IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

WP(C).No. 13921 of 2009 (I)

PETITIONERS:
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1. T.VENKATRAMANA BHAT, RETIRED SECRETARY, PERDALA SERVICE CO-OPERATIVE BANK LTD., (VIA) KUMBLA, RESIDING AT TALPANAJE HOUSE, P.O.NEERCHAL, (VIA) KUMBLA, KASARAGOD TALUK AND, DISTRICT.

2. N.PARAMESWARA BHAT, RETIRED ASSISTANT SECRETARY, PERDALA SERVICE CO-OPERATIVE BANK LTD., (VIA) KUMBLA, RESIDING AT MUMTHAJI BUILDING, IST FLOOR MALLIKARJUN NAGAR, 4TH CROSS, SAKALESHPUR- 573 134 HASSAN DISTRICT, KARNATAKA STATE.

BY ADVS.SRI.K.SHRIHARI RAO
SMT.N.SHOBHA

RESPONDENTS:
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1. THE KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, CHINMAYA LANE, KUNNUMPURAM, NEAR AYURVEDA COLLEGE, TRIVANDRUM-1, REPRESENTED BY ITS SECRETARY.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, KASARAGOD.

3. THE PERDALA SERVICE CO-OPERATIVE BANK LTD., REPRESENTED BY ITS SECRETARY, P.O.NEERCHAL, (VIA) KUMBLA, KASARAGOD DISTRICT.

R,R3 BY ADV. SRI.A.DINESH RAO
R BY SRI. P.P. PADMALAYAN, GOVERNMENT PLEADER
R BY SRI.P.V.MOHANAN,SC, CO.OP.EMP.PENSION BOARD
R1 BY SRI.K.R.SUNIL, SC, CO-OP.EMP.PENSION BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	:	TRUE COPY OF THE ARC 180/05 DATED 12.02.2005 ON THE FILE OF THE ARBITRATOR.
EXT.P2	:	TRUE COPY OF THE ARC 181/05 DATED 12.02.2005 ON THE FILE OF THE ARBITRATOR.
EXT.P3	:	TRUE COPY OF THE WRITTEN OBJECTION ARC NO. 180/05 DATED 10.04.2005.
EXT.P4	:	TRUE COPY OF THE AWARD DATED 25.05.2005 IN ARC NO.180/05.
EXT.P5	:	TRUE COPY OF THE AWARD DATED 25.05.2005 IN ARC NO.181/2005.
EXT.P6	:	TRUE COPY OF THE COMMON JUDGMENT DATED 15.12.2005 IN W.P.(C) NO. 6249/2005 AND 9390/2005 OF THIS HON'BLE COURT.
EXT.P7	:	TRUE COPY OF THE JUDGMENT DATED 30.12.2008 IN AP NO. 25/2006 OF THE CO-OPERATIVE TRIBUNAL, TRIVANDRUM.
EXT.P8	:	TRUE COPY OF THE JUDGMENT DATED 30.12.2008 IN AP. NO. 26/2006 OF THE CO-OPERATIVE TRIBUNAL, TRIVANDRUM.
EXT.P9	:	TRUE COPY OF THE PROCEEDINGS DATED 20.02.1989 OF THE ASSISTANT REGISRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KASARAGOD.

RESPONDENTS' EXHIBITS:

EXT.R3(a)	:	TRUE COPY OF THE COMMUNICATION DATED 05.05.2004.
EXT.R3(b)	:	TRUE COPY OF THE COMMUNICATION DATED 30.10.2004.
EXT.R3(c)	:	TRUE COPY OF THE REPORT BY THE INSPECTING AUTHORITY OF THE 1ST RESPONDENT.
EXT.R3(d)	:	TRUE COPY OF THE AUDIT REPORT FOR THE YEAR 1997-1998.
EXT.R3(d)(1)	:	TRUE COPY OF THE AUDIT REPORT FOR THE YEAR 1998-1999.
EXT.R3(d)(2)	:	TRUE COPY OF THE AUDIT REPORT FOR THE YEAR 1999-2000.
EXT.R3(d)(3)	:	TRUE COPY OF THE AUDIT REPORT FOR THE YEAR 2000-2001.

/ /TRUE COPY//

P.A. TO JUDGE

rv

'CR'

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 13921 of 2009

Dated this the 2nd day of September 2015

JUDGMENT

Facts:

This writ petition, pending for the last six years, raises the issue of effecting recovery decades after paying what is said to be the excess pay and allowances to the retired employees, the petitioners.

2. Briefly stated, the first petitioner, having worked as a Secretary in the third respondent Society, retired from service on 31.08.1999; the second petitioner, having worked as an Assistant Secretary, retired on 30.06.1999 from the service of the same society. In the course of time, after the retirement of the petitioners, the Government issued an Order dated 22.03.2000 revising the pay of the employees of the Co-Operative Societies extending the benefit retroactively from 01.04.1999.

3. With a view to claiming the revised pay in terms of the Government Orders issued on 22.03.2000, both the petitioners

submitted their representations before the third respondent Bank; but, the petitioners did not get any favourable reply from their former employer. Aggrieved, the first petitioner filed W.P.(C) No. 6249 of 2004; and the second petitioner, W.P.(C) No. 9390 of 2004.

4. After receiving the notices from the Court in the above writ petitions, according to the petitioners, the third respondent Society raised a dispute under Section 69 of the Kerala Co-Operative Societies Act ('the Act' for brevity). Eventually, the Society filed Exts.P1 and P2 claim petitions in ARC Nos. 180 and 181 of 2005 respectively on the file of the Co-Operative Arbitration Court, Kasaragod.

5. The principal contention of the respondent Bank in the Arbitration Proceedings was that both the petitioners, while they were in service, had drawn excess pay and also allowance—to be precise, bonus. Though the petitioners entered their appearance and contested the ARCs, eventually the learned Arbitration Court passed Exts.P4 and P5 awards upholding the claim of the respondent Bank.

6. Through the awards the learned Arbitration Court directed the first petitioner to pay ₹ 43,840/- with interest at 12% per annum; the

second petitioner, ₹ 1,60,834/- with interest at 12%. In the meanwhile, this Court disposed of W.P.(C) No. 6249 of 2004 and W.P.(C) No. 9390 of 2004 filed by the first and second petitioners respectively, through Ext.P6 common judgment dated 15.12.2005.

7. This Court, in fact, having taken note of the awards passed by the learned Arbitrator, gave liberty to the petitioners to comprehensively challenge the awards before the statutory Tribunal, so that the mutual claims of the employer on the one hand and the employees on the other could be settled finally. The petitioners did file the statutory appeals but met with failure, as the learned Tribunal dismissed the appeals through Exts.P7 and P8 judgments, dated 30.12.2008. Aggrieved, both the petitioners have together filed the present writ petition.

Summary of Submissions:

(a) Petitioners':

8. The learned counsel for the petitioners has submitted that both the petitioners have joined the service of the third respondent society in 1980s and retired in 1999. According to him, the petitioners

allegedly drew excess pay beginning from July 1982 till the date of their retirement in 1999. As regards the bonus, the petitioners are said to have drawn in excess from 1997 to 1999.

9. It is the singular contention of the learned counsel for the petitioners that neither of the petitioners has misrepresented before the Managing Committee of the respondent Society regarding either his pay or allowance, be it the bonus. In other words, the petitioners have not unjustly enriched themselves by playing fraud on their employer.

10. The learned counsel has also tried to refute the contention of the respondent Bank that the first petitioner, being the Secretary and Chief Executive Officer of the respondent Bank, himself fixed his pay, apart from fixing the pay of the second petitioner. To repel the said contention of the respondent Bank, the learned counsel for the petitioners has drawn my attention to Ext.P9 proceedings issued by the Assistant Registrar.

11. In elaboration of his submissions, the learned counsel would contend that it is only the Assistant Registrar, a responsible officer of

the Government, that periodically fixed the pay of the first petitioner. As regards the pay of the second petitioner, the learned counsel has further contended that all through, beginning from 1980 till the date of his retirement, the respondent Bank has been subjected to annual statutory audits. If at all there had been any irregularities in pay fixation or payment of bonus, the Managing Committee of the employer ought to have acted on time.

12. Summing up his submissions, the learned counsel has essentially contended that unless there is fraud or misrepresentation on the part of the employees, any alleged excess pay or allowances paid to the employees cannot be recovered after a long lapse of time, more particularly involving the retired employees.

13. To fortify his submissions, the learned counsel has placed reliance on **Kasaragod Co-Operative Town v. Divakaran K and others**[1], **State of Punjab v. Rafiq Masih (White Washer)**[2], **Babulal Jain v. State of M.P**[3], **M. Ravindran and others v. State of Kerala and others**[4], **Aleyamma Varghese v. Secretary,**

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[1] 2012 (3) KHC 123 (DB)
[2] 2015 (1) KLT 429 (SC)
[3] (2007) 6 SCC 180
[4] Unreported judgment in W.P. (C) No.25048 of 2005

General Education Department[5], **K. Gopalakrishna v. Kerala State Co-Operative Employees Pension Board**[6], and **Registrar of Co-Operative Societies v. Israil Khan**[7].

(b) Respondent Bank's:

14. Per contra, the learned counsel for the third respondent, the employer, has strenuously contested the petitioners' claim. At the outset, the learned counsel has submitted that the Arbitration Court and the Appellate Tribunal have concurrently held that the petitioners are liable to repay to the respondent Society the excess pay and allowances drawn by them.

15. The learned counsel has submitted that, soon after the petitioners' retirement, the issue of their having drawn the excess pay and allowances came to light when the Pension Verification Officer verified the records. According to him, the said official brought the issue to the notice of the respondent society on 9.11.2000. Immediately thereafter, the respondent Society, submits the learned counsel, issued a series of notices, including Ext.R3(b), calling upon

[5] 2007 (3) KLT 700 (SC)
[6] An unreported judgment dt.14.11.2003 in O.P. No.15025 of 2000
[7] 2009 (4) KLT SN 61 (C.No.53) S.C.

the petitioners to repay the excess amounts drawn by them as pay and allowances.

16. Adverting to the pleadings of the petitioners in the written statement before the Arbitration Court, the learned counsel has pointed out that in paragraph 10 thereof, apart from a bland denial, the petitioners have not supplied any reason why they drew more bonus than they had been entitled to.

17. To a specific query from this Court whether the provisions of the Limitation Act concerning the recovery of dues applies to the respondent society, the learned counsel has submitted that it has no application except to the extent it has been specifically applied in the enactment. In fact, the learned counsel has drawn my attention to Rule 106 of the Kerala Co-Operative Societies Rules, 1969 ('the Rules' for brevity) to underline the aspect that only regarding abatement, the limitation as specified in the said Rule applies.

18. Making further efforts to impress upon this Court that Limitation Act concerning the recovery of dues does not apply to the third respondent society, the petitioner has placed reliance on a

judgment of this Court in **Kavi Rajan v. Co-Operative Tribunal**[8].

19. Heard the learned counsel for the petitioners and the learned cousnel for the respondent Bank, apart from perusing the record.

Issues:

20. The issues that fall for consideration are as follows:

(1) Whether Exts.P7 and P8 judgments of the Appellate Tribunal could be sustained? In the alternative, whether the petitioners are liable to repay what are said to be the excess pay and allowances drawn by them when they were in service?

(2) Whether the petitioners are entitled to take advantage of the pay revision as effected through the Government Order dated 22.03.2000 since it had been retroactively applied from 01.04.1999 when the petitioners were in service?

Issue No.1:

Excess Pay:

21. The recovery sought by the respondent society is on two counts: the petitioners drew excess pay beginning from 1980 till the date of their retirement in 1999, i.e., for about 19 years; they also drew bonus in excess from 1997 to 2000, i.e., for three years.

[8] 1989 (2) KLT 895

22. The respondent society has contended that the first petitioner, being the Chief Executive Officer of the respondent Society, himself fixed his pay in excess and took undue advantage of his position while in service.

23. The said contention, to my mind, stands refuted by the petitioner as could be seen from Ext.P9 proceedings issued by the Assistant Registrar. A perusal of Ext.P9 makes it amply clear that the Assistant Registrar had periodically fixed the pay of the first petitioner, but not the first petitioner himself. Even otherwise, it is not the case of the respondent society that the first petitioner has played any fraud taking advantage of his position as the Secretary of the society to have any unjust enrichment.

24. There is, in my considered view, sufficient strength in the submission of the learned counsel for the petitioners that beginning from 1980, when the petitioners joined their service, the respondent society had been subjected to periodic statutory auditing. Had it been a case of any fraud or misrepresentation on the part of either of the petitioners concerning his pay, it would have seen the light at the

earliest point in time. Insofar as the second petitioner is concerned, he did not have any role in his pay fixation, admittedly. Until the petitioners' retirement and even much subsequent to their retirement, the third respondent has never raised any dispute concerning the alleged excess pay drawn by the petitioners.

25. It is the specific contention of the learned counsel for the respondent Society that as soon as the Pension Verification Officer pointed out on 19.11.2000 the anomaly in the pay of the petitioners, the third respondent society went on issuing a series of notices calling on the petitioners to repay the amounts allegedly drawn by them in excess.

26. At this juncture, this Court is required to examine whether the respondent society is entitled to recover the pay allegedly drawn by the petitioners in excess beginning from 1980 and whether it is also entitled to recover the excess bonus drawn by the petitioners.

27. This Court as well as the Apex Court has been consistently holding that unless there is fraud or misrepresentation on the part of the employee, no pay paid in excess under a bona fide mistake can be

recovered from the employee, after a long lapse of time—especially if it is to inflict extreme hardship on the unwary employee.

28. In **Divakaran K** (supra), a learned Division Bench of this Court has taken note of the fact that the delay in recovery could not be attributed to the Bank; on the contrary, the delay was on the part of the Government, which took inordiante time to dispose of the Bank's representation for initiating the recovery proceedings against certain employees. Their Lordships have, however, felt that it would be harsh to permit recovery against retired employees and those on the verge of retirement, owing to the lapse of considerable time.

29. Nevertheless, it cannot be said that there is any ratio of binding nature laid down in the above decision. The learned Division Bench, under the facts and circumstances, has adopted, to my mind, an equitable approach to the issue.

30. In **K. Gopalakrishna** (supra), the facts in brief are that the petitioner therein, upon his retirement, questioned the delay in the Pension Board's settling his pension. Having joined the issue, the Pension Board took a plea that the verification officer found some

irregularity in the fixation of the petitioner's pay while he had been in service. In other words, the objection of the Pension Board is that the petitioner, while in service, was paid more pay than he had been entitled to.

31. This Court, repelling the objections of the Pension Board, has held that the Pension Board had already received the contribution commensurate with the pay paid to the petitioner by the employer. Resultantly, this Court has further held that there was no justification for the Pension Board not to pay to the employee the pension benefits proportionate to the contribution it received. It is indeed pertinent to observe that in **K. Gopalakrishnan** (supra) the issue of recovery of the alleged excess pay by the employer was not at all in issue.

32. In **Rafiq Masih (White Washer)** (supra) a Division Bench of two learned Judges initially referred the matter to a larger Bench of three learned Judges to resolve the following issue: Whether merely on account of the fact that the release of the monetary benefits was based on a mistaken belief at the hands of the employer, and further, because the employees had no role in the determination of his pay by

the employer, could it be legally feasible for the private respondents to assert that they should be exempted from refunding the excess amount received by them?

33. A learned Three-Judge Bench in its judgment, dated 08.07.2014, as reported in **Rafiq Masih (I)[9],** has held that the observations made in the previous cases by the Supreme Court that the employer should not recover the excess amounts paid to the employees after a long lapse of time were in exercise of its extraordinary powers under Article 142 of the Constitution of India. Having opined thus, their Lordships have further observed that the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning. There is no conflict, according to their Lordships, in the views expressed in the earlier judgements, which were noted by the learned Division Bench of Two Judges to have been in conflict, though. As a result, having felt that there was no need to answer the reference, the learned Three-Judge Bench remanded the matter for appropriate disposal.

[9] (2014) 8 SCC 883

34. Under the circumstances narrated above, a learned Division Bench of two Judges has rendered **Rafiq Masih** (II) (supra) by observing that the benefit cannot be extended to an employee merely on account of the fact that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excess payment was made to the employee, in the absence of any fraud or misrepresentation at the behest of the employee.

35. Continuing in the same vein, their Lordships have observed that as between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other, the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India even in the Preamble of the Constitution of India. The right of recovery exercised by the employer will have to be weighed against its impact on the employee concerned. If the effect of the recovery from the employee

concerned would be more unfair, more wrongful, more improper, and more unwarranted than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary to effect the recovery. In such a situation, the employee's right would outbalance and, therefore, eclipse the right of the employer to recover.

36. In **Babulal Jain,** (supra), the Hon'ble Supreme Court has observed that no recovery can be effected once it is found that the employees have been paid higher pay than thay have been entitled to on a misconception or misconstruction of law, rather than owing to fraud committed or misrepresentation made by the very employee. In view of **Rafiq Masih (I),** this decision, too, may have to be treated as the one rendered under Article 142 of the Constitution. In **M. Ravindran** (supra), a cryptic judgment, this Court has relied on **Babulal Jain** (supra).

37. In **Aleyamma Varghese** (supra), the Education Department has directed the recovery of excess salary from its employee after 17 years. The Hon'ble Supreme Court, keeping in view the peculiar facts and circumstances of the case, has held that the State of Kerala should

not have taken recourse to the recovery proceedings after such a long lapse of time. In that context, the Court has observed that a mistake apparent on the face of the record may be rectified but in a matter of this nature, the State is expected to react more magnanimously and not resort to recovery proceedings after a period of 17 years. As has been observed by the Apex Court, the judgment was rendered essentially by taking recourse to Article 142 of the Constitution of Indi with a view to doing complete justice to the parties.

38. In **Col. B.J. Akkara (Retd.) v. Govt. of India**[10] the Apex Court has held that the relief agaisnt the recovery of excess payment is granted by Courts, not because of any right of the employees, but in equity and in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is allowed. It is further observed that an employee, particularly one in the lower rungs of service, would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he will spend it, genuinely believing that he is entitled to it. As

[10] (2006) 11 SCC 709

any subsequent action to recover the excess payment will cause undue hardship to him, a judicial interdiction in this regard is required.

39. Their Lordships in **Col. B.J. Akkara** (supra) have, however, served a word of caution by observing that where the employee has knowledge that the payment received is in excess of what is due to him, or where the error is detected or corrected within a short time, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, Courts may, in the facts and circumstances of each case, refuse to grant such relief against recovery.

40. Based on the ratio in **Col. B.J. Akkara** (supra), another learned Bench of two-Judges of the Hon'bel Supreme Court in **Israil Khan** (supra) has observed thus: what is important is that recovery of excess payments from employees is to be refused only where the excess payment is made by the employer by applying a wrong method of calculation, or on a mis-interpretation of the applicable rules, which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts

will not use their discretion to deny to the employer the right to recover the excess payment.

41. From a conspectus of the precedents as have been extracted above, it does not emerge as an immutable principle of law that under all circumstances the employer is ineluctably estopped from recovering the excess pay or allowances paid to the employee. I, however, hasten to add that often times the Hon'bel Supreme Court with a view to doing complete justice under Article 142 of the Constitution of India to the parties, and this Court as a matter of equity under Article 226 of the Constitution have held that in the cases of inordinate delay, especially once it is held that the employee is not at fault, the belated recovery is inequitable, and thus impermissible, as well.

42. In the present instance, the petitioners have been accused of having drawn excess pay beginning from the date of their joining service in 1980 or thereabouts. It is said to have continued until their retirement in 1999—for about two decades. In my considered view, any effort on the part of the respondent Bank to seek recovery of the alleged excess pay after more than two decades is bound to inflict

agony and financial calamity on the petitioners. Not to be forgotten is the fact that they retired in 1999, and the issue cropped up only when the petitioners wanted to have the benefit of pay revision extended to them.

Bonus:

43. Insofar as the bonus is concerned, I do find some substance in the submission made by the learned counsel for the respondent Bank that the respondent Bank had not been doing financially well, and that there was a cap imposed on the quantum of bonus the employees were entitled to. In fact, in paragraph 10 of Ext.P3 written statement, the petitioners have only offered blanket denials, without supplying any cogent reasons in defense of their stand as regards the allegation of excess drawal of bonus.

44. At this juncture, I may have to address the issue whether the respondent society is entitled to have the recovery, without reference to the Limitation Act. In the first place, the learned counsel for the respondent society could only bring to my notice Rule 106 of the Rules dealing with abatement.

45. Indeed, Rule 106 of the Rules just speaks of the limitation vis-a-vis the abatement of the judicial proceedings. In my considered view, it cannot, however, be concluded that barring Rule 106, no other indication is left to conclude that the Limitation Act does not apply to any proceedings in relation to the third respondent Society.

46. In **Kavi Rajan** (supra) what has fallen for consideration is the application of Section 5 of the Limitaiton Act, i.e., the condonation of delay, in initiating the judicial proceedings. A learned Division Bench, on reference, has laid down that the Co-operative Tribunal is not a Court and that the provisions of the Limitation Act are not applicable. In fact, to hold that the Limitation Act does not apply to the ARC proceedings before the Arbitration Tribunal, their Lordships have relied on **Sakuru v. Tanaji**[11], wherein the Hon'ble Supreme Court has held that the provisions of the Limitation Act, 1963, apply only to proceedings in "courts" and not to appeals or applications before bodies other than courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities are vested with certain specified powers conferred on courts under the

[11] AIR 1985 SC 1279

Code of Civil or the Criminal Procedure.

47. Indeed, **Kavi Rajan** (supra) has categorically held that the Arbitration Tribunal is not a Civil Court and, as a result, the provisions of the Limitation Act have no application. With a view, perhaps, to checking the enforcement of stale claims, the legislature has recently come up with an amendment to Section 69 of the Act. To be more precise, through Act No. 8/2013, dated 14.02.2013, the Legislature added sub-section (4) to Section 69 of the Act. The newly added sub-section, as is to be seen, reads to the effect that all monitory disputes mentioned in Schedule III to the Act shall be filed within the time specified in the said Schedule: indisputably, the receivables are recoverable in three years. Not to be ignored is the fact that the amendment is prospective in its application, as the amending Act itself specifies thus.

48. Without much cavil, it can be seen that Exhibits P4 and P5 awards were passed in 2005 and Exhibits P7 and P8 judgments were rendered by the Appellate Tribunal in 2008; that is, much prior to the incorporation of sub-section 4 of Section 69 of the Act. As a result, it

cannot be said that the claim of the respondent Bank to recover excess bonus drawn by the petitioners has been barred by limitation or that it suffers from any incurable latches.

49. Not much justification is forthcoming from the petitioners why they drew more bonus than they had been entitled to. Nor can it be said that the respondent Bank had tarried inordinately over its demanding the petitioners to make good the loss suffered by it in respect of the bonus.

50. In the facts and circumstances, I cannot but hold that Exhibits P7 and P8 judgments are unexceptionable only to the extent they declare that the petitioners are liable to repay the excess bonus drawn by them during the years 1997-1999. The fact, nevertheless, remains that the respondent Bank sought the recovery of the amounts almost five years after the petitioners' retirement, notwithstanding its earlier notices. Thus, adjusting the equities, this Court is of the opinion that it is not in the interest of justice to compel the petitioners to pay interest on the amounts due. To reiterate, I hold that the respondent society cannot recover any excess pay paid to the petitioners, save the

bonus.

Issue No.2:

51. It is not in dispute that the pay revision was effected through Government Order dated 22.03.2000. The pay revision, in fact, was given retroactive effect: made applicable with effect from 01.04.1999. Since both the petitioners had been in service by then, I do not see any legal or statutory impediment coming in the way of their claiming benefit of the pay revision. In the facts and circumstances, Exts.P7 and P8 are set aside, save to the extent of requiring the petitioners to refund the bonus drawn in excess by them, sans interest, though.

52. It is, therefore, declared that the respondent society is not entitled to effect any recovery of amounts on account of the excess pay alleged to have been drawn by the petitioners. The respondent Bank is entitled to recover the excess bonus paid to the petitioners during the years 1997-1999, but without interest.

It is further made clear that the petitioners are entitled to take advantage of the pay revision, as it was given retrospective effect. As a result, this Court further directs the respondent Bank to pay to the petitioners arrears of pay with interest @10% p.a., from 01.04.1999 till the respective dates of their retirement, after setting off the amounts the respondent Bank has to receive from the petitioners towards repayment of excess bonus drawn by them. On the contrary, if the amounts due to the respondent Bank from the petitioners are higher than those to be paid by the respondent Bank towards arrears of revised pay, it is at liberty to recover the same in the manner known to law, on the strength of this judgment.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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