

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 16607 of 2015 (A)

PETITIONER(S):

**K.K.PANKAJAKSHAN PILLAI AGED 56 YEARS
S/O.KUTTAN PILLAI, REVATHY, KEERIPURAM
KADAKKAL P.O., KOTTARAKKARA, KOLLAM-691 506.**

BY ADV. SRI.M.KIRANLAL

RESPONDENT(S):

- 1. KOLLAM DISTRICT CO-OPERATIVE BANK LTD.
KOLLAM, REPRESENTED BY ITS MANAGER
KUNNICODE BRANCH-691 508.**
- 2. THE PRINCIPAL
N.S.S. COLLEGE, NILAMEL-691 535.**
- 3. SHEELA MANI AMMA
W/O.LAMBODHARAN PILLAI, MOHANA BHAVAN, KURA P.O.
THALAVOOR, KOTTARAKKARA-691 506.**
- 4. LAMBODHARAN PILLAI, AGED 54 YEARS
S/O.GOPALA PILLAI, MOHANA BHAVAN, KURA P.O.
THALAVOOR, KOTTARAKKARA-691 506.**

R1 BY ADV. SRI.T.R.HARIKUMAR, SC, KOLLAM DIST.COOPERATIVE BANK

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 16607 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. COPY OF THE LETTER SENT BY THE 1ST RESPONDENT TO 2ND
RESPONDENT FOR CONFIRMING THE GENUINNESS OF THE SALARY
CERTIFICATE OF THE PETITIONER DATED 12/4/2008.**
- EXT.P2. COPY OF THE REQUISITION DATED 24/4/2015 SENT BY 1ST
RESPONDENT**
- EXT.P3. COPY OF THE RELIEVING ORDER DATED 15/5/2015 ISSUED BY THE
2ND RESPONDENT**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

P.V. ASHA, J.

W.P.(C) No.16607 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

The petitioner has approached this Court challenging Ext.P2 by which his retirement benefits are withheld on the ground that he was a guarantor in respect of a loan availed by the 4th respondent. The respondent Bank, by Ext.P2, informed that a sum of Rs.4,60,942/- has to be recovered from the DCRG of the petitioner under Section 37(2) of Kerala Co-operative Societies Act 1969 and Article 89 (3) of Kerala Financial Code, saying that it is the statutory obligation of the pay disbursing officer to recover the amount on getting requisition. Accordingly, even though the petitioner retired from service on 30.04.2015, his retirement benefits are not paid to him.

2. The learned counsel for the petitioner points out that petitioner stood as a surety for the 4th respondent and the agreement as well as the undertaking was that there can be recovery from his salary alone. As per Section 37(2) of the Kerala Co-operative Societies Act, what is contemplated is

recovery from the salary, alone. Section 37 of the Kerala Co-operative Societies Act reads as follows:

37. Deduction from salary to meet society's claim in certain cases:-

- (1) Notwithstanding anything contained in any law for the time being in force, a member of a society, may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the Society.
- (2) On the execution of such an agreement, the employer or the officer disbursing the salary or wages of any such member as is referred to in sub-section (1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction."

3. The Bank does not have a case that there is any agreement or undertaking executed by the petitioner to the effect that there can be recovery from the DCRG of the petitioner. Therefore, Ext.P2 requisition as well as withholding

of the retirement benefits of the petitioner, based on Ext.P2, on the ground that the petitioner stood as surety for the 4th respondent and the amount is due to the 1st respondent Bank towards that loan, cannot be a reason for withholding the DCRG of the petitioner.

4. In this context, the judgment of this Court in **P.S.Surendran v. Secretary, Mavelikkara Primary Co-operative Agricultural and Rural Development Bank Ltd and Others [2005 (4) ILR 435]** as well as in the judgment of a learned Single Judge of this Court in WP(C) No.81/2008 are rendered in identical circumstances, this Court has already found that recovery from DCRG cannot be made on the basis of the agreement executed while standing as a surety in respect of the loan to the Co-operative Bank as what is contemplated between the creditor and debtor is for deduction from the salary.

In the above circumstances, the amount recovered/withheld from the DCRG of the petitioner shall be released to the petitioner and Ext.P2 order is quashed and there will be a direction to the 1st respondent not to proceed further against the petitioner towards realization of the amount availed by the 4th respondent on account of the loan availed by him. I quash

Ext.P2 and direct the respondents to release the DCRG due to petitioner without any deduction or recovery based on Ext.P2 and in case the amount shown in Ext.P2 is recovered from the DCRG of petitioner, the same shall be returned and released to the petitioner.

JV

sd/-
P.V. ASHA
JUDGE