IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 21731 of 2012 (N)

PETITIONER:

M.D. PRABHAKARAN, AGED 52 YEARS
S/O.KELAN, 'DWEDROPS', CHALA EAST P.O.
KANNUR-670621.

BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR

RESPONDENTS:

1. THE SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, THIRUVANANTHAPURAM-695001 REPRESENTED BY ITS SECRETARY.

2. THE ASSISTANT PROVIDENT FUND COMMISSIONER EMPLOYEES PROVIDENT FUND ORGANISATION SUB REGIONAL OFFICE, FORT ROAD, KANNUR-670001.

3. THE MOWANCHERY CO-OPEARATIVE RURAL BANK LTD. NO. F. 1279, CHAKKARAKKAL P.O., MOWANCHERY, KANNUR-670001 REPRESENTED BY ITS SECRETARY.

RR-R1 BY ADV. SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD
RR-R2 BY ADV. DR.ABRAHAM P.MEACHINKARA, SC, EPF ORG.
R3 BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21731 of 2012 (N)

APPENDIX

PETITIONER(S)'S EXHIBITS:

EXHIBIT P1: A TRUE COPY OF THE COMMUNICATION FROM THE EMPLOYEE'S PROVIDENT FUND ORGANISATION BEARING PPO.NO.KR/KNR/23620 DATED 1.5.2007.

EXHIBIT P2: A TRUE COPY OF THE BANK STATEMENT OF ACCOUNT NUMBER 40080 OF SOUTH MALABAR GRAMIN BANK, CHALA, WHEREIN THE PETIITONER'S PENSION BENEFITS CREDITS.

EXHIBIT P3: A TRUE COPY OF THE LETTER FROM THE EMPLOYEE'S PROVIDENT FUND ORGANISATION, DATED 29.9.2012.

EXHIBIT P4: A TRUE COPY OF THE DEMAND NOTICE DATED 14.7.2011.

EXHIBIT P5: A TRUE COPY OF THE VOUCHER DATED 1.9.2011 SHOWING PAYMENT OF AN AMOUNT OF RS.3,81,166.00 BY THE PETITIONER.

EXHIBIT P6: A TRUE COPY FO THE PROCEEDINGS OF THE SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD DATED 15.11.2011.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

A. V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.21731 of 2012

Dated this the 19th day of January, 2015.

JUDGMENT

Aggrieved by the non-disbursal of the pension due to the petitioner for the period from October 2009 to September 2011, the petitioner has come up before this Court.

2. The petitioner was an employee of the Mowanchery Co-operative Rural Bank. He demitted his office on 9.12.2006 as Branch Manager. He had a tenure of 360 months. The second respondent issued a Pension Payment Order, by which the organisation have sanctioned payment of monthly pension to the petitioner at the rate of Rs.1,377/- per month with effect from 10.12.2006. According to the petitioner, he received a monthly pension at the rate of Rs.1,377/- till the month of October 2009. However, later as per Ext.P3, the pension payment was stopped unexpectedly. The petitioner further alleges that about one year, he did not receive any intimation from the authority regarding the stoppage of pensionary benefits. However, on 6.10.2010, he received Ext.P3 letter from the Employee's Provident Fund Organisation dated 29.9.2010 intimating that, the payment of

pension of the petitioner has been discontinued and the petitioner was asked to approach the Co-operative Pension Board through his employer for restoration of his pensionary benefits. As per Government of Kerala Notification dated 19.9.2006, the pensionary benefits of the petitioner had been transferred from the EPF scheme to the Kerala State Co-operative Employees Pension Board. According to the petitioner, instead of sanctioning pension based on the same, the KSCEPB has issued a demand notice to the Secretary of the Bank, asking the secretary to pay an amount of Rs.5,00,587/- to the KSCEPB regarding the petitioner's pension benefits. According to the petitioner, the liability of the Pension Board to pay pension is from the date of transfer of the contribution from the E.P.F and the demand made by Ext.P4 is based on an imaginary calculation of the salary and arbitrary rate of interest. According to the petitioner, the Pension Board is liable to pay pension based on the transfer of the fund from the E.P.F and the liability to pay pension cannot be shifted to a subsequent date. It is with this background, the petitioner has come up before this Court.

3. Today, when the matter came up for hearing, the learned counsel for the second respondent submitted that they have

transmitted the entire amount of contribution of all the employees including the petitioner to the Board.

4. Arguments have been heard.

5. The petitioner is aggrieved by the non-payment of pension for the period from October 2009 to September, 2011. A beneficial legislation has been introduced way of enacting Kerala Co-opeartive Employees Pension Scheme. Though it was a beneficial legislation intended for the benefit of the employees, on account of the implementation of the scheme, the petitioner has been denied pension for about two years. The amount of pension is determined based on the criteria under the scheme and the payment of pension cannot be delayed even assuming that the contribution transferred was based on a different scale of pay. It is the definite case of the second respondent that the entire amount of contribution has been transmitted to the respondent board. According to the petitioner, the pension scheme does not envisage nonpayment of pension after transfer of the fund from the E.P.F. Therefore, the failure to pay arrears from the date of transfer itself cannot stand in the eye of law.

6. The employer's contribution laying with the EPF had

already been transferred to the pension board and the Pension Board is not competent to demand anything more from the society in that regard. At this juncture, it is useful to quote clause 39(1)(a) of the Co-operative Employees Pension Scheme, which runs as under:

> *"Special provision for transfer of accumulations from the Contributory Provident Funds - (1) With effect on and from the date of application of this Scheme to society-*
>
> *(a) the portion of the employers' contribution with interest accrued thereon standing to the credit of the employees in the contributory provident fund established by that society shall be transferred and credited by the society to the pension fund under this scheme."*

It is clear from the above provision that the statutory requirement is for transfer of employers contribution and hence the Board is liable to pay pension immediately on compliance of the above statutory requirement. Therefore, the nonpayment of pension to the petitioner from October 2009 to September 2011, is absolutely arbitrary.

In the result, the writ petition is allowed. The first respondent is directed to pay the arrears of pension to the petitioner for the period from October 2009 to September 2011, as he is entitled to the arrears of pension for the said period. The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment. To facilitate an early disposal, the petitioner shall be at liberty to produce a copy of the writ petition and the copy of the judgment before the first respondent at the earliest.

Sd/-
A. V. RAMAKRISHNA PILLAI
JUDGE

Scl.