

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 9015 of 2014 (B)

PETITIONER(S) :

**THE KERALA STATE CO-OPERATIVE BANK LTD.,
COBANK TOWERS, PALAYAM, THIRUVANANTHAPURAM-695 033,
REPRESENTED BY ITS MANAGING DIRECTOR.**

BY ADV. SRI.GEORGE POONTHOTTAM, S.C,

RESPONDENT(S) :

**1. THE COURT OF DEPUTY LABOR COMMISSIONER,
(AUTHORITY UNDER KERALA PAYMENT OF SUBSISTENCE
ALLOWANCE ACT), PALAKKAD.**

**2. SRI. V.J. FRANCIS,
VAIDYAKKARAN HOUSE, PALAKKAL.P.O., TRICHUR-680 027.**

**R1 BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADIR
R2 BY ADV. SRI.K.B.GANGESH**

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE SUSPENSION ORDER NO. ADM./1/249/DA/428/2007-08 DATED 25-04-2007.**
- P2: TRUE COPY OF THE MEMO OF CHARGES NO.P & E/DA/V.J.F/1856/2007-08 DATED 23-07-2007.**
- P3: TRUE COPY OF THE RESOLUTION NO. 234 OF THE EXECUTIVE COMMITTEE DATED 19-03-2008.**
- P4: TRUE COPY OF THE NOTICE ISSUED TO THE 2ND RESPONDENT DATED 07-04-2008.**
- P5: TRUE COPY OF THE RESOLUTION NO. 130 OF THE EXECUTIVE COMMITTEE OF THE BANK DATED 23-01-2009.**
- P6: TRUE COPY OF THE APPLICATION FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT UNDER SECTION 4 OF THE KERALA PAYMENT OF SUBSISTENCE ALLOWANCE ACT AND THE PETITION TO CONDONE THE DELAY IN FILING THE SAID APPLICATION.**
- P7: TRUE COPY OF THE OBJECTION FILED BY THE BANK BEFORE THE 1ST RESPONDENT.**
- P8: TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT IN S.A.C. NO.39/2011 DATED 09-01-2013.**
- P9: TRUE COPY OF THE NOTICE NO. SAC 39/2011 DATED 12-03-2014 ISSUED BY THE DEPUTY LABOUR COMMISSIONER, PALAKKAD.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M. SHAFFIQUE, J.

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W.P. (C) No. 9015 of 2014

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Dated this, the 11th day of November, 2015

J U D G M E N T

Petitioner challenges Ext.P8 by which the Deputy Labour Commissioner has passed an order under the Kerala Payment of Subsistence Allowance Act, 1972 (hereinafter referred to as 'the Act') to pay the amount mentioned therein to the 2nd respondent after condoning delay in filing the application.

2. The short facts involved in the writ petition would disclose that the 2nd respondent while being an employee of the petitioner Bank was placed under suspension on 25/4/2007. He was reinstated in service after disciplinary enquiry on 29/1/2009. In between, after issuing memo of charges, an enquiry was conducted in which it was found that memo of charges stand proved. However, according to the petitioner Bank, taking a lenient view in the matter, the 2nd respondent was permitted to be reinstated in service imposing punishment of barring three increments with cumulative effect. He retired on superannuation on 31/3/2011. The 2nd respondent was paid subsistence

allowance from 25/4/2007 to 18/3/2008. He was not paid subsistence allowance from 19/3/2008 to 29/1/2009 apparently on the finding in the enquiry report. The 2nd respondent filed an application before the authority under the Act along with a petition for condoning delay in filing the application. Objection was raised on behalf of the petitioner objecting to the condonation of delay. However, in Ext.P8 order, the authority condoned the delay. Portion of the order by which the delay is condoned reads as under;

"The applicant had also filed a petition to condone the delay occurred in filing the application. On verifying the documents it is found that the delay occurred was not due to the wilful latch on the side of the applicant. Hence the delay occurred in filing the application was condoned."

3. The main contention urged by the petitioner is that there is no material to condone such huge delay of more than three years in filing the application before the competent authority under the Act. It is contended that the 2nd respondent was involved in serious misconducts which include taking of bribe

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for sanctioning loan and the findings in the enquiry clearly indicated that he was liable to be punished by dismissal from service. However, the petitioner Bank had taken a lenient view in the matter and permitted reinstatement in service by reducing the punishment. It is contended that during the course of proceedings, no attempt has been made by the 2nd respondent to file an application seeking subsistence allowance and only after his superannuation, the application is seen filed on 9/11/2011.

4. Counter affidavit has been filed by the 2nd respondent *inter alia* stating that the allegations in the disciplinary proceedings were absolutely baseless and it is incorrect to state that he was awarded with lesser punishment accepting his apology. Further, it is contended that though initially he was paid subsistence allowance upto March, 2008, the same was illegally discontinued by the Bank without any reason. He had preferred application on 20/11/2008 before the Bank and another reminder was sent on 5/1/2009. Thereafter, he was reinstated in service. The Bank issued orders regarding regularisation of his period of

suspension only after his retirement, i.e., on 29/4/2011. Since there was no mention in the said order regarding payment of subsistence allowance, he was constrained to make a claim under the Act for payment of subsistence allowance. It is therefore submitted that there was justification on the part of the authority to condone the delay in filing the application.

5. Ext.P6 is the application filed by the 2nd respondent before the authority for condoning the delay. No separate order has been produced before this Court whereas the only reference for condonation of delay is evident from Ext.P8, which is already extracted. In the petition filed for condonation of delay, it is stated that the period of suspension was not regularised till his retirement on 31/3/2011. The 2nd respondent has not indicated as to why he had not filed an application seeking subsistence allowance during the said period whereas he has already indicated that the order regularising leave was issued only on 11/5/2011. Under what circumstances he did not seek for subsistence allowance during the relevant time is not clear. It is

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needless to state that even as per the statutory format, subsistence allowance has to be paid every month during the period under which the concerned employee is under suspension, unless he is otherwise gainfully employed. Therefore, it is normally expected of an employee to approach the competent authority within a reasonable period.

6. Statute prescribes for a period of limitation of one year from the date on which money became due to the employee from the employer. Here, in the case on hand, the amount became due from 19/3/2008 onwards till 29/1/2009. Even assuming that the cause of action had arisen from 19/3/2008, the application ought to have been filed before 19/3/2009 and 29/1/2010. It is apparent that he was reinstated in the meantime, he continued in service and got superannuated on 31/3/2011 and five months thereafter, he had approached the controlling authority. No doubt, as per second proviso to Section 4 of the Act, the Government is entitled to condone the delay in entertaining the application after the expiry of one year period and it has to be on

sufficient cause being shown. Though it is stated that there is no laches on the part of the 2nd respondent, it does not amount to finding of fact regarding sufficient cause shown by the applicant. It is evident from the materials on record that when an application is filed for condonation of delay and objection is filed, necessarily, the application has to be considered in accordance with the procedure prescribed and the authority will have to come to a definite finding on the basis of the available materials that there is sufficient cause to condone delay. Such a consideration is lacking in the case on hand.

7. As far as the liability is concerned, there cannot be any dispute. The question is whether the delay could be condoned. Under such circumstances, I am of the view that this matter requires to be considered afresh and Ext.P8 order is liable to be set aside to that extent. Ext.P8 is set aside in part only in regard to the question regarding condonation of delay. The fixation of liability is confirmed, but it is payable only if the delay is condoned and that too after considering the matter afresh.

W.P(C) No.9015/14

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Under the said circumstances, this writ petition is partly allowed as follows:

(1) Ext.P8 to the extent it condones the delay in filing the application is set aside.

(2) The competent authority shall consider the application to condone delay afresh after hearing both sides and if the delay is condoned, the authority shall pass fresh orders in line with the adjudication already made in terms of Ext.P8. This shall be done within a period of four months from the date of receipt of a copy of this judgment.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
12/11/2015

//True Copy//

PS to Judge