

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 31295 of 2014 (J)

PETITIONER:

EASWARI,
ACCOUNTANT (RETIRED),
PALLURUTHY MANDALAM SERVICE CO-OPERATIVE BANK LTD NO.65,
PALLURUTHY, RESIDING AT HOUSE NO.IV/760, NORTH CHERLAI
ERNAKULAM.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOAR,
P.B NO.85, KALA NIWAS, T.C NO.27/156,
157, CHINMAYA LANE, KUNNUMPURAM,
NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM,
PIN: 695 001,
REPRESENTED BY ADDITIONAL REGISTRAR/SECRETARY.
2. THE BOARD OF MANAGEMENT OF THE KERALA STATE CO-OPERATIVE
EMPLOYEES PENSION BOARD, P.B.NO.85, KALA NIWAS,
T.C NO.27/156, 157, CHINMAYA LANE,
KUNNUMPURAM, NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM
PIN: 695 001, REPRESENTED BY ITS CHAIRMAN.

R1-R2 BY ADV. SRI.K.R.SUNIL,SC,CO-OP. EMP. PENSION BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

P1: TRUE PHOTOCOPY OF THE ORDER SANCTIONING PENSION VIDE NO.PPO 627/EKM DATED 19/9/2009.

P2:TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 21/10/2009.

P3:TRUE PHOTOCOPY OF THE DIRECTION PB/P2/627/EKM DATED 11/5/2010.

P4:TRUE PHOTOCOPY OF THE STATEMENT FILED BY THE FIRST RESPONDENT DATED 19/6/2013.

P5: TRUE PHOTOCOPY OF THE MEMO DATED 3/7/2013 FILED BY THE FIRST RESPONDENT ALONG WITH STATEMENT.

P6:TRUE PHOTOCOPY OF THE JUDGMENT IN WPC 20442/2010 DATED 9/7/2013.

P7: TRUE PHOTOCOPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER DATED 21/10/2013.

P8: TRUE PHOTOCOPY OF THE JUDGMENT IN CCC NO.457/2014 DATED 17/6/2014.

P9:TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT VIDE NO.PB/PPO/627 EKM DATED 11/6/2014.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

'CR'

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 31295 of 2014

Dated this the 17th day of September, 2015.

JUDGMENT

This is, as has been conceded by the learned Standing Counsel, the third round of litigation. The petitioner retired from service seven years ago, but still has been pursuing judicial remedies to get her full pension.

2. The facts in brief are that the petitioner joined the service of the Cochin Shipyard Employees Consumer Co-Operative Society on 01.06.1987; later, after getting relieved from the said society, she joined another society on 28.01.1999, without any break in service, however. Both the employers being the members of the Pension Scheme, they have contributed to the pension fund all through as regards the petitioner. Eventually, the petitioner retired from service on 31.12.2008.

3. Initially, the first respondent Pension Board, through Ext.P1, sanctioned the pension to the petitioner reckoning the qualifying

service as 203 months. In reply, the petitioner submitted Ext.P2 representation to the first respondent contending that the total service was 259 months instead of 203 months. Yet again, the first respondent Board issued a further reply in Ext.P3 maintaining its position that the total period would come to only 203 months.

4. Aggrieved, the petitioner filed W.P.(C) No. 20422 of 2010 in which the respondent Board filed Ext.P4 statement. As the Board did not dispute in its statement the petitioner's length of service, this Court, though Ext.P6 judgment, directed the respondent Board to recalculate the pension taking into account the petitioner's service from 01.06.1987 to 28.01.1991; that is, the service under the previous employer as well.

5. In compliance with Ext.P6 judgment, the respondent Board once again issued Ext.P7 notice to the petitioner insisting that the petitioner should ensure that the previous employer submitted all her service records to the Pension Board to enable it to reckon the previous period. At this juncture, contending that Ext.P7 was in violation of Ext.P6 judgment, the petitioner initiated contempt proceedings in C.C. No. 457 of 2014. Presumably, to ward off the

contempt proceedings, the respondent Board issued Ext.P9 payment advice. It can, thus, be gathered from Ext.P9 that the respondent Board accepted the petitioner's service under the previous employer, and actually took that into account. This Court having been satisfied that the Board had complied with Ext.P6 judgment closed the contempt case.

6. In Ext.P9 order the respondent Board re-quantified the pension payable to the petitioner. As can be seen, the Board revised the pension from ₹ 3,099 to ₹ 5,595 and agreed to pay the arrears of pension from 01.08.2013 to 30.06.2014. Aggrieved, the petitioner, yet again, approached this Court by filing the present writ petition.

7. In the above factual backdrop, as to the period of qualifying service, the learned counsel for the petitioner has submitted that at no point in time has there been any dispute, for the respondent Board has accepted the petitioner's service under both the employers. According to him, showing 203 months instead of 259 months is only a matter of mathematical mistake committed by the respondent Board. The Board is not justified, contends the learned counsel, in confining the arrears of pension to the period from 01.08.2013,

instead of from 01.09.2009. On both counts, according to the learned counsel, the action of the respondent Board is illegal and Ext.P9 cannot be sustained.

8. Per contra, the learned Standing Counsel has submitted that the respondent Board has reckoned the total service of the petitioner as 247 months, but not as 203 months as had been projected by the petitioner. He has also submitted that since the petitioner, after joining the new employer, was under probation for 12 months from 28.01.1991 to 28.01.1992, the respondent Board rightly omitted that period from the length of service. As a result, the total service, according to the learned Standing Counsel, comes to 247 months.

9. As regards the arrears of pension to be paid on account of the revision of the qualifying period, the learned Standing Counsel would submit that it was made applicable from 01.08.2013 in the light of Exhibit P6 judgment. According to him, it has to be paid only prospectively as per Ext.P6 judgment. In the alternative, he has also submitted that the present employer withheld an amount of ₹8,380/- and paid it only after Ext.P6 judgment.

10. According to the learned Standing Counsel, the Pension

Board could pay the pension drawing from the interest accrued on the corpus. If there is any delay in contribution, the revised pension could be paid only from the date of actual contribution, belated as it was.

11. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Board, apart from perusing the record.

12. In the present writ petition, two issues are required to be resolved: (1) Whether the first respondent Board has reckoned the period of the petitioner's service correctly? (2) Whether the first respondent Board is justified in paying the arrears of pension from 01.08.2013 instead of from 01.09.2009?

13. Insofar as the first issue is concerned, it does not detain us for long. It is the singular contention of the learned counsel for the petitioner that the respondent Board, having admitted the petitioner's length of service, committed an arithmetic error in calculating the actual period. On the other hand, the learned Standing Counsel has also contended that there is no arithmetic error, but the period the petitioner was under probation stood excluded from reckoning, thereby resulting in the discrepancy, if it were to be called one.

14. Indeed, as per the calculation of the petitioner, the total length of service comes to 259 months. The first respondent Board has taken into account 247 months. The defense offered by the respondent Board is that the petitioner under the second employer underwent probation from 28.01.1991 to 28.01.1992. As can be seen from the record, when the petitioner joined the second employer, the contributory provident fund scheme was in force. The length of service would be reckoned only from the date of the employee joining the said scheme.

15. In this case, it is not in dispute that the petitioner while under probation did not opt to join the scheme. She joined the contributory provident fund scheme only on 01.02.1992. Accordingly, in my considered view, the action of the first respondent Board in reckoning the length of service of the petitioner as 247 months, after excluding the period of probation—12 months—cannot be found fault with.

16. Concerning the second issue, there is an element of controversy. The defense on the part of the respondent Board is two-fold: that the revised pension was to be paid prospectively only from

01.08.2013. It is said to be due to the fact that the revision of pension was based on Ext.P6 judgment. In the alternative, the Board contends that the second employer paid the contribution after Ext.P6 judgment; that is, in 2013.

17. The first contention cannot be countenanced for the simple reason that a judicial directive, especially a judgment of this Court, cannot be subjected to the concept of prospectivity or retroactivity, as the case may be. A judgment of a Court, in fact, judicially declares what has been in existence all along either as a matter of a pure question of law or fact. Thus, the issue that has been in existence all along is brought out explicitly removing all the clouds of controversy hovering over it. As such, the concept of prospectivity or retroactivity as in the case of the statutes has no application.

18. The alternative plea of the Board is that the second employer contributed the balance fund only after the direction of this Court in Ext.P6 judgment. The revision, as per the Board, could take place only on the basis and from the date of the actual payment of the contribution.

19. It has been the persistent submission of the learned

Standing Counsel that the Board could pay, as a welfare measure of the State, the pension to the retired employee on the strength of the accumulated interest on the corpus contributed by the employer. In this case, since the amount was belatedly contributed, there was no occasion for the respondent Board to earn any interest so that the benefit could be passed on to the retired employee.

20. Attractive as the submission of the learned Standing Counsel appears to be, on a closer scrutiny, it appears to me to be fallacious. Even when the fund was lying with the employer, it was lying in an account earning interest. In the course of time, the entire amount must have been transferred to the respondent Board, along with accumulated interest.

21. It is, indeed, not the case of the respondent Board that there was any notice of demand from the Board, and still the employer committed default. In that event, in terms of clause 38 or 39 of the Kerala Co-Operative Societies Employees Self Financing Pension Scheme, 1994, the respondent Board could have been in a position to collect penal interest. In the present instance, I do not see any such demand having emanated from the respondent Board.

22. Thus, in a conspectus, it could be said that the employer, though paid belatedly, paid the amounts along with accrued interest. As such, I do not see any justification for the Board's paying the revised pension to the petitioner only prospectively, instead of from the date of his retirement.

23. In the facts and circumstances, this Court holds that the quantum of the revised pension as has been calculated by the respondent Board cannot be interfered with. Nevertheless, this Court having found that the prospective disbursement of the revised pension is unsustainable, it further directs the respondent Board to pay the revised pension at the earliest with effect from 01.09.2009, the date of retirement of the petitioner.

With the above observation, this writ petition is disposed of. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

The date mentioned in the first line of page No.4, 11th line of page No.5 and 11th line of page No.9 of the judgment dated 17.09.2015 in W.P. (C) No. 31295/2014 is corrected as "01.01.2009" instead of "01.09.2009" as per order dated 02.11.2015 in I.A. No. 15705/2015 in W.P.(C) No. 31295/2014.

sd/- Registrar (Judicial).

