IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA,1937

WP(C).No. 26943 of 2013 (P)

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PETITIONERS : -

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1. UNNIKRISHNA PILLAI R., S/o RAGHAVAKURUP R.,
   ANUPAM,VETTIYARA P.O., NAVAIKULAM,
   THIRUVANANTHAPURAM - 695 603,
   (SENIOR SUPERVISOR (RETIRED),
   THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD No. T 316, KILIMANOOR - 695 601).

2. K. DEVADAS, S/o KARUNAKARAN V.,
   DEVASAILAM, NJEKKAD, VADASSERIKONAM P.O.,
   VARKALA, THIRUVANANTHAPURAM - 695 143,
   (JUNIOR SUPERVISOR (RETIRED),
   THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

3. N. THULASEEDHARAN NAIR, S/o E. NEELAKANDA PILLAI,
   DARSANA, KONCHIRA P.O., VIA VEMBAYAM,
   THIRUVANANTHAPURAM - 695 615 (SENIOR CLERK) RETIRED,
   THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD No. T. 316, KILIMANOOR - 695 601).

4. SREEKUMARI K., W/o PURUSHOTHAMAN PILLAI,
   PRIYACOTTAGE, VETTIYARA P.O., NAVAIKULAM,
   THIRUVANANTHAPURAM - 695 603 (JUNIOR SUPERVISOR (RETIRED),
   THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

5. M. SULOCHANA, W/o SUDHAKARAN A., THEJAS,
   VIRUNTHIYODE, ATTINGAL P.O., THIRUVANANTHAPURAM,
   (JUNIOR SUPERVISOR (RETIRED),
   THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

6. PUSHPAKUMARI A., W/o KRISHNANKUTTY NAIR,
   PRAYAGAPULIPPARA, PANGODE P.O., KALLARA,
   THIRUVANANTHAPURAM (JUNIOR SUPERVISOR (RETIRED),
   THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

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7. M. GOPI PILLAI, S/o MADHAVAN PILLAI,
PANACHAYIL VEEDU, KADAMBANATTUKONAM,
MALAYAMADOM, KILIMANOOR P.O.,
THIRUVANANTHAPURAM - 695 601 (HIGHER GRADE ATTENDER (RETIRED), THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. NO. T.316, KILIMANOOR - 695 601).

8. C. PRABHAVATHI AMMA, W/o RAJACHANDRAN PILLAI,
MANGALASSERY VEEDU, KARAVARAM, THOTTAKKADU P.O.,
THIRUVANANTHAPURAM (SENIOR SUPERVISOR (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

9. A. BALACHANDRAN, S/o APPUKUTTAN NAIR,
SARASWATHI SADANAM, VAMANAPURAM P.O,
THIRUVANANTHAPURAM (SECRETARY (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

10. B.BALACHANDRAN NAIR, S/o BALAKRISHNA PILLAI,
KURAKKANI HOUSE, MANCHA P.O., NEDUMANGADU,
THIRUVANANTHAPURAM 695541 (JUNIOR SUPERVISOR (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

11. R. SASIDHARAN NAIR, S/o RAGHAVANNAIR, ASWATHY,
PAKALKURI P.O., PALLICKAL,
THIRUVANANTHAPURAM 695 604 (SENIOR SUPERVISOR (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

12. K.S. PADMINI DEVI, W/o VIJAYAN UNNITHAN,
PANAPPALLIL VEEDU, PALLICKAL KILIMANOOR P.O., PALLICKAL,
THIRUVANANTHAPURAM 695 604 (JUNIOR SUPERVISOR (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

13. R. PREMAJA, W/o LEELAKRISHNAN R., KALIYILIL VEEDU,
CHOOTTAYIL, KILIMANOOR P.O., THIRUVANANTHAPURAM - 695 601,
(HIGHER GRADE TYPIST (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

14. A. SOBHANA AMMA, W/o THULASEEDHARAN KEERTHI,
PALACKAVU MADAM, PAPPALA, KILIMANOOR P.O.,
THIRUVANANTHAPURAM 695 601 (SECRETARY (RETIRED),
THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. No. T.316, KILIMANOOR - 695 601).

BY ADVS.SRI.S.SUBHASH CHAND
SRI.SHINDO VARGHESE

WP(C).No. 26943 of 2013 (P)
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RESPONDENTS : -
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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   CO-OPERATION (B) DEPARTMENT,
   GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM - 695 001.

2. THE KERALA CO-OPERATIVE EMPLOYEES PENSION BOARD,
   TC No. 27/156, 157, KALA NIVAS, CHINMAYALANE,
   NEAR AYURVEDA COLLEGE,
   THIRUVANANTHAPURAM - 695 001, REPRESENTED BY ITS SECRETARY.

3. EMPLOYEES PROVIDENT FUND ORGANIZATION
   (MINISTRY OF LABOUR), GOVERNMENT OF INDIA,
   REGIONAL OFFICE, KERALA, BHAVISHYA NIDHI BHAVAN,
   PATTOM, THIRUVANANTHAPURAM - 695 004,
   REPRESENTED BY THE REGIONAL PROVIDENT FUND COMMISSIONER.

4. THE KILIMANOOR CO-OPERATIVE AGRICULTURAL & RURAL
   DEVELOPMENT BANK LTD NO. T.316, KILIMANOOR - 695 601,
   REPRESENTED BY ITS SECRETARY.

5. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM - 695 001.

R2 BY ADV.SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOARD
R3 BY ADV.SMT.T.N.GIRIJA, SC, EPF ORGANISATION
BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-12-2015, ALONG WITH WPC 15294/2013. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26943 of 2013 (P)

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**APPENDIX**

PETITIONERS' EXHIBITS :

EXHIBIT P1 : TRUE COPY OF THE NOTIFICATION DATED 19.6.2006 ISSUED BY RESPONDENT No.1.

EXHIBIT P2 : TRUE COPY OF THE NOTIFICATION DATED 12.7.2006 ISSUED BY RESPONDENT No.1.

EXHIBIT P3 : TRUE COPY OF THE CIRCULAR DATED 7.11.2008 ISSUED BY RESPONDENT No.3.

EXHIBIT P4 : TRUE COPY OF THE CIRCULAR BEARING No.1/09 DATED 22.1.2009 ISSUED BY RESPONDENT No.2.

EXHIBIT P5 : TRUE COPY OF THE COMMUNICATION DATED 23.12.2008 ISSUED BY RESPONDENT No.3 TO RESPONDENT No.4.

EXHIBIT P6 : TRUE COPY OF THE RESOLUTION BEARING No.VII DATED 28.10.06 ADOPTED BY THE BOARD OF DIRECTORS OF RESPONDENT NO.4 BANK.

EXHIBIT P7 : TRUE COPY OF THE DEMAND NOTICE DATED 15.6.2011 ISSUED BY RESPONDENT No.2 TO RESPONDENT No.4 SEEKING REMITTANCE OF THE AMOUNT IN RESPECT OF PETITIONER No.1.

EXHIBIT P8 : TRUE COPY OF THE APPLICATION DATED 19.7.2011 SUBMITTED UNDER THE RIGHT TO INFORMATION ACT, 2005.

EXHIBIT P9 : TRUE COPY OF THE REPLY DATED 19.8.2011 ISSUED BY PUBLIC INFORMATION OFFICER IN THE OFFICE OF RESPONDENT No.2.

EXHIBIT P10: TRUE COPY OF THE COMMON JUDGMENT DATED 19.11.2012 PASSED BY THIS HONOURABLE COURT IN WP (C) Nos.27949/2011(P) AND 28086/2011 (I).

EXHIBIT P11: TRUE COPY OF THE COMMON ORDER DATED 15.7.2013 PASSED BY THIS HONOURABLE COURT IN RP Nos. 215/2013 AND 214/2013.

EXHIBIT P12: TRUE COPY OF THE ORDER BEARING No. E.M(2) 34634/2013 DATED 23.9.2013 PASSED BY RESPONDENT No.5.

EXHIBIT P12(a) : TRUE COPY OF THE PAY-IN-SLIP DATED 2.1.2013.

EXHIBIT P12(b): TRUE COPY OF THE COMMUNICATION DATED 2.1.2013 ISSUED BY RESPONENT No.4.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

**DAMA SESHADRI NAIDU, J.**

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**W.P.(c) No. 26943 of 2013**
**&**
**W.P. (c) No. 15294 of 2013**

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Dated this the 16st day of December, 2015

JUDGMENT

The petitioners in W.P.(C) No. 15294 of 2013, 18 in number, have retired from the service of the 4th respondent Bank on different dates. Initially they approached this Court and invited Ext.P12 judgment, through which this Court directed the employer Bank to pay its contribution, and the Pension Board to fix the monthly pension and pay the arrears along interest.

2. Pursuant to Ext.P12, the Pension Board passed Ext.P13 to P30 orders fixing the petitioners' monthly pension. The pension of the petitioners 1 to 10 was granted with effect from 01.02.2013; that of the petitioner No. 11, from 01.05.2011; of the petitioners 12 to 16, from 01.02.2013; and of the petitioners 17 and 18, from 01.04.2012. The petitioners, however, have filed the present writ petition contending that the pension, as well as the other related aspects, was fixed only prospectively.

3. While the writ petition was pending, the Pension Board sought the review of Ext.P12 judgment and invited Ext.P11 order, through which this Court directed the Registrar of the Co-operative Societies to adjudicate upon the aspect of payment of interest to be paid to the petitioners. In compliance with Ext.P11 order of this Court in the review, the Registrar passed an order denying interest and arrears—instead of interest on arrears—to the petitioners.

4. 14 out of 18 petitioners in W.P.(C) No. 15294 of 2013 filed W.P.(C) No. 26943 of 2013 impugning Ext.P12 order of the Registrar, through which they were denied interest and arrears.

5. The learned counsel for the petitioners has submitted that this Court through Exhibit P11 order in review of Exhibit P10 judgment has concluded that the petitioners are entitled to not only arrears of pension, but also interest thereof. According to him, the only issue delegated to the Registrar of Societies is, who should contribute the interest for the delay that has occurred?

6. In elaboration of his submissions, the learned counsel has submitted that the Registrar has gone beyond the brief

delegated to him by this Court and rendered Exhibit P12 order to the effect that there is no provision in the Scheme for paying interest and the arrears of pension.

7. The learned counsel has laid emphasis on the fact that even the Registrar has found that the employer Bank was guilty of laches in remitting the contribution. It is the singular contention of the learned counsel for the petitioners that even in the absence of any statutory provision, as a matter of common law remedy, the petitioners are entitled to interest on delayed payment, as has been decided by the Honourable Supreme Court as well as this Court in a plethora of precedents.

8. In that context, the learned counsel has placed reliance on **Krishnan Namboothiri T.V. v. Travancore Devaswom Board, Tvm and Others**[1], **S.K. Dua v. State of Haryana and Another**[2], **Union of India and Others v. P. Aboobacker and Another**[3], **Thulasi Devi B. v. Kerala State Coop. Employees' Pension Board and Others,**[4] **Sambasivan Nair T.R. v. Kerala State Co-operative**

1 2015 (1) KHC 143
2 2008 (3) KLT 58
3 ILR 2011 (4) Ker. 228
4 2008 (4) KHC 498

**Employees' Pension Board and Another,**[5] and an unreported judgment of a learned Division Bench of this Court in Writ Appeal No.1840/2014.

9. In W.P. (C) No. 15294/2013, the respondent Bank was served with notice, yet it has not chosen to appear. In W.P. (C) No.26943/2013, the same Bank is the respondent. Though notice has not been served on the Bank in that particular writ petition, the fact remains that the writ petition was filed by fourteen out of eighteen petitioners in W.P. (C) No.15294/2013. And further, W.P. (C) No. 26943/2013 is only about the subsequent developments arising out of the cause of action presented in W.P.(C) No.15294/2013. Thus, the issues in both the writ petitions involving the same parties are interconnected and require common adjudication.

10. In the absence of any representation for the respondent Bank, this Court is unable to appreciate its stand, if any, on the issue.

11. The learned Standing Counsel for the Pension Board has submitted that no laches or delay can be attributed to the Pension Board for it has started disbursing the pension as soon

5 2012 (3) KHC 518

as it has received the entire contribution.

12. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record.

13. Indeed, this Court initially rendered Exhibit P10 judgment with the following directions:

> "In the facts and circumstances, the writ petition is disposed of directing the 4th respondent bank to remit the balance amount of employer's share of contribution along with interest to the pension board within a period of one month from the date of receipt of a copy of this judgment, if not remitted till date. There will be a further direction to the 2nd respondent to sanction and disburse monthly pension due to the petitioners along with arrears and interest within a period of two months after the remittance."

14. Later, in the light of the Review Petition filed by the Pension Board, this Court reviewed Exhibit P10 judgment and rendered Exhibit P11 order. The Court has opined that the question of entitlement of the petitioners to get interest will have to be re-agitated. The Court, while granting the relief against both the Bank and the Pension Board, did not consider the issues such as the writ petitioners' entitlement to interest on the arrears of pension, their very eligibility to get interest,

and the fixing of the responsibility as regards the delayed disbursement of pension. In essence, the issue as regards who should pay the interest.

15. In the said factual backdrop, The Court directed the Registrar of Co-operative Societies to decide the above question after hearing the writ petitioners, the Pension Board, and the Bank.

16. In compliance with Exhibit P11 order, the Registrar of Co-operative Societies rendered Exhibit P12 order dated 23.09.2013. He has initially held that the respondent Bank did not pay its contribution to the pension fund on time, and it led to litigation. He has, however, proceeded further and observed that there is no provision in the Kerala Co-operative Employees' Pension Scheme for paying 'interest and arrears.' According to the said authority, the Pension Board is bound by the Rules of the Scheme, and it has no authority to pay 'interest or arrears.'

17. Without cavil, I may observe that this Court in Exhibit P10 judgment has directed the Pension Board to disburse monthly pension due to the petitioners along with arrears and interest. Later, at the behest of the Pension Board, it reviewed

its earlier judgment and issued Exhibit P11 order to the effect that the question whether the writ petitioners are entitled to interest on arrears of pension will have to be decided by a competent authority. Thus, evidently what was required to be decided is the entitlement of interest on arrears, but not interest and arrears. And this Court, accordingly, has directed the Registrar of Co-operative Societies to decide only the issue of petitioners' entitlement to interest on arrears.

18. In my considered view, the Registrar ought to have decided the principal aspects of the petitioners' entitlement to interest on arrears and who should pay, but not any other aspect of the dispute. For all other issues have stood concluded. At any rate, the Registrar's observation that the respondent Bank is guilty of not paying its contribution on time has not been contradicted by the respondent Bank; it has neither chosen to challenge the said finding before an appropriate forum, nor has it appeared before this Court to defend its interest.

19. In **S. K. Dua's** case *(supra)*, the Honourable Supreme Court has held that even in the absence of Statutory Rules, Administrative Instructions or Guidelines, an employee

can claim interest under Part III of the Constitution - especially in terms of Arts.14, 19 and 21 of the Constitution.

20. Indeed, delaying pension and gratuity is in negation of the solemn statutory scheme. It is the duty of the appointing and controlling authorities to see that the pension and gratuity of every retiring personnel are sanctioned and made payable by retirement. If not, the consequence would be disastrous. Survival of the pensioner itself would become a challenge. Not only he had to run from pillar to post but also to fight litigation.

21. Recently this Court, per me, in **Krishnan Namboothri** (supra), after taking into account both the previous precedents, has held that even in the absence of any statutory provision, if the delay could not be attributed to the petitioner, he should be entitled to reasonable interest on delayed payment. In fact, this Court has granted interest at 6% per annum on delayed payment of gratuity.

22. Now, the question that arises in the wake of the established judicial precedents is, who should pay the interest? The learned Standing Counsel has submitted that if the Pension Board is directed to pay and recover the same from

the Bank, it leads to a lot of delays and procedural hazards which the Pension Board can ill afford. In that context, it is pertinent to examine certain judicial precedents of this Court.

23. This Court in **Thulasi Devi's** case *(supra)* has held that there is no justification in delaying the payment of family pension on the grounds of deficiency of funds with the employer. As a result, the Court ordered the Pension Board to release the family pension to the petitioner within one month. It has further ordered the employer to pay the arrears in two months. The Court, in fact, has further empowered the Pension Board to recover the dues through the process of revenue recovery, if the employer fails to pay.

24. A learned Division Bench of this Court in **Sambasivan Nair** (supra) has, first, acknowledged that the Pension Board has the remedy of recovering the dues from the employer Bank through the process of revenue recovery. It has, then, in the interest of the hapless pensioners, gone a step further and ordered the Registrar of Co-operative Societies to issue a direction to all the Societies to make their contributions on time. The Societies' failing, the Registrar is required to disqualify the Secretary or the Board of Directors

for its failure and impose a personal penalty or cost on the erring persons.

25. The observation of the learned Division Bench is to the effect that the Secretary or the Board of Directors should be surcharged for belated remittance of contribution to the Pension Board. So emphatic is the observation that under no circumstances should the default or penal interest be charged by the Pension Board on the Societies' account. Further, a deterrent rate of interest at 24% per annum, according to their Lordships, is not compensatory but is provided only as a penal rate to ensure that delay does not happen.

26. **Sambasivan Nair T.R.** (supra) further observes that if a Society fails to make a contribution, the question to be considered is whether that is a sign of sickness and ultimate insolvency leading to winding up, which is a matter to be investigated in the case of defaulting Societies.

27. In the facts and circumstances, given the authoritative pronouncements of the Honourable Supreme Court as well as this Court, it is beyond dispute that the petitioners are entitled to not only arrears of pension, as has been held in Exhibits P10 and P11 judgments, but also to

interest as has been held in **S.K. Dua** (supra) and other decisions.

28. Since the Pension Board has an efficacious method of recovering the amounts either by taking recourse to revenue recovery or even seeking the supersession of the Managing Committee of the Society as has been declared by this Court in **Sambasivan Nair T.R** (supra), it should pay to the petitioners the pension arrears along with 6% interest and recover the same from the respondent Bank in the manner legally permissible.

Needless to observe that the respondent Board shall complete the entire exercise of paying the arrears of pension along with interest as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

**DAMA SESHADRI NAIDU**
**JUDGE**

rv/DMR/-