IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).NO. 21661 OF 2009 (C)

PETITIONER(S):

MOOSPET SERVICE CO-OPERATIVE BANK LTD. NO.682,
MOOSPET ROAD, THRISSUR - 5,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.M.SASINDRAN.

RESPONDENT(S):
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1. **THE KERALA CO-OPERATIVE EMPLOYEES' PENSION BOARD, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.**

2. **K.P. PAULLY, KOOLA HOUSE, CHELAKOTTUKARA, TRICHUR - 5.**

3. **KOCHAPPU T.V., THAIKKADAN HOUSE, APPOLLO STREET, CANNING ROAD, KURIACHIRA P.O., THRISSUR.**

R1 BY ADV. SRI.K.R.SUNIL, SC.
R2 & R3 BY ADV. SRI.K.G.BALASUBRAMANIAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RS.

WP(C).NO. 21661 OF 2009 (C)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE COVERING LETTER DATED 14/10/1996 ALONG WITH THE DETAILS OF PAYMENT IN RESPECT OF THE EMPLOYEES.
EXT.P2	COPY OF THE PROCEEDINGS DATED 09/12/1996 ISSUED BY THE PENSION BOARD.
EXT.P3	COPY OF THE DEMAND NOTICE DATED 15/11/2004 ALONG WITH THE PROFORMA OF CALCULATION.
EXT.P4	COPY OF THE LETTER DATED 03/03/2005 ALONG WITH THE STATEMENT SHOWING PAYMENT OF THE BALANCE AMOUNT ACCORDING TO THE CALCULATION BASED ON THE DEMAND IN RESPECT OF SMT.OMANA.
EXT.P5	COPY OF THE NOTICE NO.151/07 DATED 30/06/2007 ISSUED IN RESPECT OF SRI.K.P. POLY BY THE RESPONDENT.
EXT.P6	COPY OF THE NOTICE DATED 154/07 DATED 30/06/2007 ISSUED BY THE RESPONDENT IN RESPECT OF SRI.T.V.KCHAPPU.
EXT.P7	COPY OF THE REPLY DATED 31/08/2007 ISSUED BY THE ASSISTANT REGISTRAR TO THE PETITIONER.
EXT.P8	COPY OF THE COMMUNICATION DATED 12/09/2007 ISSUED BY THE 1ST RESPONDENT.
EXT.P9	COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXT.P10	COPY OF THE COMMUNICATION DATED 02/02/2008 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
EXT.P11	COPY OF THE COMMUNICATION DATED 24/03/2008 ISSUED BY THE PETITIONER TO THE RESPONDENT.
EXT.P12	COPY OF THE COMMUNICATION DATED 15/07/2008 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
EXT.P13	COPY OF THE CIRCULAR REFERRED TO IN EXT.P12.
EXT.P14	COPY OF THE NOTICE DATED 06/07/2009 DEMANDING RS.1,36,487 TOWARDS CONTRIBUTION OF K.P. POLY.
EXT.P15	COPY OF THE NOTICE DATED 29/06/2007 DEMANDING RS.74,160/- TOWARDS THE CONTRIBUTION OF KCHAPPU.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

C.K. ABDUL REHIM, J.

W.P.(C)No.21661 of 2009

Dated this the 6th day of February, 2015

JUDGMENT

Petitioner is a Co-operative Society registered under the Kerala Co-operative Societies Act, as mandated under Section 61 of the Act r/w Rule 58 of the Kerala Co-operative Societies Rules. The petitioner Bank was maintaining a contributory Provident Fund for benefit of its employees. By virtue of introduction of Section 80 A, the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 was introduced, which was brought into force with effect from 14/03/1995. By virtue of the amendments effected in Section 61, the Contributory provident Fund Scheme established could be applied to the employees, because the newly introduced scheme was made applicable to the petitioner society. As per clause 39 of the Kerala Co-operative Societies Employees Self Financing Scheme, 1994 (hereinafter referred to as the Scheme) with effect from the date of application of the scheme to the society, the society is bound to transfer the employer's contribution with interest accrued thereon standing to the credit of each of the employees into the contributory Provident Fund established by the Society, to the credit of the pension fund under the scheme. Respondents 2 and 3 here are employees retired from the petitioner society. It is stated that those respondents were enrolled in the scheme and the entire amount available in the Contributory Provident Fund with respect to those employees which was remaining in deposit at the Thrissur District Co-operative Bank was already transferred to the pension fund, as evidenced from Ext.P1. By virtue of Ext.P2, the 1st respondent had accepted the remittance, subject to verification. But the 1st respondent issued Exts.P5 and P6 demands requiring the petitioner society to make payment of the arrears of contribution to the extent of Rs.92,221 with respect to the 2nd respondent, and Rs.50,108/- with respect to the 3rd respondent. Along with demands the calculation statements were also attached, claiming interest on the employers contribution at different rates from 7% to 12% for different periods. Even though the petitioner society had approached the Assistant Registrar raising objections, they were advised to approach the 1st respondent itself, as per Ext.P7 letter. Therefore the petitioner represented the matter before the 1st respondent. But in Ext.P8 notice, the demand for payment of the arrears was repeated. The petitioner again submitted a detailed representation as per Ext.P9 before the 1st respondent. But the 1st respondent again responded stating that usually the deposit of Contributory Provident Fund amount is being converted as Fixed Deposits and the pension fund is to be determined based on that. Further reply was submitted by the petitioner as per Ext.P11. Thereafter the issue was considered by the 1st respondent and Ext.P12 letter was issued stating that, as per the circulars issued from time to time by the Registrar of Co-operative Societies, the Societies were instructed to deposit the Contributory Provident Fund in a manner deriving higher interest. But the petitioner society had not deposited the amount to derive higher interest and thereby caused loss in the amount of interest, which could have been derived on the deposit of Provident Fund. Hence it was directed to remit the amount demanded. Thereafter the 1st respondent had further issued Exts.P14 and P15 notices threatening recovery steps, on failure to remit the amounts. The petitioner in this writ petition is challenging Exts.P5, P6, P12, P14 and P15.

2. Issue to be decided is as to whether the 1st respondent is entitled to demand and recover any amount of interest over and above what was accrued as interest in the deposit of Contributory Provident Fund, from any co-operative society. As observed above, Section 61 of the Act require the society to establish a contributory

provident fund for the benefits of its employees and to credit all the contributions made by the employees and the society, in accordance with the Rules or in accordance with the Employees Provident Funds Act, 1952, whichever is more beneficial. Various restrictions are also incorporated under sub section (2) of Section 61 with respect to usage of the Provident Fund for other purposes. Rule 58 empowers the society to frame regulations for maintenance and utilisation of the contributory provident Fund. The second proviso to Rule 58(1) stipulates that the Contributory Provident Fund established under sub- section (i) of Section 61 of the Act shall cease to operate in the case the existing employees are brought under the Self Financing Pension Scheme, framed under Section 80A of the Act. Chapter IV of the scheme deals with the deposit and investment of pension fund. Clause 39 of the scheme enumerates special provision for transfer of accumulations from the Contributory Provident Funds. It provides that any portion of the employer's contribution with interest accrued thereon standing to the credit of the employees in the contributory Provident Fund established by that society should be transferred and credited by the society to the pension fund under the Scheme. Sub-clause (1A) of clause 39 provides that if any society fails to transfer the employer's contribution with interest accrued thereon, after 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, shall be liable to transfer such amount with interest at the rate of 24% per annum. Sub-clause (2) of Clause 39 provides that the liability of an employer to contribute to the funds shall cease from the date on which the amount standing to the credit of an employee in the said provident fund is transferred and credited to the Pension Fund under this scheme.

3. None of the provisions mentioned above

empowers the 1st respondent in any manner to make a claim that the society should transfer the amount of employer's contribution under the contributory provident fund along with any particular rate of interest. On the other hand, what could be claimed by the 1st respondent Board is only the interest accrued on the employer's contribution lying in deposit. In the case at hand, there is no dispute that the petitioner society had transferred the employer's contribution along with interest accrued thereon standing credit to the respondents 2 and 3 in the contributory Provident Fund, within the time stipulated, to the new scheme. The demand of the 1st respondent is that the petitioner society should pay arrears computed on the basis that the deposit of employer's contribution ought to have been made in a manner deriving more interest. For making such a demand the 1st respondent is relying on Ext.P13 circular issued by the Registrar of Co-operative Societies. The instructions given thereunder is to the effect that the societies should see that the

Provident Fund Deposits and security deposits are invested in such a way as to fetch maximum interest, so that benefit of the enhanced interest may go to the employees. Allegation contained in the impugned notices are to the effect that, the petitioner society had deposited the employer's contribution only in Savings Bank Accounts instead of depositing the same in Fixed Deposits, in a manner deriving more interests. Even assuming that the petitioner society had made deposits of the employer's contribution in a manner not strictly in accordance with the instructions issued by the Registrar of co-operative societies, that itself will not entitle the 1st respondent to make a claim from the society to transfer any amount of interest which was not accrued on the deposit of contribution to the credit of the employees concerned. Therefore the impugned demand is made clearly beyond the powers vested on the 1st respondent and is beyond the authority conferred by virtue of provisions contained in the Co-operative Societies Act and

Rules as well as under provisions contained in the scheme.

4. It is submitted by learned counsel appearing for respondents 2 and 3 that they were compelled to make payment of amounts demanded through the impugned notices, for facilitating disbursal of the arrears of pension due from the 1st respondent. In the counter affidavit filed by the 1st respondent it is mentioned that pension amounts were released to the employees concerned, after receiving consent letters from them agreeing to deduct the alleged arrears of pension fund contribution. Therefore it is evident that arrears of pension due to respondents 2 and 3 were paid after deducting the amounts claimed in the impugned notices. Learned counsel for the respondents 2 and 3 contended that the amount of arrears deducted from the pension is liable to be released.

5. In view of the findings arrived as above, with respect to sustainability of demand for payment of

additional amount of interest, it is to be held that deduction if any made to that extent from arrears of pension due to respondents 2 & 3 cannot be sustained. It is for the 1st respondent to pay the amounts if any deducted from respondents 2 and 3 in this regard.

Under the above mentioned circumstances this writ petition is allowed and Exts.P5, P6, P12, P14 and P15 are hereby quashed.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL