

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 22323 of 2015 (M)

PETITIONER : -

S. SHAJAHAN, AGED 50 YEARS,
S/O.SAINLABDEEN, SAJAD NIVAS,
EDANADU P.O., KOLLAM-691 571.

BY ADVS.SRI.DIPU.R
SRI.SANAL P.RAJ

RESPONDENTS : -

1. STATE OF KERALA,
BY AND THROUGH ITS PRINCIPAL SECRETARY,
DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
DEPARTMENT OF CO-OPERATION,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
STATUE, THIRUVANANTHAPURAM-695 001.
3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
CIVIL STATION, KOLLAM-691 013.
4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
CIVIL STATION, KOLLAM-691 013.

R1 -R 4 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

- EXT.P1 : TRUE COPY OF THE JUDGMENT IN OP NO.27006/2000 DATED 11/1/2001.
- EXT.P2 : TRUE COPY OF THE ORDER NO.A.1278/2010 DATED 13/10/2010.
- EXT.P2A : TRUE ENGLISH TRANSLATION OF EXT.P2.
- EXT.P3 : TRUE COPY OF THE ORDER NO.A.1425/2012 DATED 22/6/2012.
- EXT.P3A : TRUE ENGLISH TRANSLATION OF EXT.P3.
- EXT.P4 : TRUE COPY OF THE CIRCULAR NO.4/03/FIN DATED 1/1/2003.
- EXT.P5 : TRUE COPY OF THE CIRCULAR NO.EM(2) 7092 DATED 16/2/1999.
- EXT.P6 : TRUE COPY OF THE JUDGMENT DATED 29/5/2015 IN WPC NO.8565/2014.

RESPONDENTS' EXHIBITS : -

- EXHIBIT R3(a) : TRUE COPY OF THE REGULARIZATION ORDER OF 2nd RESPONDENT.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 22323 of 2015

Dated this the 16th day of November, 2015

JUDGMENT

The petitioner presently working as as Peon in the District Co-operative Bank seeks a direction to all the respondents, as the learned counsel puts it, that they should follow Exhibits P4 and P5 circulars concerning the encashment of 'Earned Leave'.

2. The third and fourth respondents having filed their statements took an objection that the writ petition is not maintainable.

3. The learned Government Pleader has submitted that the petitioner has already filed ARC No.34/2015 and that he ought to have sought a comprehensive relief before the Arbitration Court, which is competent to adjudicate all the issues concerning any service dispute.

4. In reply, the learned counsel for the petitioner has submitted that in ARC the petitioner has questioned only the wrong calculation of the length of his service. He has further submitted that in the present writ petition he seeks a direction to the respondent authorities to follow Exhibit P5 circular.

5. In the first place, the issue of Earned Leave or the

encashment thereof is a matter of service dispute; it is required to be adjudicated upon by the Arbitration Court in terms of Section 69, which is quite comprehensive in its scope. Second, the petitioner ought to have applied to his employer seeking a particular benefit, be it the encashment of Earned Leave, relying on Exhibit P5 circular, and in the event the employer has refused to accede to the petitioner's request, he could have had the necessary cause of action to approach the Arbitration Court invoking Section 69 of the Act.

6. In the present instance, I do not see any such effort as having been made by the petitioner. He has, in fact, rushed to the Court seeking a direction to the respondents 2 to 4, who in my considered view have nothing to do with the issue unless there is a rejection of petitioner's request by his employer.

In the facts and circumstances, this Court dismisses the writ petition, leaving it open for the petitioner to take appropriate steps, if necessary, by approaching his employer for the relief of leave encashment.

DAMA SESHADRI NAIDU
JUDGE

DMR/-