

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 21561 of 2015 (U)

AGAINST THE JUDGMENT IN APPEAL NO. 104/2014 of KERALA CO-OPERATIVE
TRIBUNAL, THIRUVANANTHAPURAM DATED 23-06-2015

WRIT PETITIONERS/1ST RESPONDENT:

THE TRICHUR URBAN CO-OPERATIVE BANK LTD.,
MISSION QUARTERS, THRISSUR,
REPRESENTED BY ITS GENERAL MANAGER IN CHARGE,
SMT. V. SATHYDEVI, AGED 57 YEARS,
VALORE HOUSE, KUTTUMUKKU, P.O. RAMAVARMAPURAM,
THRISSUR - 680 631.

BY ADV. SMT.R.PADMAKUMARI

RESPONDENTS/APPELLANT & 2ND RESPONDENT & TRIBUNAL:

1. M.C. NANDAN, AGED 59 YEARS,
S/O. CHATHUKKUTTY, MADATHIPARAMBIL HOUSE,
HOUSE NO.22, BROTHAR MISSION ROAD, IRINJALAKUDA,
THRISSUR DISTRICT - 680 001.
2. THE DISCIPLINARY COMMITTEE,
THE TRICHUR URBAN CO-OPERATIVE BANK LTD.,
MISSION QUARTERS, THRISSUR,
REPRESENTED BY ITS CONVENER - 680 001.
3. THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM - 695 001.

R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER
R BY SRI.C.D.DILEEP,SC,TRICHUR URBAN CO-OPERATIVE BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE REPORT SUBMITTED BY THE SUBCOMMITTEE.
- EXT.P1(a) : THE ENGLISH TRANSLATION OF EXHIBIT P1.
- EXT.P2: : TRUE COPY OF THE LETTER DATED 06.02.2006 ISSUED TO THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES.
- EXT.P3 : TRUE COPY OF THE ENQUIRY REPORT DATED 27.10.2006.
- EXT.P4 : TRUE COPY OF THE RESOLUTION DATED 15.02.2008 PASSED BY THE MANAGING COMMITTEE.
- EXT.P4(a) : ENGLISH TRANSLATION OF EXHIBIT P4.
- EXT.P5 : TRUE COPY OF THE JUDGMENT DATED 17.06.2014 IN ARC 105/2011 ON THE FILES OF CO-OPERATIVE ARBITRATION COURT (NORTHERN), KOZHIKODE.
- EXT.P6 : TRUE COPY OF THE JUDGMENT DATED 23.06.2015 IN APPEAL NO.104/2014 ON THE FILES OF KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 21561 of 2015 (U)

Dated this the 30th day of July, 2015.

JUDGMENT

Heard the learned counsel for the petitioner, the learned Government Pleader, the learned counsel for the first respondent and the learned Standing Counsel for the second respondent, apart from perusing the record.

2. The first respondent, an employee of the petitioner Bank, was subjected to disciplinary proceedings and removed from service on 25.01.2007. Aggrieved, he filed a suit before the Arbitration Court, which dismissed the case through Ext.P5 award. Further aggrieved, the first respondent filed a statutory appeal before the third respondent. Without adverting to the merits of the matter, the Tribunal, in my view correctly, has decided to remand the matter to the primary adjudicatory forum, the Arbitration Court.

3. Before proceeding further, it is apposite to examine the reasons that have weighed with the appellate Tribunal in

remanding the matter. I, therefore, reproduce the last paragraph of Ext.P6 judgment, which contains the reasons:

"10. On a careful scrutiny of the award and the back file, it is evidently clear that court below did not consider any of the contentions raised by the Appellant in the plaint, in the light of evidence, law and binding precedents. Court below without discussing evidence and law in its correct perspective in the light of the contentions of Appellant and not taken a reasoned decision on each points and simply stated that he has not seen any infirmity in the enquiry, enquiry report, decisions of disciplinary sub committee and managing committee and accepted it and dismissed the case. An Appellate court cannot consider the legality and correctness of the award if the award lacks reasons for the conclusions and the decisions taken thereon. Considering the nature of order I proposed to pass in this case, I am not discussing the merit of the case. The award is illegal for the reasons stated above and is not sustainable in the eye of law. It warrants interference of this Tribunal in Appeal. This Tribunal can take a decision in the case after setting aside the award. But as per Section 82 of the Kerala Co-Operative Societies Act, the decision of this Tribunal is final. That will deny the right of aggrieved party to file an appeal. Therefore, I am of the view that interest of justice requires a remand of the case with direction to consider all the contentions raised by the Appellant in the light of evidence, law and binding precedents and to answer each point raised by the court judiciously and passing a speaking award. Therefore the Appeal is to allow, impugned award is to set aside and remand the case for disposal in accordance with law. Points 1 and 2 answered accordingly."

4. Initially, at the behest of the petitioner Bank, this Court on 17.07.2015 issued an interim suspension of Ext.P6. Today,

at the Bar, the learned counsel for the first respondent has submitted that the first respondent does not have any objection, if the very appellate Tribunal, the third respondent, is to decide the case on merits, dispensing with the need of remanding the matter. In other words, the learned counsel has expressly submitted that the writ petition may be allowed as prayed for.

5. Though the appellate Tribunal has observed in Ext.P6 judgment that it is in a position to decide the matter on merits, since it has the entire material to dispose it of; it has, however, decided in the interest of both the parties that any such decision at appellate stage may deprive either of the parties an opportunity of filing an appeal, for the judgment of the appellate Tribunal would be final in the statutory scheme.

6. At any rate, since the first respondent has conceded that the issue could be decided by the appellate Tribunal on re-appreciation of evidence, I do not see any substantive ground not to take note of the said submission made by the first respondent. I accordingly allow the writ petition.

Needless to observe that the third respondent, the appellate Tribunal, shall re-hear the matter on appreciation of the entire evidence and pass appropriate judgment thereon, as expeditiously as possible, preferably, within two months from the date of receipt of a copy of this judgment

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

