IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 21542 of 2009 (K)

PETITIONERS:
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1. K.RAGHAVAN,
RETD.AS OIL MILL TECHNICIAN,
RAJANI NIVAS, P.O.ELAMBARA, KANNUR DISTRICT.

2. K.DAMODARAN NAMBIAR,
RETD.AS OFFICE ASSISTANT, PRANAMAM, P.O.CHAVASSERI
VIA.KUTHUPARAMBA, KANNUR DISTRICT.

3. C.K.GOVINDAN,
RETD.AS MANAGING DIRECTOR,
AGED 63 YEARS, S/O.KUNHIRAMAN NAMBIAR, GOPA NIVAS,
MATTANOOR, KANNUR DISTRICT.

4. K.C.PADMANABHAN,
RETD.AS DRIVER,PORORA,
PORORA.P.O, KANNUR DISTRICT.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS:
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1. THE STATE OF KERALA,
REP.BY ITS SECRETARY TO GOVT.,
CO-OPERATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, KANNUR-670001.

3. THE TELLICHERRY TALUK CO-OPERATIVE-
MARKETING & PROCESSING SOCIETY,
REPRESENTED BY ITS SECRETARY/MANAGING DIRECTOR,
P.O.MATTANNUR-670702.

4. THE KERALA CO-OPERATIVE EMPLOYEES PENSION BOARD,
REP.BY ITS SECRETARY, POST BOX.NO.85
KALA NIVAS, T.C.NO.27/156, 157, CHINMAYA LANE,
KUNNUMPURAM, NEAR AYURVEDA COLLEGE, TRIVANDRUM-1.

R1 & R2 BY SR.. GOVT. PLEADER SRI. SOJAN JAMES
R3 BY ADV. SRI.M.SASINDRAN
R4 BY ADV. SRI.K.R.SUNIL,SC,CO-OP.EMP. PENSION BOARD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-04-2015, ALONG WITH WPC No.9307/2010 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

W.P (c) No.21542/2009

APPENDIX

PETITIONERS' EXHIBITS

EXT- P1-	TRUE COPY OF THE DEMAND NOTICE DATED 05-01-2004 ISSUED BY THE 4TH RESPONDENT.
EXT- P2-	TRUE COPY OF THE RESOLUTION DATED 18-11-2004 OF THE BOARD OF DIRECTORS OF THE 3RD RESPONDENT SOCIETY.
EXT- P3-	TRUE COPY OF THE PROCEEDINGS No.3643/03/HM/K.DIS DATED 03-02-2005 OF THE 2ND RESPONDENT.
EXT- P4-	TRUE COPY OF THE JUDGMENT IN RP No.176/2007 IN WA No.1866/06.
EXT- P5-	TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 28-05-2007.
EXT- P6-	TRUE COPY OF THE JUDGMENT DATED 05-09-2008 IN WPC No.27060/2008.
EXT- P7-	TRUE COPY OF THE JUDGMENT DATED 23-03-2009 IN WPC No.7890/2009
EXT- P8-	TRUE COPY OF THE ORDER DATED 10-07-2009 OF THE 2ND RESPONDENT.
EXT- P9-	TRUE COPY OF THE COMMUNICATION ISSUED BY THE 3RD RESPONDENT DIRECTING PETITIONERS TO PAY CONTRIBUTION AMOUNT.

RESPONDENTS' EXHIBITS

EXT- R3 (a)-	TRUE COPY OF THE AFFIDAVIT DATED 04-08-2009.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 21542 OF 2009-K

&

W.P.(c) No. 9307 OF 2010-K

DATED THIS THE 1st DAY OF APRIL, 2015.

J U D G M E N T

Issue involved in both these writ petitions pertain to realisation/recovery of the contribution due from the petitioner society (in WP (c) No. 9307/2010) to the pension fund under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 (hereinafter referred to as the scheme). The petitioners in W.P (c) No.21542/2009 are employees of the society who retired from service during various years between 1998 and 2004. The society submitted application for registration under the scheme as early as in the year 1995. The Pension Board had issued a demand notice to the society on 05-10-2004 requiring them to make payment of a sum of Rs.15,46,795/- towards the contributions payable under the scheme, with respect to its retired employees, along with 24% interest due thereon from 01-06-2004 onwards. The society thereupon took a resolution to approach the pension board seeking for waiver of the amount interest demanded to the tune of Rs.7,49,272/-, considering its critical financial situation. However, nothing is indicated to show that any representation made by the society was favourably considered by the authorities of the Pension Board. Meanwhile, the Joint Registrar concerned had granted permission to the society to conduct sale of certain immovable properties, for discharging liabilities of the society. Since the contributions due to the Pension Board was not remitted even after disposal of the immovable property, the employees who are the petitioners herein along with certain others have approached this court in a writ petition. The matter was ultimately decided by this court in the order of a Division Bench in RP No.176/2007 in WA No.1866/2006 (Ext.P4 in W.P (c) No.21542/2009). This court directed the Joint Registrar to pass appropriate orders on the representations submitted by the employees. Accordingly the matter was considered by the Joint Registrar and Ext.P2 order (in W.P (c) No.9307/2010) was issued on 28-05-2007. The Joint Registrar found that the society is facing acute financial crisis and is not in a position to make payment of the arrears of contribution due to the pension fund along with the interest. The Joint Registrar had accepted the proposal submitted by the society to make payment of the arrears along with 25% of the amount of interest due, subject to condition that balance 75% of the amount of interest will be remitted by the employees. The Joint Registrar directed the employees to co-operate with the society in accordance with the said proposal.

2. The petitioners herein (employees)have challenged the above said decision of the Joint Registrar in a writ petition filed before this court as W.P (c) No.27060/2008. When the said writ petition came up for consideration, it was submitted on behalf of the Pension Board that they have got necessary power to invoke steps for recovery of the outstanding arrears and that they are proposing to take immediate appropriate steps for effecting the recovery. Recording the submission made on behalf of

the Pension Board the said writ petition was closed through judgment dated 05-09-2008. In the meanwhile a 'One Time Settlement Scheme' was introduced for realisation of arrears of contributions due from the Co-operative Societies, by granting waiver/relief with respect to the amount of interest. In another writ petition filed by the petitioners herein as W.P (c) No.7890/2009 this court had passed a judgment on 23-03-2009 (Ext.P7 in W.P (c) No.21542/2009) directing the Joint Registrar to take steps to compel the society to make payment of the arrears due to the Pension Board based on the benefit available under the 'One Time Settlement Scheme'. The pension board was directed to intimate the Joint Registrar about its decision after re-computing the amounts due based on the One Time Settlement Scheme. The Joint Registrar was thereupon directed to consider the issue and to pass appropriate orders with respect to payment of arrears by the society. It was observed that the society shall comply with such decision of the Joint Registrar and shall make report of compliance to this court.

3. Consequent to the above said directions issued by this court, the Joint Registrar had again considered the matter and issued Ext.P4 proceedings (in W.P (c) No.9307/2010). It is stated observed that the Pension Board had failed to re-compute the amounts due in accordance with the directions issued by this court and to intimate the Joint Registrar about the dues outstanding. However, after elaborate consideration of the entire factual circumstances the Joint Registrar observed that there is no change in the financial situation and therefore the society can be permitted to remit the amount as proposed earlier.

4. Even after the above said proceedings issued by the Joint Registrar there was no progress in the matter and the society had not remitted any amount. Therefore recovery steps were initiated at the behest of the Pension Board and the society was served with demand notice under the Revenue Recovery Act as per Exts.P6 & P7 (in W.P (c) No.9307/2010), which is challenged by the society. In W.P (c) No.21542/2009 filed by the employees, the challenge is against order passed by the Joint Registrar on 10-07-2009.

5. As per provisions contained in the scheme, it is the liability of the co-operative society to make payment of contributions due with respect to the employees, from the date on which the society is registered as a member under the scheme. It is evident that, despite repeated demands the society had failed to make payment of the contributions. Therefore this court is not inclined to accept any of the contentions taken by the petitioner in W.P (c) No.9307/2010 against the recovery steps initiated. However, the society will be at liberty to raise disputes with respect to quantification of the arrears. Challenge in W.P (c) No.21542/2009 is against the proceedings of the Joint Registrar. In fact the Joint Registrar had only directed the society to make remittance of the arrear of contribution in a manner as proposed by the Society. But this court takes note of the fact that the Joint Registrar is not vested with any such powers to permit the society to have any waiver with respect to the contributions. Nor the Joint Registrars can compel the employees to make payment of any part of the contributions which is due from the society.

6. However, the fact remains that the society in question is facing acute financial crisis and the default occurred only due to such circumstances. Learned counsel appearing for the society had submitted that the amount now demanded by the Pension Board is highly exorbitant and is calculated on the basis of compounded rate of interest. Standing Counsel appearing for the Pension Board submitted that, considering the huge arrears pending and also considering the pathetic financial condition of the society in question, they are prepared to accept the arrears calculated on the basis of simple interest at the rates applicable during different periods. Learned counsel for the society had further pointed out that, going by Clause 38 of the scheme the Pension Board is entitled to recover the amount of interest only from the date of lapse on the part of the society in paying the amount, after receipt of the demand notice. It is pointed out that the demand notice in this regard was issued for first time by the Pension Board only on 05-01-2004 and the request was to remit the amount within 14 days of receipt of such notice. Therefore it

is contended that interest can be computed only from the due date of the said notice. However, it is for the authority concerned in the Pension Board to recompute the liability in accordance with waiver of the compound interest already conceded, taking note of the contentions raised by the petitioner society based on Clause 38 of the scheme. It is left open to the society as well as the petitioners in W.P (c) No.21542/2009 to arrive at any consensus with respect to sharing of the liability. They will be at liberty to approach the Pension Board seeking reduction/ appropriation of the amounts which will be agreed to be paid by the employees/pensioners from the arrears of pension which will be due to each of such employees, based on the calculations to be made.

7. If any such approach is made by the society and the petitioners in W.P (c) No.21542/2009 based on any consensus arrived, within a period of 2 weeks from the date of receipt of a copy of this judgment, the Pension Board will recompute the liability by allowing the offer for waiver already expressed, and also on considering the request for

appropriation/reduction out of the amount of pension arrears due to the petitioners. The Pension Board shall issue necessary directions in such case to the society for remittance of the amounts due based on such decision. Needless to observe that, if any such agreement is arrived and if any orders are issued by the Pension Board based on the above direction, payment of monthly pension to the petitioners in W.P (c) No.21542/2009 shall continue.

8. Based on the observations and directions contained herein above, these writ petitions are disposed of to the extent of quashing the proceedings issued by the Joint Registrar dated 10-07-2009 (Ext.P8 in W.P (c) No.21542/2009). It is found that the impugned recovery proceedings in W.P (c) No.9307/2010 does not warrant interference by this Court. However in order to facilitate the parties to work out remedies as mentioned above and to approach the Pension Board for appropriate orders, coercive steps of recovery proceedings initiated based on Exts.P6 & P7 (in W.P (c) No.9307/2010) shall be kept in abeyance for a period of 4 months from today.

9. It is further observed that on failure of the parties to arrive at any consensus and to workout the remedies as mentioned above, the Pension Board will be at liberty to pursue recovery steps but subject to consideration of the contentions raised by the petitioner society based on Clause 38 of the scheme, after issuing fresh requisition to the District Collector in this regard.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge