kerala'

and shall, in relation to functions entrusted under article 258 A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article;”

Thus it is argued that Government occurring in Regulation 4(2)(ii) is Government of Kerala and not

Government of India. Petitioner was working in SBT was not under any control by the Government of Kerala. It is not a statutory body owned or controlled by Government of Kerala.

8. Further he relied on the judgment of this court in Venugopal K & another Vs M.Aneeshkumar & others reported in 2013(3) KLT 717, which interpreted the definition of the term 'Government', while considering an issue under the Guruvayoor Devaswom Act. Para 6 of the judgment reads as follows:–

“Firstly, we shall deal with the contention that the term of “Government” in Section 14(1) of the GD Act is not confined to servants of Government of Kerala and therefore, the field of choice would take in servants of the Central Government as well. The word “Government” is not defined in that Act. The GD Act being a State Act, the Kerala Interpretation and General Clauses Act, 1125, for short, the 'Kerala I & GC Act', will apply. “Government” is defined in Section 2(15) of the Kerala I&GC Act. The GD Act, being one which came into force after the commencement of the Constitution (Seventh Amendment) Act, 1956, applying Clause (c) of Section 2(15) of the Kerala I & GC Act, the word “Government” in Section 14 of the GD Act means the “Government of the State of Kerala”. The prescription in Section 2 of the Kerala I&GC Act is, among other things, that in all enactments passed after the commencement of that Act, unless there is anything repugnant in the subject or context, the

definitions in Section 2 would apply. No argument is advanced; nor could there be any; that there is anything repugnant in the subject or context of Section 14(1) of the GD Act, which is under consideration, being considered herein. The legislative device used in clause (15)(c) of Section 2 of Kerala I&GC Act is 'shall mean'. Hence, it shall mean what is expressly stated to mean; nothing beyond; nothing less. Therefore, there is no room for any interpretation or construction which would go beyond such legislative prescription.

9. It is further argued that the SBT is a subsidiary of the State Bank of India and even State Bank of India is only a Government Company with 58.7% share held by Government of India. The SBT is a separate entity controlled by State Bank of India. State Bank of India is a company constituted under the State Bank of India Act. Even though State Bank of India is an undertaking under the Central Government, SBT, which is admittedly a subsidiary of SBI, is not controlled by Government of India. It is controlled by a Government of India undertaking only. In support of his contentions he furnished the details of share holding chart as available in the official website of SBT. As far as State Bank of India is concerned it holds 78.906 shares in the State Bank of Travancore, whereas the Central Government's

share is only 8.86% of shares. The learned counsel therefore argued that the SBT cannot be considered as one coming under any of the categories specified in Regulation 4(2)(ii).

10. His next point is with regard to the nature of pension he is drawing. It is true that Ext.P4 letter of Chief Manager of State Bank of Travancore certified that the petitioner is drawing an amount of Rs.15,079/- from the said bank towards pension. At the same time, referring to the constitution of the pension fund, he Ext.P3 State Bank of India Transfer of Employees' Regulation 1999, it was argued that the pension being drawn from the Trust was not liable to be deducted for fixing pay. Regulation 7 of this scheme provides for Composition of the Fund which reads as follows:-

“7. Composition of the Fund-The fund shall consist of the following namely-

- (a) the contribution by the Bank at the rate of ten percent per month of the pay of the employee;
- (b) the accumulated contributions of the Bank to the Provident Fund and interest accrued thereon upto the date of such transfer in respect of the employees;
- (c) the amount consisting of contributions of the Bank along with interest refunded by the employees who

- had retired before the notified date but who opt for pension in accordance with the provisions contained in these regulations;
- (d) the investment in annuities or securities purchased out of the moneys of the Fund and interest thereon;
 - (e) amount of any capital gains arising from the capital assets of the Fund;
 - (f) the additional annual contribution made by the Bank in accordance with the provisions contained in regulation 11 of these regulations;
 - (g) any income from investments of the amounts credited to the Fund.
 - (h) the amount consisting of contribution of the Bank along with interest refunded by the family of the deceased employee.”

11. Sri. P.C. Sasidharan, learned Standing Counsel for the Public Service Commission supported the arguments on behalf of the petitioner and referred to Ext.R3 (a) by which the Chairman had addressed the Accountant General recommending the entitlement of the petitioner for pension in full, without any deduction, pointing out that the petitioner, who retired from SBT is drawing pension from the fund created by contribution of employees and will not come under the categories from which deduction is to be made from their retirement benefits. The learned Standing Counsel pointed out that Regulations which govern the service conditions of Chairman and Members are made by

Governor in exercise of powers under Article 318 of the constitution and not by Govt.

12. On the other hand, Senior Government Pleader Sri. Abdul Salam, with reference to Ext.P7 and P12 as well as Exts.P3 of State Bank of Travancore, argued that the pension drawn by the petitioner from SBT is liable to be deducted in terms of Regulation 4(2)(ii), while fixing pay. According to him SBT is a Government of India undertaking under the control of State Bank of India and hence the pension drawn is liable to be deducted. According to him the expression Government occurring in Regulations 4(2)(i) as well as in 4 (2) (ii) are one and the same and includes both Government of India and Government of Kerala and hence the pension drawn from SBT is to be deducted.

13. In view of the aforesaid contentions, the main and only issue to be examined in the writ petition is whether the pension drawn by the petitioner is liable to be deducted for fixing his pay. In order to examine that, it is necessary to scan the relevant regulations which govern the fixation of pay of members of PSC. Regulations Rule 4(1) and Rule 4(2) (i) and 4(2)(ii) of the Regulations read as

follows:-

“4.(1) There shall be paid to the Chairman a salary at the rate of six thousand and seven hundred rupees per mensem and to other members at the rate of six thousand two hundred and fifty per mensem. The Chairman and other Members shall also be paid Dearness Allowance and City Compensatory Allowance at the rates admissible to the officers of the State Government drawing equivalent pay.

Provided that in the absence of the Chairman on leave or otherwise Governor may by Order authorize a Member of the Commission to discharge duties of the Chairman. There shall also be paid such Member so authorized an additional allowance not exceeding one half of the difference of the pay of the Chairman and Member as the Governor may direct in this behalf.

4.(2)(i) A person, who at the date of his appointment to the Commission is holding a post under the Government of India or the Government of a State shall, on appointment as Chairman or other Member, receive the salary and Dearness Allowance mentioned in clause(1):

Provided that such person shall be allowed to draw his salary last drawn in the Government of India Service, the All India Services or the State Service as the case may be, minus the pension including commuted value of pension and pension equivalent of other retirement benefits through out the period of his service in the Commission if the last pay drawn by him during such service is higher than the pay attached to the posts:

Provided further that a member of an All India Service appointed as Chairman or Member of the Commission prior to 30th September, 1975 shall be entitled to draw the salary which he would have drawn from time to time had he continued in the said service till his retirement from the service of the Commission or the salary mentioned in clause (1) whichever is higher:

Provided further that a member of the State or Central

government Service appointed as Chairman or Member of the Public Service Commission before superannuation shall be allowed to draw the salary which he would have drawn from time to time had he continued in the said service or the salary mentioned in Clause (1) of Regulations 4 whichever is higher till his retirement from the service of the Commission.

4.(2)(ii) In the case of an appointment as Chairman or other Member of a person who has retired or deemed to have retired from service under the Government, a local body, a University or Private College or aided school or any other body wholly or substantially owned or controlled by the Government and who is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, contributory provident fund or otherwise his salary mentioned in clause (1) shall be reduced by such amount not exceeding the pension (including any portion of the pension which may have been commuted) and the pension equivalent of other retirement benefits if any or as the case may be, the pension equivalent of the employer's contribution of the contributory provident fund, interest on such contribution and other retirement benefits, if any. He shall also be eligible for dearness allowance as provided in clause (1) and house rent allowance as provided in regulation 6E on the above salary without excluding his pension equivalent of other retirement benefits, if any, subject to the restriction that he shall not be eligible to draw any further dearness allowance on his pension as long as he holds the office of the Chairman or other Members."

(emphasis supplied)

From Regulation 4(2)(i) it is evident that expression employed therein are 'Government of India or Government of a State.' In the proviso 4(2)(i) the expressions adopted are Government of India, All India service or State service. At the same time, Regulation 4(2)(ii) employs the term

'Government' alone. The expression 'the Government' is followed by Local body, University or private college or aided college or any other body fully or substantially controlled 'by the Government'. In view of the specific distinction in the expressions employed in each sub regulations i.e, in 4(2)(i) where Government of Kerala, Government of India, etc. are specifically provided for and 4 (2)(ii) where there is Government alone, I am of the view that the contentions raised by the learned Senior Counsel are to be accepted. Regulation 4(2) (ii) deals with fixation of pay in the case of those who are drawing pension from Government of Kerala or from authorities/institutions owned/controlled by Government of Kerala. When the term 'Government' is not defined in the Regulations, one has to adopt the definition given in Section 2(15) of the Interpretation and General Clauses Act, 1125 which is already reproduced above.

14. As rightly pointed out by the learned Senior Counsel, going by the definition of the expression 'Govt' under Section 2(15) of the Interpretation and General Clauses Act, 1125 and as interpreted by the Division Bench

of this court in *Venugopal K. Another v M. Aneesh Kumar and Others* reported in [2013 (3) HKC 490], it can be seen that the petitioner was not drawing pension from an establishment owned or controlled by Government. The respondents do not have a case that Government of Kerala is having any sort of control over SBT. Therefore it is evident that fixing of the pension of petitioner after effecting deduction of pension is uncalled for.

15. Even going by the counter affidavit as well as the impugned orders passed by the Government, SBT is controlled by State Bank of India alone and not one controlled by Government of India, even assuming that Government means Government of India under Regulation 14(2)(ii). There is no provision to deduct the pension drawn from a body owned or controlled by a Government of India undertaking.

16. In the light of the above, there cannot be any doubt that the petitioner who was working in the SBT, does not come under the purview of the listed categories in the provisions of Regulation 4(2)(ii), so as to fix his pay after deducting the pension he is getting on account of his

service there, as SBT is not one owned, controlled or financed by the Government of Kerala. Government of Kerala does not even have any share in the SBT.

17. Once it is found that SBT is not a body owned / controlled by Government, it is not necessary to go into the nature of pension drawn by petitioner, which is not likely to get revised from time to time, as in the case of other pensions and is being paid from a trust constituted under Ext.P3. Therefore even without going into the nature of pension, being drawn by petitioner, it is clear that the fixation of pay in the case of petitioner, after deducting the pension is illegal.

18. In the above circumstances, I quash Exts.P7 and P12 and declare that the petitioner will be entitled to get his pay fixed in accordance with Ext.P8 Government Order i.e., (substantive pay of Rs.50,790/-), as revised from time to time, without effecting deduction of the monthly pension being drawn by him from the State Bank of Travancore, in terms of Ext.P3 Regulations. There will be further direction to respondents 1 and 2 to re-fix the pay of the petitioner accordingly, and to grant him all consequential

benefits including arrears of pay, within a period of 3 months from the date of receipt of a copy of the judgment.

The writ petition is accordingly allowed.

Sd/-
P.V.ASHA, JUDGE

SKV