IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 25688 of 2010 (I)

PETITIONER :

JANAKI.K.A.,W/O.THANKAPPAN,
KADAPLACKAL, KATTAMKOTTIL, KALLOORKAD P.O.,
VIA MUVATTUPUZHA, ERNAKULAM DISTRICT.

BY ADVS.SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

RESPONDENT(S):
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1. THE KALLOORKAD FARMERS CO-OPERATIVE BANK LTD., NO.2605, KALLOORKAD P.O., VIA MUVATTUPUZHA, ERNAKULAM DISTRICT.

2. THE BOARD OF DIRECTORS, THE KALLOORKAD FARMERS CO-OPERATIVE BANK LTD., NO.2605, KALLOORKAD P.O., VIA MUVATTUPUZHA, ERNAKULAM DISTRICT.

3. ADDITIONAL REGISTRAR/SECRETARY, KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD, P.B.NO.85, KALA NIVAS, T.C.NO.27/156,157, CHINMAYA LANE, KUNNUMPURAM, NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM-1.

R1 & R2 BY ADVS. SRI.SOJAN MICHEAL
SMT.DHANYA P.ASHOKAN
R3 BY SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD
SRI.P.V.MOHANAN,SC,K.ST.CO.OP.EMP.PENSION BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.25688/2010

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ORDER NO.PB/P2/1319/EKM DATED 9/3/10

P2 COPY OF THE PROCEEDINGS NO.5/85-86 DATED 18/11/85.

P3 COPY OF THE PROCEEDINGS NO.6/85-86 DATED 3/12/85.

P4 COPY OF THE RELEVANT PAGES OF SERVICE BOOK OF THE PETITIONER.

P5 COPY OF THE ORDER NO.PB.PPO.652/EKM DATED 23/12/09

P6 COPY OF THE PAY IN SLIP DATED 4/7/05.

P7 COPY OF THE REPRESENTATION DATED 25/1/10 BEFORE R2

P8 COPY OF THE REPRESENTATION DATED 25/1/10 BEFORE R3.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

C.K. ABDUL REHIM, J.

W.P.(C)No.25688 of 2010

Dated this the 5th day of February, 2015

JUDGMENT

The petitioner joined service of the 1st respondent Bank on daily wage basis with effect from 01/11/1979. She was regularised in the service with effect from 01/11/1985 and her probation was declared with effect from 30/10/1986. The petitioner retired from service on 31/01/2009. Issue involved in this writ petition pertains to computation of monthly pension entitled to the petitioner under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994.

2. The 3rd respondent had issued Ext.P5 proceedings according sanction for payment of monthly pension to the petitioner by computing qualifying service of the petitioner as 192 months, commencing from 01/02/1993, which is the date of joining of the petitioner in the Contributory Provident Fund Scheme formed by the 1st respondent society under the provisions of the Kerala Co-operative

Societies Act and Rules framed thereunder. The petitioner claimed that she is entitled for pension by reckoning the qualifying service from 15/10/1984 onwards, which is the date of joining noted in Ext.P4 Service Book of the petitioner. It is contended that, the date of joining of the 'Contributory Provident Fund' shown as 01/02/1993 in Ext.P5, is contrary to facts, because the 1st respondent society had paid arrears of contribution to the 3rd respondent amounting to Rs.28,530/- as early as on 04/07/2005, as evidenced from Ext.P6. The said arrears pertains to the period from 01/11/1986 to 31/01/1993. Hence it is contended that the qualifying service ought to have been computed at least with effect from 01/11/1986. Even though the petitioner submitted Exts.P7 and P8 representations before the 2nd and 3rd respondents, the request for rectification of the pension payment order was rejected. Hence this writ petition is filed seeking direction to the 3rd respondent to re-compute the qualifying service of the petitioner for the purpose of payment of pension under the scheme, considering remittance of arrears made under Ext.P6.

3. In the counter affidavit filed by the 3rd respondent it is contended that, the petitioner had joined the 'Contributory Provident Fund' only from 01/02/1993. The 1st respondent Bank had remitted contributions for the said period on 04/07/2005 and the Board had resolved to sanction payment of eligible pension to the petitioner for the period from 01/02/1993 to 31/01/2009 (date of retirement). The arrears of pension for the above said period was also paid to the petitioner. It is contended that, as per the scheme the qualifying service can be computed only from the date of joining of the 'Contributory Provident Fund' by an employee. Since the petitioner had joined the 'Contributory Provident Fund' with effect from 01/02/1993, computation of an early date cannot be sustained. There is no provision in the scheme permitting payment of contribution with retrospective effect after joining the pension scheme and therefore the claim of the petitioner cannot be accepted.

4. What should be the qualifying service for the purpose of computation of pension is provided under clause 19 of the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994. (hereinafter referred to as the scheme). It provides that, qualifying service under the scheme in the case of an employee who was in the service of the society is the date of application of the scheme to the said society and the length of service commencing from date of joining of the 'Contributory Provident Fund'. It further provides that, the qualifying service shall be limited to the period for which the employer's contribution towards the Provident Fund has been fully paid by the society, with respect to the particular employee. The 3rd proviso to clause 19(1)(a) specifies that, if with respect to an employee on probation the Contributory Provident Fund contribution has not been remitted at the time of implementation of the scheme, such period of probation was also qualified for pension, if proportionate employer's contribution together with interest thereon has been credited to the

pension fund.

5. In a decision of this court in **Purushothaman v. Kerala State Co-operative Employee's Pension Board [2011 (3) KLT 250]** this court observed that, considering clause 19(1)(a) and the 1st proviso thereof the length of service commencing from the date of joining of 'Contributory Provident Fund' by an employee alone can be treated as service qualifying for pension. It is found therein that mere fact that the society had voluntarily paid the proportionate share of the employer's contribution to the pension fund in relation to any period during which the employee was under probation will not entitle the employee to contend that as stipulated in the 3rd proviso she is entitled to reckon the period during which she was on probation as qualifying service for the purpose of grant of pension, because the employee was not on probation as on the date on which the scheme was introduced.

6. Contention of the petitioner is that when the 1st respondent society had remitted contributions for the

period prior to date of joining of the 'Contributory Provident Fund' the 3rd respondent ought to have computed qualifying service with retrospective effect. Learned counsel for the petitioner contended that it was obligatory on the part of the 1st respondent society under Rule 58 of the Kerala Co-operative Society Rules to enroll the petitioner in the 'Contributory Pension Fund' with effect from the date of her joining service. Therefore it is contended that the petitioner could not be put to suffer if any default has been committed by the society in this regard. Further it is contended that the payment of arrears of the employer's contribution was made as early as in the year 2005, even prior to the date of retirement of the petitioner from service. The 3rd respondent had accepted such payment and kept the amount in the pension fund from 2005 onwards. Therefore the 3rd respondent is estopped from contending that the qualifying service will be counted only from 01/02/1993. Having been accepted payment of contribution they are estopped from raising any such objection, is the contention raised.

7. As observed above, payment of pension under the scheme is governed specifically by provisions contained in the scheme. The petitioner cannot make any claim for payment of pension, beyond what is permissible and contemplated under provisions of the scheme. Clause 19 (1)(a) of the scheme makes it clear that an employee will be entitled for payment of pension by reckoning his qualifying service commencing from the date of joining in the 'Contributory Provident Fund'. Therefore statutory obligation if any existed on the part of the 1st respondent and any failure to discharge such obligation, cannot be taken as a ground to claim benefits more than what is provided under the scheme. Since there is no dispute that the petitioner joined the 'Contributory Provident Fund' only with effect from 01/02/1993, it cannot be held that she is entitled to get the qualifying service reckoned for any period prior to the said date, going by clause 19 (1)(a). Admittedly the 3rd proviso of clause 19(1) (a) will not apply in the case at hand. Contention of the

petitioner is mainly based on remittance of contribution made by the 1st respondent for the period prior to 01/02/1993. Learned counsel contended that the 3rd respondent had accepted the payment as early as in the year 2005, even prior to retirement of the petitioner. Therefore the 3rd respondent is estopped from raising objection with respect to computation of the period for which contribution was already paid, is the contention. Learned standing counsel appearing for the 3rd respondent had pointed out that through Ext.P1 letter the Pension Board had intimated the petitioner that the qualifying service can be reckoned only from 01/02/1993, which is the date of joining the 'Contributory Provident Fund' and that there is no provisions permitting remittance of contribution with retrospective effect, after joining the pension scheme. Question remains as to whether any estoppel can be attributed against the Pension Board merely on the basis that the employer had remitted contribution for any period prior to the date of joining of the CPF. Merely because the Pension Board has not refunded such contribution , it cannot be contended that the Board can go beyond the provisions of the scheme to make payment of pension by computing the qualifying service beyond the stipulations contained in the scheme.

8. Learned counsel for the petitioner had placed reliance on a decision of this court in **Narayana Kuruppu v. Kerala State Co operative Employees Pension Board [2012(2) KLT 207]** wherein it is held that, if an employee was not eligible for a pension, it should have been made clear even while receiving the contributions and not after considerable period of time. It is a case where the Pension Board denied pension to the employee on the premise that the very appointment itself was not in accordance with law. This court found that the Pension Board is not entitled to arrive at any conclusion that the appointment made by the Registrar is improper or illegal. It is held that the Board cannot adjudicate on the issue as to whether the appointment made is legal or not. The situation cannot be equated in any manner with the facts of this case. There is nothing to indicate that the

petitioner had joined the CPF on any date prior to 01/02/1993 in order to make her eligible to reckon the qualifying service for the purpose of pension with effect from any date prior to 01/02/1993. Therefore no estoppel can be contended against the Pension Board on the basis that the employer had remitted contributions pertaining to any previous period.

9. Learned counsel for the petitioner placed reliance on the decision of **Kunju v. Kottayam Co operative Agricultural and Rural Development Bank Ltd. [2008 (4) KLT 682]** wherein it is held that the Pension Board has no power to fix or re-fix pay of a retired employee, which power primarily rests with the society who is the employee. But the dictum contained therein has no bearing on the issue agitated in the present writ petition. As already observed this court is of the opinion that there cannot be any estoppel found against the Pension Board since the statute restrain its power against computation of the qualifying service from any date prior to the date of joining of the 'Contributory Provident Fund'

by the employee. It remains well settled that no estoppel can be claimed against any statutory provisions.

10. Under the above mentioned circumstances, this court do not find any merit in the contentions raised. Consequently the writ petition fails and the same is hereby dismissed.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL