

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 24475 of 2009 (D)

PETITIONER:

**T.S.JOSHI,S/O. SEBASTIAN,
GAHAN MESSENGER, THE TELIPARAMBA PRIMARY
CO-OPERATIVE AGRICULTURE AND RURAL DEVELOPMENT BANK
TALIPARAMBA, KANNUR DISTRICT.**

**BY ADVS.SRI.M.A.FIROZ
SRI.GEORGE MECHERIL**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM.**
- 3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KANNUR.**
- 4. THE TALIPARAMBA PRIMARY CO-OPERATIVE
AGRICULTURAL AND RURAL DEVELOPMENT BANK
TALIPARAMBA, KANNUR DISTRICT, REPRESENTED BY
ITS SECRETARY.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI. GIKKU JACOB
R4 BY ADV.SRI.M.SASINDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-02-2015, ALONG WITH W.P.(C). NO. 24879/2009 & W.P.(C). NO. 25254/2009
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DCS

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE ORDER DATED 10.04.2002 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES**
- P2- TRUE COPY OF THE ORDER DATED 8.7.2002 OF THE 2ND RESPONDENT**
- P3- TRUE COPY OF THE JOINT STATEMENT OF THE PETITIONER AND THE 4TH RESPONDENT BANK IN I.D. NO. 56/2002 FILED BEFORE THE INDUSTRIAL TRIBUNAL**
- P4- TRUE COPY OF AWARD PASSED BY THE INDUSTRIAL TRIBUNAL IN I.D. 56/2002 DATED 03.03.2002**
- P5- TRUE COPY OF THE ORDER DATED 23.01.2003**
- P6- TRUE COPY OF RESOLUTION DATED 11.02.2003**
- P7- TRUE COPY OF RESOLUTION NO. 1 DATED 11.02.2003**
- P8- TRUE COPY OF JUDGMENT DATED 25.09.2003**
- P9- TRUE COPY OF PROCEEDINGS NO. 6862/01-AL DATED 17.03.2004**
- P10- TRUE COPY OF ORDER DATED 26.10.2006 OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES**
- P11- TRUE COPY OF THE JUDGMENT IN W.P.(C). NO. 1262/2007 DATED 21.07.2008**
- P12- TRUE COPY OF THE G.O. (RT.) 351/09 DATED 04.07.2009**
- P13- TRUE COPY OF COMMUNICATION ISSUED BY THE BANK DIRECTING PETITIONER AND OTHER FOUR EMPLOYEES TO REMIT THE ENTIRE AMOUNT WITHIN 7 DAYS OF RECEIPT OF THE NOTICE.**

RESPONDENT(S)' EXHIBITS:-NIL

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

**W.P.(C). Nos. 24475, 24879 &
25254 of 2009**

Dated this the 09th day of February, 2015

JUDGMENT

The then President of the fourth respondent Co-operative Bank agreed to reinstate the petitioners in service who were facing disciplinary proceedings. This is discernible from the order dated 10.04.2002 passed by the second respondent Registrar of Co-operative Societies. It was stated therein that the Managing committee has a discretion to treat the period of suspension of the petitioners as on duty or on leave. The pending cases between the petitioners and the bank were also directed to be withdrawn on the basis of consenses arrived at between the parties. This order was followed by yet another order dated 08.07.2002 of the second respondent Registrar of Co-operative Societies. It was clarified therein that the reinstatement in service would be without prejudice to the cases pending.

2. The period of the Managing Committee expired and a part-time administrator assumed charge of the affairs of the fourth respondent bank. The part-time administrator exercises all the powers and functions of the Managing Committee as per Section 32(4) of the Kerala Co-operative Societies Act,

1969 (the 'Act' for short). The part-time administrator issued an order dated 23.01.2003 directing the fourth respondent bank to reinstate the petitioners in service within three days. The part-time administrator also decided to treat the period of suspension of the petitioners as on duty and disbursed the arrears of their salary. It may be recalled that the Administrative Committee was given the discretion to treat the period of suspension as on duty or as on leave by the second respondent Registrar.

3. The third respondent Joint Registrar however by order dated 16.04.2003 directed the pay released to the petitioners to be recovered. This order was set aside in W.P.(C). No. 16535/2003 on the short ground that none of the employees were put on notice or heard. The third respondent Joint Registrar thereafter passed an order dated 26.10.2006 purporting to rescind the decision of the part-time administrator. The fourth respondent bank thereafter issued notices to the petitioners seeking recovery of the amount paid to them during the period of suspension. This is challenged by the petitioners contending that no circumstances exist to recover the amount paid to them.

4. It may at once be noted that there were proceedings pending before the Industrial Tribunal, Kozhikode as well. A joint statement is seen filed therein by an employee by name M. Sureshan and the part-time administrator. The joint statement inter alia stated as follows:-

“The management has decided and agreed to give full back wages and other benefits to this workmen with continuity in the service. As such both the management and the workmen is not intending to proceed further with the above dispute.”

It is on the basis of the above joint statement was I.D. No. 52/2002 on the file of the Industrial Tribunal, Kozhikode disposed of. There is no reason as to why a different yardstick should be adopted in the case of the other petitioners who were similarly situated like M. Sureshan. The employee M. Sureshan also withdrew his petition pending with the third respondent Joint Registrar as revealed from the proceedings dated 17.03.2004. The order of the Joint Registrar to rescind the decision of the part-time administrator to disburse the pay and allowances to the petitioners was challenged in appeal. The appeal filed under Section 83(1)(j) of the Act by the petitioners has been dismissed by the Government and hence these writ petitions.

5. Firstly it is on the basis of a settlement arrived at between the Managing Committee and the petitioners were the employees reinstated in service. Secondly the second respondent Registrar of Co-operative Societies had given discretion to the Managing Committee to treat the period of suspension as on duty or on leave. Thirdly this discretion was exercised by the part-time administrator to treat the period of suspension as on duty. Fourthly the part-time administrator was only acting in accordance with the permission accorded by the second respondent Registrar of Co-operative Societies. Fifthly the part-time administrator was empowered to exercise the discretion of the Managing Committee under Section 32(4) of the Act. Sixthly the amount was accordingly disbursed to the petitioners as early as in the year 2003 and a decade has rolled by. Seventhly the third respondent Joint Registrar who is junior to the second respondent Registrar of Co-operative Societies cannot issue a contrary direction. Eighthly the petitioners are not to be blamed for getting the period regularised and having the amount disbursed. Ninthly even an industrial dispute with respect to one employee was withdrawn on the basis of the settlement. Tenthly no reason has been stated as to how the other employees stand on a

different footing. Eleventhly petitioners have not been accused of pocketing the amount due to them as salary and allowances by any mischievous means.

6. I do not feel that the amount released to the petitioners on the basis of lawful orders should be recovered at this distance of time. I make it clear that only the question of recovery of the amounts disbursed to the petitioners has been considered in these writ petitions. The propriety or otherwise of the action of the part-time administrator then in office is not agitated for consideration. The order dated 26.10.2006 of the third respondent Joint Registrar as affirmed in the order dated 04.07.2009 of the Government are accordingly quashed.

The writ petitions are allowed. No costs.

**V. CHITAMBARESH
JUDGE**

DCS