

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 27968 of 2007 (D)

PETITIONER:

M.N.SUKUMARAN NAIR, PRIYA BHAVAN,
POOTHAKUZY, SOUTH PAMPADY, KOTTAYAM DIST.

BY ADVS.SRI.P.M.SEBASTIAN
SRI.M.R.MOUNEESH

RESPONDENTS:

1. KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD, REP. BY THE SECRETARY.
2. MANGANAM SERVICE CO-OP.BANK LTD.NO.1920,
MANGANAM, KOTTAYAM, REPRESENTED BY ITS
SECRETARY.
3. THE ASSISTANT REGISTRAR,
CO-OPERATIVE DEPARTMENT, KOTTAYAM.

ADDRESS OF R1 IS CORRECTED.

KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD REP. BY THE SECRETARY,
CHINMAYA LANE, KUNNUMPURAM, NEAR
AYURVEDA COLLEGE, TRIVANDRUM-1.

Corrected as per order dated 24.01.2011 in IA 966/11.

R2 BY ADV. SRI.P.RAMAKRISHNAN
R1 BY ADV. SRI.K.R.SUNI
R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 27968/2007

PETITIONER'S EXHIBITS:

EXT. P1 THE TRUE COPY OF THE ORDER DATED 12.3.1998 OF THE APPELLATE AUTHORITY UNDER THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENT ACT 1960 (DEPUTY LABOUR COMMISSIONER, KOTTAYAM)

EXT. P2 THE TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT DATED 26.10.2006 PASSED IN O.P.NO.7742/1998

EXT. P3 THE TRUE COPY OF THE NOTICE DATED 10.05.2007 ISSUED TO THE FIRST AND SECOND RESPONDENTS

EXT. P4 THE TRUE COPY OF THE REPLY LETTER DATED 4.6.2007 ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.27968 of 2007 D

Dated this the 22nd day of September, 2015

JUDGMENT

The petitioner, having joined the service of the second respondent on 01.12.1970, faced certain disciplinary proceedings which eventually resulted in his dismissal from service on 02.07.1990. Aggrieved when the petitioner filed an appeal, through Exhibit P1 the Appellate Authority under the Kerala Shops and Commercial Establishment Act, 1960 , reversed the disciplinary findings and directed reinstatement of the petitioner with full back wages. In Exhibit P1 the Appellate Authority has, however, given an option to the respondent Bank in the alternative to compensate the petitioner in view of his reinstatement.

2. Assailing Exhibit P1 when the second respondent filed O.P.No.7742/1998, this Court through its Exhibit P2

judgment dated 26.10.2006 affirmed the findings of the learned Appellate Authority in Exhibit P1. This Court has further directed the second respondent, in the event of its paying compensation to the petitioner instead of reinstatement, to pay an additional sum of Rs.50,000/- towards interest on the initial amount of compensation of Rupees Eight lakhs fixed by the Appellate Authority.

3. As has been averred by the petitioner, he made numerous representations to the second respondent and also to the first respondent Pension Board, but to no avail. Especially in view of Exhibit P4 reply given by the first respondent that the second respondent has not remitted the pension contribution, the petitioner has filed the present writ petition. The matter, though filed in 2007, could be taken up for consideration only now.

4. The learned counsel for the petitioner has strenuously contended that in the light of reinstatement

ordered by the Appellate Authority in Exhibit P1 as has been confirmed by Exhibit P1 judgment of this Court, it is deemed for all practicable purposes that the petitioner continued in service and retired, though notionally, on 26.10.2006, on his attaining the age of superannuation. He has further submitted that since the petitioner had been a member, while he was in service, of the contributory pension scheme, it is further deemed that he continued to be a member of the Self Financing Pension Scheme introduced in 1994. In sum and substance, the learned counsel for the petitioner would contend that there is no statutory embargo against, on the contrary there is a statutory compulsion for, paying the pensionary benefits to the petitioner.

5. Per contra, the learned counsel for the respondent Bank, in tune with the averments made by the second respondent, has fairly submitted that there is no factual

dispute in the matter. He has further contended that both in Exhibit P1 appellate order and in Exhibit P2 judgment of this Court an option was given to the second respondent Bank either to reinstate the petitioner with full back wages or to compensate him with the amount quantified by the appellate authority, i.e. Rupees Eight lakhs. Since this Court, through Exhibit P2, further ordered interest of Rs.50,000/- on the initial amount of compensation of Rupees Eight lakhs, the learned counsel contends that the respondent Bank soon after suffering Exhibit P2 judgment compensated the petitioner.

6. In other words, it is the contention of the learned counsel for the second respondent Bank that the Bank has already complied with the judgment of this Court and nothing further survives. Eventually the learned counsel has submitted that the question of the respondent Bank having an obligation to admit the petitioner to pensionary benefits

would have arisen had the Bank chosen to reinstate the petitioner instead of compensating. The learned counsel for the respondent Board, having substantially adopted the submissions of the learned counsel for the second respondent, submitted that the Pension Board does not have any say in the matter. According to him, if the respondent Bank had contributed in terms of the Kerala Co-operative Societies Employees' Self Financing Pension Scheme, 1994, there would have been an obligation on the part of the Board to pay pension to the petitioner.

7. Heard the learned counsel for the petitioner and the learned counsel for the second respondent, as well as the learned counsel for the first respondent, apart from perusing the record.

8. Indeed, as has been rightly submitted by the learned counsel for the second respondent Bank, there is no factual controversy in the matter. Since Exhibit P1 appellate

order stood merged with Exhibit P2 judgment of this Court, it is profitable to refer to the findings therein. This Court at paragraph 5 of the judgment has observed as follows:

“The next question to be considered is the challenge against the relief granted which is in the form of reinstatement with full back wages with continuity of service or in the alternative compensation of Rs.8 lakhs. In order to appreciate the nature of loss suffered by the second respondent, this Court directed the parties to calculate the loss of wages had the second respondent continued in service. Second respondent's counsel produced a statement which shows that he would have drawn an amount of Rs.18,63,316/- towards arrears of wages including DA and HRA alone. Further benefits computed amount to Rs.1,77176/-. Counsel for the petitioner-Bank submits that the working out of benefits produced in Court is approximately correct, though not precisely, and according to him, the total benefit would be a little over Rs.15 lakhs. In the circumstances, the compensation of Rs.8 lakhs awarded under Section 18(3) of the Act cannot be said to be excessive or arbitrary. During the pendency of OP petitioner enjoyed virtually full stay because this Court ordered payment of paltry sum of Rs.10,000/- to the second respondent as a condition for granting stay. I feel second respondent should be compensated for six year's delay in recovery of the compensation awarded by the first respondent, which stands confirmed by this judgment. In the circumstances, I direct the petitioner to pay Rs.50,000/- towards interest along with the compensation amount, which should be paid within one month from the date of production of a copy of this judgment by the second respondent.”

9. From the portion extracted above, it is quite evident that this Court has not disturbed the findings of the appellate authority in Exhibit P1. On the other hand, over and above what has been provided in Exhibit P1 in the matter of compensation, this Court has only ordered an additional amount of Rs.50,000/- to be paid to the petitioner by the respondent Bank towards interest because of the delay, if at all the Bank has chosen to opt for paying compensation instead of reinstating the petitioner. Indisputably, the respondent Bank did compensate the petitioner in terms of Exhibit P2 judgment.

10. In my considered view, in the absence of any reinstatement, it is difficult to hold that there subsisted, even notionally, any employer and employee relationship between the petitioner and the second respondent Bank. Once that were to be the conclusion, it would be further

difficult to hold that the respondent Bank was obligated to contribute any amount towards pensionary benefit for the petitioner.

Under these facts and circumstances, regrettably I do not find any merit in the writ petition and I am further constrained to dismiss it. The writ petition is accordingly dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv