

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 14496 of 2013 (J)

PETITIONERS:

1. V.K. KOCHUNNI, S/O.KUMARAN, AGED 47,
VADAKKEVALAPPIL HOUSE, VARADIAM,
AVANUR, THRISSUR-680 547.
2. K.K.BABU, AGED 44, KANDANGATH HOUSE,
ENAMAKKAL P.O., THRISSUR-680 510.
3. SANTHOSHKUMAR N.V., AGED 46 YEARS,
NARAMATH HOUSE, THRITHALLOOR P.O.,
THRISSUR-680 619.
4. PRABHEESH E.V., AGED 30 YEARS,
EDAKKANNATH HOUSE, KANNOTH P.O.,
THRISSUR-680 510.
5. GANESH V.A., AGED 47, VENGALATH HOUSE,
THIRUVATHRA P.O., THRISSUR-680 506.
6. MOHANAN C.C., AGED 48 YEARS,
CHEMBOTH HOUSE, ARIMPUR P.O.,
THRISSUR-680 620.
7. M.L.ANTONY, S/O.LOUIS, AGED 39 YEARS,
MANALIPPARAMBIL HOUSE, ATHANI P.O.,
THRISSUR-680 771.
8. V.R.SANTHOSH, S/O.RAMAKRISHNAN, AGED 40,
VALIYAPARAMBIL HOUSE, MADAVANA P.O.,
THRISSUR-680 666.
9. SUNILKUMAR V.C., AGED 36, VALATHARA HOUSE,
KARA P.O., THRISSUR-680 671.
10. PRIYA A.M., W/O.AJITHAN, AGED 38 YEARS,
PUTHENKATTIL HOUSE, EDAVILANGU P.O.,
THRISSUR-680 671.
11. A.P.PAUL, AGED 50 YEARS, ALUKKA HOUSE,
KORATTI EAST P.O., THRISSUR-680 308.
12. T.K.SHAJI, S/O.KRISHNAN, AGED 45 YEARS,
THANDASSERY HOUSE, GHANNA NAGAR,
KORATTI P.O, THRISSUR-680 309.

13. K.RAGESH, AGED 35 YEARS, KANDANKAVIL HOUSE,
MANAKKODY P.O., THRISSUR-680 012.
14. SAJEESH P.S., AGED 33 YEARS, PLACHIL HOUSE,
THALAKKOTTUKARA, KECHERY, THRISSUR-680 501.
15. ABHILASH P.P., AGED 34 YEARS, POONGHAT HOUSE,
CHITTANJOOR P.O., KUNNAMKULAM, THRISSUR-680 523.
16. MUKKESH M.M., S/O.MURALI, AGED 28, MULLASSERY HOUSE,
VALLIVATTOM P.O., THRISSUR-680 123.
17. RAJI K.R., AGED 44 YEARS, KATHIKULATH HOUSE,
MALA P.O., THRISSUR-680 732.
18. ANILKUMAR T., S/O.KUMARAN, AGED 41 YEARS,
THOTTATHIL HOUSE, PUNNAYOORKULAM P.O.,
THRISSUR-679 561.
19. MINI A., D/O.RAMANKUTTY NAIR, AGED 42,
AKAZHIPPURATH SALIL HOUSE,
MARATHANCODE P.O., THRISSUR-680 604.
20. SINI BABU, S/O.C.P.BABU, AGED 37 YEARS,
CHEMBILA HOUSE, KANIPPAYYOOR P.O.,
KUNNAMKULAM, THRISSUR-680 517.
21. SUNITHA BABU, AGED 41 YEARS, PALAPPARAMBIL HOUSE,
PARAPPURAM, KUZHUR P.O., THRISSUR-680 734.
22. MINI M.M., S/O.SREENIVASAN, AGED 35 YEARS,
MULLATH HOUSE, CHITTANJOOR P.O.,
KUNNAMKULAM, THRISSUR-680 523.
23. MEERA SUNIL, W/O.SUNIL, AGED 35 YEARS,
EYYANI HOUSE, VADAKKUMURI P.O.,
THRISSUR-680 570.
24. SULATHA JANARDANAN, W/O.JANARDANAN, AGED 44,
POLATHIL HOUSE, VADAKKUMURI P.O., THRISSUR-680 570.
25. NISHITHA E.V., D/O.VALSALA VASUDEVAN, ELOOR HOUSE,
NATTIKA P.O., THRISSUR-680 566.
26. VINOD K.S., S/O.SUBRAMANIAN, AGED 43 YEARS,
KAITHAYIL HOUSE, NADAVARAMBU P.O.,
THRISSUR-680 661.
27. MOIDEENKUTTY AGED 32 YEARS, CHARAPARAMBIL
HOUSE, NEDUMPARA P.O., THRISSUR-679 531.
28. SHIBU PAULOSE, S/O.PAULOSE, AGED 46,
PAINGATTUKUNNEL HOUSE, ELANADU P.O.,
THRISSUR-680 586.
29. P.B.AJESH, S/O.BHASKARAN, AGED 40, PUTHENPURACKAL
HOUSE, KUZHUR P.O., THRISSUR-680 734.

30. NIRMALA RAVI, AGED 43, AIKKARA HOUSE,
ERAVIMANGALAM P.O., THRISSUR-680 751.
31. ALPHONSA VARGHESE, W/O.VARGHESE, AGED 49,
KULANGARA HOUSE, CHENGALLOOR P.O.,
THRISSUR-680 312.
32. AMBUJAM MOHAN, AGED 48, ATTUPURATH HOUSE,
KODAKARA P.O., THRISSUR-680 684.
33. JESSY K.S., AGED 43, KANIYAMPARAMBIL HOUSE,
VATANAPPALLI P.O., THRISSUR-680 614.
34. JOSHY K.B., AGED 40, KIZHUPPILLIKARA HOUSE,
KIZHUPPILLIKARA P.O., THRISSUR-680 702.
35. JANCY SAJU, AGED 30, PULIKKOTIL HOUSE,
PAVARATTY P.O., THRISSUR-680 507.
36. SRINATH M.P., S/O.PRABHAKARAN, MELEMBATT HOUSE,
KUMARANALLOOR P.O., THRISSUR-680 590.
37. SAJI O.S., AGED 30 YEARS, OTTUPURAKKAL HOUSE,
THONOORKARA P.O., THRISSUR-680 586.
38. SHANOJ T.J., S/O.JOSE, AGED 23, THOLATH HOUSE,
CHOWANNUR P.O., THRISSUR-680 517.
39. SANTHOSH T.C., AGED 30 YEARS, THEKKOOT HOUSE,
KUTTENCHERRY P.O., THRISSUR-680 584.
40. K.MAHESH, S/O.MANOCHARAN, AGED 32 YEARS,
KOTTILIL HOUSE, PUTHENPALLY P.O., THRISSUR-680 103.
41. V.S.RAMESH, AGED 36, VAZHELIPARAMBIL HOUSE,
MELADOOR P.O., THRISSUR-680 741.
42. M.A.VARGHESE, AGED 49, MALIYEKAL HOUSE,
ELINJIPRA P.O., THRISSUR-680 721.
43. SIJU K.CHINNAN, S/O.K.V.CHINNAN, AGED 35 YEARS,
KOOOTHUR HOUSE, KOTTAPPADY P.O., THRISSUR-680 505.
44. SHEEJA PRADEEP, AGED 40, KIZHUPPILLIKARA HOUSE,
KIZHUPPILLIKARA P.O., THRISSUR-680 702.
45. JANARDHANAN P.G., AGED 58, POLATHIL HOUSE,
VADAKKUMMURI P.O., THRISSUR-680 570.
46. HARSHAN K.K., AGED 48 YEARS, KONNADATH HOUSE,
PERINGANAM P.O., THRISSUR-680 686.
47. SAJEESH V.A., S/O.APPUKUTTAN, AGED 30 YEARS,
VELAPARAMBIL HOUSE, VALLIVATTOM P.O.,
THRISSUR-680124.
48. SHALI PREMAN, AGED 42, KODAPPALLY HOUSE,
PADDIYAM P.O., THRISSUR-680 641.

49. C.GOVINDANKUTTY, AGED 50, CHEERATH HOUSE,
CHERUR P.O., THRISSUR-680 008.
50. SIJI C.C., AGED 37 YEARS, THOLATH HOUSE,
PAZANJI P.O., THRISSUR-680 542.
51. VIJAYAKUMARI, W/O.JAYAPRAKASHAN, AGED 43,
ELUPARAMBIL HOUSE, VELLAMKALLOOR P.O.,
THRISSUR-680 662.
52. BINCY VINOD, AGED 40, CHUNKATH HOUSE,
NEDUPARA P.O., THRISSUR-680 007.
53. AMBIKA, W/O.JAYAPRAKASH, AGED 37, ERAVATH
HOUSE, ERAVU P.O., THRISSUR-680 620.
54. SUBITHA, AGED 28, NELLIPARAMBIL HOUSE,
VALLISSERY, AIVNISSERY P.O., THRISSUR-680 620.
55. V.R.SANTHOSH, S/O.RAMANKUTTY, AGED 45 YEARS,
VADAKKEDATH HOUSE, KAIPPAMANGALAM P.O.,
THRISSUR-680 681.

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

RESPONDENTS:

1. THE THRISSUR DIST. CO-OPERATIVE BANK LTD.,
'SAHAKARANA SHATABDI MANDIRAM',
KOVILAKAATHUPADAM, THRISSUR-680 022,
REPRESENTED BY ITS GENERAL MANAGER.
2. BOARD OF DIRECTORS, THE THRISSUR DISTRICT
CO-OPERATIVE BANK LTD., 'SAHAKARANA SHATABDI
MANDIRAM', KOVILAKAATHUPADAM,
THRISSUR-680 022, REPRESENTED BY ITS PRESIDENT.
3. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
THRISSUR, PIN-680 001.
4. REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM, PIN-695 001.
5. STATE OF KERALA REPRESENTED BY ITS SECRETARY
TO GOVERNMENT, DEPARTMENT OF CO-OPERATION,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 & R2 BY ADV. SRI.GEORGE POONTHOTTAM
R3 TO R5 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 14496 of 2013 (J)

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE NOTIFICATION DATED 7-7-2010 IN THE MALAYALA MANORAMA DAILY DATED 9-7-2010.

EXHIBIT P2 : TRUE COPY OF THE ONE SUCH AGREEMENT EXECUTED BY RAGESH K., PETITIONER NO.13.

EXHIBIT P3 : TRUE COPY OF THE FIXED DEPOSIT RECEIPT DATED 27-7-2010 FURNISHED BY PETITIONER NO.3, SRI.SANTHOSHKUMAR N.V., IN WHICH LIEN IS NOTED IN FAVOUR OF THE GENERAL MANAGER OF THE BANK.

EXHIBIT P4 : TRUE COPY OF THE IDENTITY CARDS ISSUED TO THREE OF THE PETITIONERS, P.P.ABHILASH, PETITIONER NO.15, SMT.SHEEJA PRADEEP, PETITIONER NO.44, AND MOHANAN C.C., PETITIONER NO.6.

EXHIBIT P5 : TRUE COPY OF THE ONE SUCH TDS CERTIFICATE ISSUED TO A PETITIONER.

EXHIBIT P6 : TRUE COPY OF THE CIRCULAR NO.10/2005 DATED 13-4-2005.

EXHIBIT P7 : TRUE COPY OF THE CIRCULAR NO.4/2006 DATED 20-2-2006.

EXHIBIT P8 : TRUE COPY OF THE CIRCULAR NO.42/2009 DATED 14-8-2009.

EXHIBIT P9 : TRUE COPY OF THE ORDER DATED 3-1-2012.

EXHIBIT P10 : TRUE COPY OF THE ORDER DATED 13-11-2009 OF THE CO-OPERATIVE (B) DEPARTMENT.

EXHIBIT P11 : TRUE COPY OF THE NOTIFICATION DATED 26-2-2011 PUBLISHED BY THE CO-OPERATION (D) DEPARTMENT - GO(P)NO.39/2011/CO-OP.

EXHIBIT P12 : TRUE COPY OF THE MEMO DATED 20-5-2006 ISSUED BY THE GENERAL MANAGER IN CHARGE OF THE KANNUR DISTRICT CO-OPERATIVE BANK LTD, MAKING PERMANENT ONE OF ITS DEPOSIT COLLECTORS, SRI.SHAJI.

EXHIBIT P13 : TRUE COPY OF THE MEMO DATED 12-3-2008 OF THE GENERAL MANAGER IN CHARGE OF THE KASARAGOD DISTRICT CO-OP. BANK LTD. WHICH SHOWS THAT PERMANENCY WAS GIVEN TO THE DEPOSIT COLLECTORS OF THE SAID BANK IN 2007.

EXHIBIT P14 : TRUE COPY OF THE REPRESENTATION DATED 3-6-2013 SUBMITTED BY THE PETITIONERS BEFORE THE GENERAL MANAGER.

EXHIBIT P17 : TRUE COPY OF THE CIRCULAR DATED 27.11.2013 ISSUED BY THE GENERAL MANAGER OF THE FIRST RESPONDENT BANK TO ALL ITS BRANCH MANAGERS (VIDE IA 2005/2015)

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.14496 of 2013 J

Dated this the 6th day of August, 2015

JUDGMENT

The petitioners, fifty-five in number, were engaged as collection agents in the respondent Bank pursuant to the notifications issued in that regard, Exhibit P1 being one such notification. Beginning from 2010, the respondent Bank is said to have engaged many collection agents till 2013. As a matter of policy, the Government issued Exhibit P6 circular directing the Co-operative Credit Societies to regularise the services of the collection agents. Exhibits P7 and P8 are said to be the consequential circulars pursuant to Exhibit P6. In fact, the petitioners were appointed subsequent to the issuance of Exhibits P6 to P8 circulars.

2. On 30th May 2013, when the petitioners went to their respective branches for reporting to duty, they were not allowed to discharge their duties. Aggrieved, the

petitioners have approached this Court by filing the present writ petition.

3. On 07.06.2013 this Court recorded the submission of the learned counsel for respondents 1 and 2 that the respondent Bank would not engage any other collection agents in the place of the petitioners. In this regard, the union of the petitioners is also said to have made Exhibit P14 representation.

4. In the above factual background, the learned counsel for the petitioners has submitted that Exhibit P6 circular squarely applies to the respondent Bank and the said circular has not been challenged. He has also submitted that, as can be seen from Exhibits P12 and P13, similarly placed Societies have already regularised the services of the collection agents engaged by them.

5. The learned counsel has also submitted that subsequent to the interim order dated 07.06.2013, the respondent Bank has re-engaged, as can be seen from

Exhibit P17, the petitioners for some more time. It is the singular contention of the learned counsel for the petitioners that, as can be seen from Exhibits P15 and P16, the respondent Bank is still continuing with the scheme without engaging the petitioners.

6. In sum and substance, the contention of the learned counsel for the petitioners is that dispensing with the services of the petitioners without any notice is arbitrary and illegal, especially in the face of Exhibit P6 circular. Accordingly, the learned counsel has urged this Court to allow the writ petition.

7. Per contra, the learned counsel for the respondent Bank has initially submitted that Exhibit P6 circular does not bind it. He has further contended that clauses 10, 11 and 16 in Exhibit P2, one of the agreements entered into between the respondent Bank and the petitioners, have mandated that the petitioners' engagement is purely contractual and that they cannot have any indefeasible

right. It is also one of the specific contentions of the learned counsel for the respondent Bank that the scheme has been dispensed with, with effect from 01.06.2013.

8. In expatiation of his submissions, the learned counsel for the respondent Bank has contended that initially the scheme of daily collections was introduced by the respondent Bank, but it was found to be uneconomical. He has also submitted that on numerous occasions there had been defaults and misappropriation on the part of the collection agents resulting in criminal prosecution. Under these circumstances, as the respondent Bank does not desire to revive the scheme, the question of engaging any collection agents, including the petitioners, does not arise. Accordingly, the learned counsel has urged this Court to dismiss the writ petition.

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

10. The respective counsel for the petitioners on one hand and the respondent Bank on the other have urged various issues before this Court, apart from placing reliance on certain precedents in support of their contentions. The cardinal canon of law cannot be ignored. In elaboration, it may be stated that once the petitioners' engagement is accepted to be temporary and tenorial, especially in the face of dispensing with the very scheme under which they were provided employment, the unwilling employer cannot have the employees, the additional workforce, thrust upon it, to its peril.

11. At this juncture, the learned counsel for the petitioners—in my view, fairly—has submitted that it may not be possible for the petitioners to insist upon their continuation in service under all circumstances, especially when the respondent Bank has gone on record saying that there is no scheme in existence. He has, however, submitted that the petitioners have a genuine apprehension that the

scheme was not revived only given the interim order passed by this Court. They further apprehend that in near future once the respondent Bank gets rid of the petitioners, it will revive the scheme and engage another set of daily collection agents.

12. In response to the apprehension expressed by the learned counsel for the petitioners, the learned counsel for the respondent Bank—in my view, equally fairly—has submitted that the scheme experimented by the respondent Bank has not only proved uneconomical but has also led to many complications, such as misappropriation of money on the part of certain collection agents. In paragraph 5 of the counter affidavit, the respondent Bank has set out in detail the amounts that have been misappropriated. As per the learned counsel for the respondent Bank, as and when, if at all, the scheme is to be revived by the respondent Bank, it does not have any objection to give preferential treatment to those collection agents who have not faced any

allegations of malpractices and whose conduct has not been put in question when they were engaged, as could be gathered from any record.

Recording the above submission of the learned counsel for the respondent Bank, this Court disposes of the writ petition. No order as to costs.

Dama Seshadri Naidu, Judge

tkv