IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 11785 of 2015 (W)

PETITIONER :

P.G. THANKAMANI, AGED 58 YEARS
CHEKKOTTUMADOM, NEERKUNNAM, VANDANAM P.O.,
ALAPPUZHA

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS :
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1. KERALA STATE CO-OPERATIVE EMPLOYEES, PENSION BOARD, REPRESENTED BY ITS SECRETARY, PB NO. 85
KALA NIVAS, TC NO. 27/156, 157, CHINMAYA LANE,
KUNNUMPURAM, NEAR AYURVEDA COLLEGE
THIRUVANANTHAPURAM-1.

2. THE BANK EMPLOYEE'S CO-OPERARTIVE SOCIETY,
LTD.NO.A-106, REPRESENTED BY ITS SECRETARY, MULLAKKAL
ALAPPUZHA 688 010.

3. THE MANAGING COMMITTEE OF THE BANK EMPLOYEES'
CO-OPERATIVBE SOCIETY LTD., NO.A-106
REPRESENTED BY ITS PRESIDENT, MULLAKKAL
ALAPPUZHA 688 010.

R1 BY ADV. SRI.K.R.SUNIL,SC,
R2 & R3 BY SRI.N.NANDAKUMARA MENON SENIOR ADVOCATE
BY ADVS. SRI.P.K.MANOJKUMAR
SMT.SMITHA S.PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE RESOLUTION NO.40/99-2000 DATED 23/12/1999

EXHIBIT P2: COPY OF THE CHALLAN DATED 23/12/1999 WITH STATYEMENT OF ACCOUNTS SENT BY THE PENSION NOARD AND COVERING LETTER DATED 24/12/1999.

EXHIBIT P3: COPY OF THE DEMAND NOTICE ISSUED BY THE PENSION BOAERD DATED 18/11/2014.

EXHIBIT P4: COPY OF THE JUDGMENT REPORTED IN 2008(4) KLT 647

RESPONDENT(S)' EXHIBITS :

EXT.R2(A): COPY OF THE LETTER DT 24/12/1999 ISSUED BY THE SECRETARY, THE BANK EMPLOYEES' CO-OP. SOCIETY LTD. NO.A106 ALAPPUZHA - 688010 TO THE KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, TVM.

EXT.R2(B): COPY OF THE FORM DT 23/12/1999 ISSUED BY THE SECRETARY-IN-CHARGE, REQUISITION OF SOCIETIES WITH THE KEALA STATE CO-OPERATIVE EMPLOYEES' PENSION OARD, TVM, TO THE PETITIONER AND ANOTHER.

EXT.R2(C): COPY OF THE FORM NO.II DT 23/12/1999 STATEMENT FOR THE TRANSFER OF THE PORTION OF THE EMPLOYERS CONTRIBUTION OF THE CONTRIBUTORY PROVIDENT FUND TO THE PETITIONER AND ANOTHER.

EXT.R2(D): COPY OF THE STATEMENT SHOWING THE DETAILS OF THE PAY OF THE EMPLOYEES FOR ASCERTAINING THE EMPLOYER'S CONTRIBUTION OF THE PETITIONER.

EXT.R2(E): COPY OF THE STATEMENT RELATING TO THE OTHER EMPLOYEES FOR ASCERTAINING THE EMPLOYER'S CONTRIBUTION.

EXT.R2(F): COPY OF THE COMMUNICATION NO. PB/OR-1195-96/SLP/0/85 DT 5/1/2000 ISSUED BY THE SECRETARY, KERALA STATE CO-OPERATIVE PENSION BOARD, TVM-1.

EXT.R2(G): COPY OF THE DOCUMENT SHOWING THE ACCEPTANCE OF THE AMOUNT BY THE PENSION BOARD KERALA STATE CO-OPERATIVE EMPLOYEE'S PENSION BOARD, TVM, TO THE PETITIONER AND ANOTHER.

EXT.R2(H): COPY OF THE STATEMENT SHOWING THE PENSION CONTRIBUTION REMITTED IN THE NAME OF THE PETITIONER IN THE PENSION BOARD FROM DECEMBER, 1999 TO FEBRUARY 2014.

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EXT.R2(I): COPY OF THE DEMAND NOTICE NO. 9325/ALP DT 23/7/2014 ISSUED BY THE P.F. INSPECTOR TO THE SECRETARY, BANK EMPLOYEES CO-OPERATIVE BANK, ALAPPUZHA.

EXT.R2(J): COPY OF THE STATEMENT NAME OF BANK BANK EMPLOYEES CO-OP SOCIETY LTD. NO. A 106 TO THE PETITIONER.

EXT.R2(K): COPY OF THE STATEMENT KSCEPB PROFORMA FOR CALCULATION OF PENSION FUND, TO THE PETITIONER.

EXT.R2(L): COPY OF THE REPRESENTATION DT 14/10/2014 SUBMITTED BY THE PRESIDENT THE BANK EMPLOYEE'S CO-OPERATIVE SOCIETY LTD., ALAPPUZHA, TO THE SECRETARY, KERALA STATE CO-OPERTIVE EMPLOYEE'S PENSION BOARTD, TVM.,

EXT.R2(M): COPY OF THE REPLY NO. BP/P1/3917/ALP DT 18/11/2014 ISSUED BY THE ADDITIONAL REGISTRAR/SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD TVM,TO THE SECRETARY, BANK EMPLOYEES CO. SOCIETY, BANK EMPLOYEES CO. SOCIETY, ALAPPUZHA.

EXT.R2(N): COPY OF THE REPLY DT 12/12/20154 ISSUED BY THE SECRETARY IN CHARGE, THE BANK EMPLOYEES CO. SOCIETY, ALAPPUZHA, TO THE SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEES. PENSION BOARD, TVM.

EXT.R2(O): COPY OF THE REPLY NO. PB/P1/6493/ALP DT 21/1/2015 ISSUED BY THE ADDITIONAL REGISTRAR/SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEE'S PENSION BOARD TVM., TO THE SECRETARY, BANK EMPLOYEES CO. SOCIETY, ALAPPUZHA.

EXT.R2(P): COPY OF THE REPLY DT 26/2/2015 ISSUED BY THE BANK EMPLOYEES CO. SOCIETY, ALAPPUZHA, TO THE SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, TVM.

//TRUE COPY//

P.A.TO JUDGE

bp

A.M.SHAFFIQUE, J

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W.P.C.No.11785 of 2015

Dated this the 13th day of November 2015

J U D G M E N T

Petitioner has approached this Court seeking for a direction to the 1st respondent to pay pension due to her with interest and also directing respondents 2 and 3 to pay the balance gratuity of Rs.1,08,090/- with interest.

2. The short facts involved in the writ petition would disclose that the petitioner retired from service from the 2nd respondent Society on 31/05/2014 after rendering 32 years of service. She was employed in the 1st respondent Pension Board (hereinafter referred to as 'the Board'). Before retirement, her pension documents were forwarded to the Board. However, the Board made a demand for an amount of Rs.1,52,583/- in terms of Ext.P3 from the 2nd respondent alleging short fall in payment of the contribution as well as interest. 2nd respondent paid an amount of Rs.30,594/- on 18/09/2014. However, the Board still did not take any action for payment of pension and accordingly petitioner has approached this Court.

3. Petitioner has a further grievance that the gratuity is not calculated in terms with the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the 1972 Act') and the daily wages has not been calculated by dividing the total salary of a month by 26 days whereas the 2nd respondent had computed daily wages by dividing salary with thirty days.

4. Counter affidavit has been filed by the 2nd respondent inter alia stating that the petitioner was enrolled as a member of the Board in 1999 and since then the entire contribution has been paid without any default. Ext.R2(h) has been produced to indicate that a total amount of Rs.3,34,636/- has been paid without any delay which has been accepted by the Board. According to them, for the first time, the demand was made on 23/07/2014 as Ext.R2(i) calling upon them to pay a further amount of Rs.1,52,583/-. They have objected to the aforesaid demand and ultimately when it was pointed out that there is a deficit of Rs.30,594/- towards contribution, without raising any dispute regarding the same and to avoid unnecessary controversy and especially since pension was to be paid to the petitioner, they remitted an amount of Rs.30,594/- and requested to the 1st

respondent not to charge any penal interest. However, by Ext.R2(m) dated 18/11/2014, they were called upon to pay the balance amount. The 2nd respondent again sent a representation dated 12/12/2014 which was replied by Ext.R2(o) dated 21/01/2015 by which 24% penal interest has been reduced to 12% and the 2nd respondent was called upon to remit Rs.92,669/-. It is submitted that there is no provision which enables the Board to demand penal interest at 24% and for the first time, a demand has been made by demand notice dated 23/07/2014 as Ext.R2(i). It is their case that, in the absence of any provision which enables the Board to levy penal interest other than Rule 38 of the Scheme, before making a demand for any deficit amount, penal interest cannot be levied.

5. In regard to the claim for gratuity, it is contended that the 1972 Act has no application to the Society as there are only three employees and gratuity is paid in terms with the provisions of Rule 59 of the Kerala Co-operative Societies Rules (hereinafter referred to as 'the Rules') which does not lay down any such parameters as provided under the 1972 Act.

6. Statement has been filed by the 1st respondent inter alia supporting the stand taken in demanding the aforesaid amount. According to them, the Board has calculated 24% penal interest for the deficit amount of contribution and has issued a demand notice. According to them, since the Society did not remit the contribution in accordance with the statutory provisions, when on enquiry it was found that there was deficit, the Board was entitled to recover the deficit amount with 24% interest. Learned counsel has also relied upon Rule 39(1A) of the Kerala Co-Operative Societies Employees Self Financing Pension Scheme 1994 (hereinafter referred to as 'the Scheme') to indicate that the Board has the power to levy 24% interest for the deficit amount.

7. The facts being so, the first question to be considered is whether the Board is entitled to call upon the 2nd respondent Society to pay 24% interest on the deficit amount pointed out by them as per Ext.R2(i). Learned senior counsel appearing for the 2nd respondent Society relies upon Rule 38 of the Scheme which reads as under:

> *"**38. Recovery of amount due from a Society.**- If any amount due from a society to the Pension Fund under this Scheme is in arrears,*

the Secretary or any other officer authorised by him in this behalf shall, after due enquiry, ascertain the amount of arrears and if the society fails to clear the arrears within the time as may be specified in the notice issued thereon, issue a certificate for that amount with interest at the rate of 24% p.a. till date or Rs.500 whichever is higher, from the date of such notice to the Collector of the District in which the demand arised and the Collector on receipt of such certificate shall proceed to recover the amount with interest in the same manner as arrears of Public revenue due on land].

8. Going by the Scheme, it is clear that the claim for interest at 24% can be levied only after demand notice is issued by the Board. It is therefore apparent from the aforesaid provision that, in the absence of any other provision, the Board is not entitled to charge penal interest for any arrears unless demand notice is issued in that regard.

9. Learned counsel for the 1st respondent however relies upon Rule 39(1A) of the Scheme which reads as under:

*"**39. Special provision for transfer of accumulations from the Contributory Provident Funds.-***

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(1A) If any society fails to transfer the employers' contribution with interest accrued thereon after the commencement of Sec.80A of the Kerala Co-operative Societies Act, 1969 and the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, within a period of one year from 14-03-1995, that is the date of implementation of the pension scheme or has transferred only a part thereof, shall be liable to transfer such amount or part thereof as the case may be with interest at the rate of 24% per annum.]

10. This provision does not apply to the factual situation as their entitlement for charging 24% interest arises only with reference to failure to pay the contribution and the interest accrued thereon within one year from 14/03/1995 when there is a transfer of employers' contribution to the particular scheme. This provision cannot have application to the facts of the present case. No other provision has been brought to the notice of this Court to enable the Board to charge interest @ 24% for the deficit amount.

11. The learned counsel for the 1st respondent however submits that the Board has the power to levy interest as there is deficit in the contribution amount. It is the obligation of the Society to ensure that correct contribution is being made from time to time. It might be correct that if the contribution is not paid in accordance with the statutory scheme or there is deficit, the Board is entitled to demand payment of the said amount with penal interest. But when penal interest is charged, the Board will have to comply with the procedure prescribed under Rule 38 of the scheme. Since no such steps had been taken and demand has been made for charging penal interest from 1999 onwards, I am of the view that the said demand for penal interest is illegal and the 2nd respondent cannot be made liable for the same. Under such circumstances, the Pension Board is liable to pay the pension amount legally due to the petitioner without demanding penal interest from the 2nd respondent.

12. As far as the claim for gratuity is concerned, learned counsel for the petitioner relies upon the judgment in **Digvijay Woollen Mills Ltd., v. Mahendra Prataprai Buch** *[AIR 1980 S.C 1944]*. There cannot be any dispute that when the liability to

pay gratuity arises under the 1972 Act, provisions of the Gratuity Act and the judgment aforesaid apply to the fact situation. But that is not an instance here. Gratuity is paid under Rule 59 of the Co-operative Societies Rules which is a different scheme altogether and the provisions of the Payment of Gratuity Act or the computation thereof cannot be made applicable to the fact situation. It is not disputed that there are only three employees and therefore Rule 59 alone has application and the provisions of the Payment of Gratuity Act cannot be made applicable. As per Rule 59(iii), the liability to pay gratuity is “not exceeding half month's pay for every completed year of service. When this provision applies, the respondent society is justified in computing gratuity on the basis of “half month's pay”. Under such circumstances, I am of the view that the computation of gratuity made by the 2nd respondent Society cannot be disturbed.

Having regard to the said finding, the writ petition is allowed as under:

i) That the 1st respondent shall pay the pension legally due to the petitioner without making the demand for any penal interest on the 2nd respondent Society as demanded by them in terms of Ext.R2(i).

ii) The pension shall be paid to the petitioner with arrears within a period of one month from the date of receipt of a copy of this judgment.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr