IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 21977 of 2009 (N)

PETITIONER:

MOHAN C.ALI, S/O.CHIRIYANDA, 'ANUGRAHA'
AILA, UPPALA PO, KASARAGOD. [DIED]

SUPPLEMENTAL PETITIONER IMPLEADED

DEVADAS T.UCHIL, AGED 38 YEARS, S/O.LATE TIMMAPPA,
D.NO.10-21(F) SAIDHAM BEACH ROAD, SOMESHWAR
UCHIL PO., MANGALORE DISTRICT.

IMPLEADED AS PER ORDER DATED 02.11.2015 IN IA 15880/15.

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL

RESPONDENTS:

1. KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY.

2. JOINT DIRECTOR OF FISHERIES, EX-OFFICIO REGISTRAR OF FISHERIES CO-OPERATIVE SOCIETIES, KOZHIKODE.

3. AILA BOVIS FISHERMEN DEVELOPMENT AND WELFARE CO-OPERATIVE SOCIETY LTD.NO. 3279, AILA BOVIS, UPPALA, REP. BY ITS SECRETARY.

R3 BY ADV. SRI.M.B.PRAJITH
R2 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR
R1 BY ADV. SRI.K.R.SUNIL

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

APPENDIX IN WPC 21977/2009

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE PROCEEDINGS OF THE BOARD OF DIRECTOR HELD ON 15.1.1983 AS RESOLUTION NO.50

EXT. P2 TRUE COPY OF THE REGISTER SHOWING THE DETAILS OF PROVIDENT FUND SUBSCRIPTION OF THE PETITIONER

EXT. P3 TRUE COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT APPROVING THE APPOINTMENT OF THE PETITIONER AS A SECRETARY OF THE THIRD RESPONDENT SOCIETY

EXT. P4 TRUE COPY OF THE PROCEEDINGS OF THE BOARD OF DIRECTORS DATED 17.6.2000

EXT. P5 TRUE COPY OF THE LETTER ISSUED BY THE JOINT DIRECTOR OF FISHERIES DATED 28.10.2000 IN PROCEEDINGS NO.F.2301/2000/L.Dis.

EXT. P6 TRUE COPY OF THE G.O.(P)NO.56/2003/CO-OP DATED 22.3.2003

EXT. P7 TRUE COPY OF THE LETTER ISSUED BY THE PRESIDENT OF THE THE THIRD RESPONDENT SOCIETY DATED 19.11.03

EXT. P8 TRUE COPY OF THE COMMUNICATION NO.9/2399/04 DATED 12.10.2004 ISSUED BY JOINT DIRECTOR OF FISHERIES TO THE DIRECTOR OF FISHERIES, THIRUVANANTHAPURAM

EXT. P9 TRUE COPY OF THE DEMAND NOTICE DATED 17.4.2006 ISSUED BY THE FIRST RESPONDENT TO THE THIRD RESPONDENT

EXT. P10 TRUE COPY OF THE PAY-IN-SLIP SHOWING THE REMITTANCE OF RS.80,618/-

EXT. P11 TRUE COPY OF THE PENSION SANCTIONING ORDER NO. PB.PPO.1000/KGD DATED 2.7.2008

EXT. P12 TRUE COPY OF THE LETTER ISSUED BY THE THIRD RESPONDENT SOCIETY TO THE FIRST RESPONDENT

EXT. P13 TRUE COPY OF THE COMMUNICATION NO.PB/PRO/4643/2008 DATED 31.7.2008 ISSUED BY THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS:

EXT. R2(a) TRUE COPY OF THE ORDER NO.F.568/2002 DATED 17.6.2010

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.21977 of 2009 N

Dated this the 12th day of November, 2015

JUDGMENT

On 25.05.2015, the learned counsel for both the parties argued extensively; whereon I dictated the judgment in the open court. But, before I could sign it, the learned counsel for the petitioner, by way of special mentioning, informed me that the petitioner had died—a fact he too was unaware of when he argued the matter. As a result, the matter later appeared under the caption 'to be spoken to'.

2. In the course of time, the learned counsel for the petitioner filed I.A.No.15880/2015 to bring on record who is said to be a 'legal heir' of the deceased petitioner. The petition was allowed and additional second petitioner was brought on record. In the judgment, however, the original petitioner, since deceased, is referred to as 'the first petitioner.

3. The dispute in this writ petition concerns the actual date of the first petitioner's entitlement to the pension under Self Financing Pension Scheme.

4. The facts in brief are that the first petitioner initially joined the service of the third respondent on 18.01.1983 as a Clerk; it was pursuant to Exhibit P1 resolution passed by the third respondent-Society. On 31.07.1984, the first petitioner enrolled himself in the Employees Provident Fund Scheme, as is evident from Exhibit P2. Later, based on the resolution dated 09.08.1998 passed by the third respondent, the first petitioner was promoted as Secretary through Exhibit P3 proceedings, which was followed by the revision of his scale of pay, as could be seen from Exhibit P4 proceedings. In fact, the Society has approved the said revision of scale of pay through its resolution in Exhibit P5.

5. As a matter of subsequent developments, when the Government introduced Kerala Co-operative Employees Self Financing Pension Scheme ('the Scheme' for brevity), the Government through Exhibit P6 proceedings included all the Societies under the Scheme. Through Exhibit P7 the third respondent-Society requested for inclusion of the first petitioner's name; it was forwarded through Exhibit P8 by the second respondent. Later, based on Exhibit P9 demand notice issued by the first respondent for payment of the employer's contribution, the third respondent remitted the requisite amount and obtained Exhibit P10 receipt.

6. As can be seen, on 30.06.2004 the first petitioner retired from service having attained the age of superannuation. After the necessary verification by its officer, the first respondent Board sanctioned through Exhibit P11 pension to the first petitioner. It has further transpired that an amount of only ₹ 500/- was sanctioned as

monthly pension to the first petitioner.

7. Aggrieved by the decision of the first respondent in sanctioning much-reduced pension, the first petitioner submitted a representation to the third respondent, who in turn forwarded it to the first respondent. Under these circumstances, the first respondent passed Exhibit P13 order, which is assailed in the present writ petition.

8. In the above factual background, Sri.S.Shyam Kumar, appearing on behalf of Sri.M.Sasindran, the learned counsel for the first petitioner, has contended that the very Society, being the appointing authority, appointed the first petitioner way back in 1983, as is evident from Exhibit P1, after following the due procedure. According to him, the first petitioner was appointed in a substantive vacancy in line with the approved staffing pattern. He has also laid stress on the fact that the first petitioner was included in the Pension Scheme way back on 19.07.1984, and he had

the necessary qualifying service in terms of Clause 19 of the Scheme.

9. The learned counsel would contend that before the first respondent issued Exhibit P11 proceedings, an inspecting official deputed by the said authority verified the necessary service records of the first petitioner and recommended for sanction of pension to him. He has also contended that Exhibit P3 clearly records that the first petitioner has completed fifteen years of service as a Clerk. And this position has never been doubted in any quarter.

10. Even when revision of scale of pay was effected, the first petitioner's service, contends the learned counsel, was reckoned from the date of his initial appointment. He has thus singularly contended that there is no justification for the first respondent to pass Exhibit P13 order placing reliance on Exhibit P8 that the second respondent approved the first petitioner's appointment only with effect from

01.01.1994.

11. In support of his submissions, the learned counsel has placed reliance on **Elampal Service Co-operative Bank Ltd. v. Government of Kerala**[1], **Saraswathi v. Registrar of Co-operative Societies**[2] and **Sukumaran N. v. Kerala State Co-operative Employees Pension Board, Tvm. and Another**[3].

12. Sri.K.R.Sunil, the learned Standing Counsel for the first respondent, has strenuously opposed the claims and contentions of the first petitioner. He has contended that Exhibit P8 issued by the second respondent clearly records that the first petitioner's appointment as Secretary was approved by the Registrar of Co-operative Societies (North Zone), Kozhikode, through order dated 11.01.1999. According to him, there is every justification for the first respondent to take into account the said date as the

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[1] 2000 (3) KLT 389
[2] 2002 (2) KLT 327
[3] 2010 (4) KHC 859

reckoning point of the first petitioner's service so that the qualifying service can be determined for fixing the pensionary benefit.

13. The learned counsel, referring to the statutory provisions, has drawn my attention to Clause 2(f) of the Scheme to contend that an employee is to be taken as regular employee only from the date when his service was approved. The learned Standing Counsel has also drawn my attention to Section 80 of the Act as well as Rule 182 of the Rules with a specific emphasis on sub-rule (5) thereof.

14. To a specific query from the Court, the learned Standing Counsel has submitted that approval of the first petitioner's appointment by the second respondent was on the strength of the circulars issued by the Government under Section 66 of the Act. In this regard, the learned Standing Counsel has laid emphasis on Circular No.18/1991 as well as Circular No.17/2011, which is in modification of

the former circular.

15. The learned Standing Counsel has strenuously contended that unless there is a proper mechanism to verify the actual date when an employee was born on service, it is difficult for the first respondent Board to weed out spurious claims of longer lengths of service than what the employees have put in. According to him, if the approval of service granted by the second respondent is to be ignored on whatever ground, it will open floodgates for false claims with exaggerated lengths of service. It would not, therefore, be possible for the first respondent Board to ascertain the genuine claims, contends the learned Standing Counsel. Summing up his submissions, the learned Standing Counsel has urged this Court to dismiss the writ petition as devoid of merit.

16. Heard the learned counsel for the first petitioner and the learned Standing Counsel for the respondent Board,

apart from perusing the record.

17. Indeed, the issue lies in a narrow compass: whether the first petitioner is entitled to the pensionary benefits by reckoning the length of his service from the date of his initial appointment; i.e., from 1983, or from the date when his service is said to have been approved; i.e., from 11.01.1994.

18. There is no gainsaying the fact that the first petitioner's initial appointment was on 18.01.1983; it was based on Exhibit P1 resolution passed by the third respondent-Society, which is, indisputably, the competent authority. Nowhere has the respondent contended that the first petitioner's initial appointment was either ad hoc or contingent, much less against a non-sanctioned post—not even that it was in violation of the staffing pattern.

19. In the course of time, the first petitioner's services were regularised and later, he was promoted as the

Secretary, in which capacity he superannuated. Even while the pay revision was undertaken by the employer, i.e., the third respondent, the first petitioner's entire service beginning from the date of his initial appointment was taken into account.

20. It is pertinent to observe that when an official inspected the service records and submitted his recommendation, the said official, as could be seen from Exhibit P13, reckoned the first petitioner's qualifying service as twenty years.

21. Though the first respondent came to a different conclusion from what had been recommended by its own official, who had undertaken the verification of the service records lying with the third respondent, it has not deemed it desirable to put either the third respondent or the first petitioner on notice concerning its stand that the qualifying service should be reckoned only from 01.04.1999. At any

rate, this Court desires to examine the justifiability of the first respondent's reckoning the qualifying service only from 01.04.1999.

22. Since the learned Standing Counsel has laid much emphasis on Exhibit P8 communication issued by the second respondent to the Director of Fisheries, it is profitable to extract the relevant portion of the said communication, which reads as follows:

> "This society started functioning in 1919 and the employee Shri. Mohan C. Ail had started to contribute to P.F. Scheme since 1984 till his retirement on 30.06.2004. His appointment as Secretary was approved by the Registrar of Fisheries Co-operative Societies (N.Z) Kozhikode vide order No.F.2027/98 dated 11.1.99. As such I request that the application put in by the society may kindly be forwarded to the Kerala State Co-operative Employees' Pension Board Thiruvananthapuram for further action. The documents are endorsed herewith."

23. A perusal of the above extract makes it manifestly clear that the first petitioner's appointment was approved by the Director of Fisheries Co-operative Societies (N.Z), Kozhikode, only with effect from 11.01.1999. When a

specific query was put, the learned Standing Counsel, as has already been adverted to, submitted that the approval was in terms of Section 182(5) as well as Circular Nos. 18/1991 and 79/2011 issued by the Registrar of Co-operative Societies.

24. In the first place, neither Circular No.18/91 nor its modified version, Circular No.79/11, has any application. Because, being executive instructions, they at best would have only prospective application. It is not in dispute—in fact, it stands established—that the first petitioner was appointed way back in 1983. Sub-rule (5) of Rule 182 mandates that in respect of the societies and posts not covered by Section 80(3A) and Section 80B of the Act, the appointment shall be made by the Committee after conducting the written examination and interview following the guidelines issued by the Registrar.

25. It is pertinent, in my view, to observe that sub-rule (5) of Rule 182 was engrafted in the statute book only in 2003. The same reason cited for non-application of the circulars referred to above would also apply in the present instance: Sub-rule (5) of Rule 182 cannot control the service conditions of, much less the benefits due to, the first petitioner.

26. The question still remains whether the approval accorded by the Registrar of the Co-operative Societies, as has been referred to in Exhibit P8, has any legal validity. In other words, whether there is any statutory sanction behind the alleged approval said to have been given on 11.01.1999 concerning the first petitioner's appointment way back in 1983.

27. I am afraid, no provision has been brought to my notice, more particularly, being extant in 1983 when the first petitioner was appointed, to hold that the approval

granted on 11.01.1999 has statutory force. Under these circumstances, I am constrained to hold that, if at all there was an approval as has been indicated in Exhibit P8, it is, without cavil, an extra-statutory approval, having no legal consequences flowing therefrom.

28. In fact, the issue is not res integra as could be seen from the judicial pronouncements of this Court. In Elampal Service Co-operative Bank Ltd. (supra) a learned Division Bench of this Court having referred to Section 80, which deals with the staffing pattern of the societies, has observed thus:

> “3. A reading of the above Rule and Appendix III makes it clear that staff pattern is fixed by the Rule itself. Therefore, normally society will be free to appoint staff as per the staff pattern fixed in Appendix III. Ist proviso allows the society from not adopting the staff pattern due to financial position and allows the members of the committee to work in an honorary capacity. That is for the society to decide. Second proviso only makes it obligatory for the society to get prior approval from the Registrar only if there is a 'need of any change in the pattern of staff including the scale of pay under special circumstances.' The above wordings make it clear that for appointing staff as per the staff pattern fixed in Appendix III and the rules according to the type and

> class to which the society belongs, no prior approval is necessary. Only if a change in the pattern is necessary, approval is required. In this connection we refer to the decision reported in Sherthallai Urban Co-operative Bank v. State of Kerala.[4] A similar view was taken in O.P.No. 8097/90 decided on 28.2.91 and O.P.No.10078/85 decided on 27.3.1987."

29. In Saraswathi (supra), a learned single Judge, placing reliance on an earlier judgment of this Court in **Parameswaran Kartha v. Assistant Registrar**[5], has held as follows:

> "6. Parameswaran Kartha v. Asst. Registrar is authority for the proposition that the primary right to classify the societies into different categories as also the right to prescribe the staff pattern and scales of pay of the employees is that of the Government and that it is, however, for the society to decide the category in which it falls with reference to the conditions in Appendix III. Neither the Act nor the Rules provide for any prior approval of the Registrar or the Government before the society is classified in a particular slot and any decision of the society that it falls in such class would be open to recession by the Registrar in exercise of his power under R.176, if he is not satisfied that the working capital/outstandings/investment/ turnover, as the case may be, of the society are such as to bring it within a particular class. In the instant case there was no recession of the classification. On the other hand, the resolution passed on 3.10.1992 was approved by the Registrar in May, 1993 w.e.f. 1.1.1993. It may be that

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4 1984 KLT 971

5 1992 (2) KLT 77

additional posts to which the society might be entitled in view of re-classification into Class IV could be filled up only with prior approval; but that cannot be said about the vacancy that existing even on the date before the resolution regarding higher classification was passed by the society."

30. Finally, in Sukumaran.N. (supra), a learned Single Judge of this Court having exhaustively surveyed the statutory position has definitively held thus:

"15. Going by the provisions mentioned above, I am not inclined to accept the contention of the petitioner in full. I am also not inclined to accept the contention raised by Sri.P.V.Mohanan that the relevant date is the date of the resolution passed by the Society. Going by clause 19 read with clause 39 of the Scheme, the relevant date is the date of joining the contributory provident fund. The portion of the employers' contribution for the period during which the employee was contributing to the contributory provident fund shall be transferred and credited by the Society to the Pension Fund under the Scheme. In such a case, the employee would be justified in contending that his qualifying service is to be reckoned from the date of joining the contributory provident fund. As seen from Ext.P7 resolution dated 28.01.1989, it is crystal clear that the Contributory Provident Fund Scheme was introduced in the Bank from 01.07.1984. There is no case for the Board that it did not receive the employer's contribution with reference to that date. If so, the employee, namely, the petitioner is entitled to reckon his qualifying service with effect from 01.07.1984. At the same time, the employee is not entitled to contend that by making his contribution for the period from 01.07.1974 on a subsequent date and that too after coming into force of the Scheme, he would be

> entitled to compute the qualifying service from an anterior date, anterior in point of time of his joining the contributory provident fund."

31. The above judicial pronouncements which have unquestionable efficacy and binding force have made it clear beyond any pale of controversy that the Registrar of Co-operative Societies has no power to approve the appointments; on the contrary, it is the statutory duty of the very society, the competent appointing authority. As such, any approval, as has been indicated in Exhibit P8, is only an extra-statutory measure, having no legal force.

32. In the alternative, it is further pertinent to observe that the petitioner joined the contributory provident fund scheme way back in 1984, and the subsequent intervention of the Scheme and the petitioner's inclusion is only in continuation thereof. Thus, in terms of Clause 19 of the Scheme, the petitioner is eminently entitled to claim the pensionary benefits reckoning his service from 31.07.1984.

33. At this juncture, it is pertinent to examine the submission of the learned Standing Counsel that any adjudication holding that the Registrar of Co-operative Societies has no jurisdiction to approve the appointments in Co-operative Societies would open floodgates for spurious claims with varied lengths of service. I am afraid, this Court does not intend to lay down an invariable principle that under whatever circumstances the Registrar of Co-operative Societies has no jurisdiction to accord approval of appointments in the Co-operative Societies. It is made clear that under extant statutory regime, no provision has been brought to the notice of the Court to hold that the Registrar of Co-operative Societies has the said power.

34. Indeed, it is not in dispute that way back in 1983, there were no proceedings issued even in the nature of Circular Nos.18/91 and 79/11 to invest the Registrar with any modicum of power concerning the approval of

appointments. If there is any provision brought on the statute book subsequently, it would not, at any rate, affect the service conditions of the first petitioner, who joined the service in 1983 and retired therefrom in 2004.

35. I may examine the issue of adverse consequences that may follow from the present adjudication concerning what is said to be the difficulty in having a proper verification of the claims of the retired employees as regards the length of service. The difficulty is said to be acute in the absence of any effective mechanism concerning the approval of appointments by the Co-operative Societies.

36. Stressing the obvious, I can only observe that an adjudication is to be made based on the regnant regulatory regime and precedential position, notwithstanding the consequences flowing therefrom. It is, after all, the concern of the legislature as an element of future policy measure.

37. In the facts and circumstances, Exhibits P11 and P13 are set aside with a further direction to the first respondent to reckon the first petitioner's service from 31.07.1984 and calibrate the first petitioner's pension accordingly. Needless to observe, since the first petitioner retired way back in 2004, the first respondent shall take expeditious steps to finalise the issue.

38. In the absence of the first petitioner, the arrears of pension being the estate of the deceased, they should be paid to the legal heir. In the present instance, in I.A.No. 15880/2015, through which the second additional petitioner has come on record, the averment is to the effect that the first petitioner's wife, too, died; the couple was issue less. I do not see any clear relationship between the first and second petitioners described in the petition. Ipso facto, the respondent authorities shall ensure the proper identity of the second additional petitioner to be treated as the legal

heir of the first petitioner before the benefits can be paid.

In the manner indicated above, this Court allows the writ petition. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'