

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 36209 of 2009 (U)

PETITIONER :

**THE KERALA STATE CO-OPERATIVE PENSION BOARD
REPRESENTED BY ITS SECRETARY/ADDL.REGISTRAR M.M.JACOB,
KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD,
P.B.NO.85, CHINMAYA LANE, KUNNAMPURAM,
THIRUVANANTHAPURAM.**

BY ADV. SRI.K.R.SUNIL

RESPONDENT(S) :

- 1. P. SANTHAKUMARI AMMA
KOTTAZHAKATHU VEEDU, POOTHAKULAM P.O.**
- 2. SECRETARY TO GOVERNMENT
CO-OPERATION DEPARTMENT, THIRUVANANTHAPURAM.**
- 3. THE SECRETARY,
AYIROOR VILLAGE SERVICE CO-OPERATIVE BANK LTD. NO.4267,
ELAKAMON P.O., THIRUVANANTHAPURAM.**
- 4. THE KERALA LOKA AYUKTA
REPRESENTED BY ITS SECRETARY, OFFICE OF THE LOKA AYUKTA
THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.V.BABY
BY ADV. SRI.R.KIRAN
R4 BY ADV. SMT.RENU D.P., SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015,
ALONG WITH WPC NO. 6356/2011, THE COURT ON 18-09-2015 DELIVERED
THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE COMPLAINT NO. 648/2008.

EXT.P2 COPY OF THE COUNTER AFFIDAVIT.

EXT.P3 COPY OF THE JUDGMENT IN COMPLAINT NO. 648/2008 DATED
9.9.2009.

EXT.P4 COPY OF THE PROCEEDINGS DATED 3.12.2009.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

ANU SIVARAMAN, J.

= = = = =

**W.P.(C).Nos.36209 of 2009 &
6356 of 2011**

= = = = =

Dated this the 18th day of September, 2015

JUDGMENT

W.P.(C).No.36209 of 2009 is filed by the Kerala State Co-operative Employees Pension Board challenging Ext.P3 order of the Kerala Lok Ayukta and Ext.P4 show cause notice issued against the petitioner. Ext.P3 is under challenge on the ground that the Lok Ayukta has no jurisdiction to pass orders directing payment of pension and the order is therefore illegal and void. The 1st respondent in this writ petition has filed W.P.(C).No.6356 of 2011 seeking implementation of the order of the Lok Ayukta as also challenging Ext.P7 order of the Pension Board limiting the qualifying service of the petitioner's late husband for family pension from August, 1993.

2. The petitioner in W.P.(C).No.6356 of 2011 is the widow of late R.Sundaresan Pillai, an employee of the Aiyroor village Service Co-operative Society who died in harness on 30.07.2005 while working as salesman. He had been appointed on 01.11.1979 and his services regularised by the Joint Registrar

w.e.f. 24.04.1980 by Ext.P1 order dated 20.03.1997. It is stated in the writ petition that the deceased employee was admitted to the contributory provident fund w.e.f 24.04.1980. He was also a member of the self financing pension scheme introduced by Section 80A of the Kerala Co-operative Societies Act. The petitioner is entitled to receive family pension from the board under the provisions of this scheme. After the order of the Joint Registrar according sanction for regularisation of the services of the employee was issued, the provident fund contribution of Rs.12,292/- for the period from 24.04.1980 to 28.02.1998 was remitted by the society as per Exts.P2 and P2(a). Thereafter, the pension board had, by Ext.P3 demand notice dated 14.11.2006 directed the society to pay an amount of Rs.69,519/- towards arrears of employer's contribution. This was paid by the employer. Thereafter, the pension board issued orders sanctioning family pension reckoning the period from 02.08.1993 to 30.07.2005 as qualifying service. The contention of the board was that in the pension docket forwarded by the society, it was stated that the employee had been enrolled as a member of the

provident fund only w.e.f. 02.08.1993. The petitioner claims that her husband had been admitted to membership in the provident fund w.e.f. 24.04.1980 and all arrears of contribution had been paid in full. In the above circumstances, it is submitted that the refusal to reckon his full qualifying service is illegal and unsustainable.

3. Heard Sri.K.R.Sunil, learned counsel appearing for the Pension Board, Sri.P.V.Baby, learned counsel appearing for the petitioner in W.P.(C).No.6356 of 2011, Smt.Renu D.P., learned counsel appearing for the Lok Ayukta as well as the learned Government Pleader appearing for the 2nd respondent in W.P.(C). No.36209 of 2009. With regard to jurisdiction, the contention raised by the Pension Board is to the effect that the Lok Ayukta cannot issue positive directions to respondents appearing before it. The power of the Lok Ayukta is only to make a report and to submit the same before the Government. Section 12 of the Kerala Lok Ayukta Act, 1999 reads as follows:-

"12. Reports of Lok Ayukta etc:-(1) If, after investigation of any action in respect of which a complaint involving grievance has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied

that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lok Ayukta or an Upa-Lok Ayukta shall, by a report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time, as may be specified in the report and also intimate the complainant about its having made the report.

(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated, as the case may be, to the Lok Ayukta or the Upa-Lok Ayukta the action taken on the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that such allegation is substantiated, either wholly or partly, he shall, by report in writing, communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority and also intimate the complainant about its having made the report.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and, within three months of the date of receipt of the report, intimate or cause to be intimated to the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, the action taken or proposed to be taken on the basis of the report.

(5) If the Lok Ayukta or the Upa-Lok Ayukta is satisfied with the action taken or proposed to be taken on his

recommendations or findings referred to in sub-sections (1) and (3), he shall close the case, under intimation to the complainant, the public servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant.

(6) The Lok Ayukta shall present annually a consolidated report on the performance of his functions as well as the functions of the Upa-Lok Ayuktas, to the Governor.

(7) On receipt of the special report under sub-section (5) or the annual report under sub-section (6), the Governor shall cause a copy thereof, together with an explanatory memorandum, to be laid before the Legislative Assembly.

(8) The Lok Ayukta or an Upa-Lok Ayukta may, at his discretion, make available, from time to time, the substance of cases closed or otherwise disposed of by him which may appear to him to be of general, public, academic or professional interest, in such manner and to such persons, as he may deem appropriate."

4. It is submitted by the learned Standing Counsel for the Pension Board that this Court has considered the scope of the power of the Lok Ayukta and has held that the Lok Ayukta can only submit reports and is not empowered to pass orders under Section 12 of the Act. He brought to my notice the decision of this Court in **George v. Saralakumari** (2007 (4) KLT 924) in

support of his contention. A decision of a Division Bench of this Court in **State of Kerala v. Bernard** (2002 (3) KLT 254) which was relied in **George v. Saralakumari** (supra) was also cited by the learned counsel appearing for the Pension Board. At paragraph 14 of the judgment of the Division Bench it is held that the Lok Ayukta has no jurisdiction to make an adjudicatory order. It is further held that the only legitimate exercise of the Lok Ayukta on the complaint of the respondent could have been to see if in equity some compensation by way of interest or otherwise be paid to the respondents.

5. However, the learned counsel appearing for the Lok Ayukta relied on a decision of the Division Bench in **KSRTC v. Padmavathi** (2008 (1) KLT 584) wherein it has been found that the Lok Ayukta has jurisdiction to entertain matters relating to terminal benefits. A decision of a Division Bench of this Court in **Joy Kaitharath v. State of Kerala** (2015 (2) KLT SN 20; 2015 (1) KLD 463) considered the provisions of the Act and the Rules elaborately and held that the Kerala Lok Ayukta has all power to take appropriate action in the complaint including the

jurisdiction to direct the initiation of prosecution or prosecution for false complaint. The learned counsel also placed reliance on decision of a Division Bench of this Court in **Sreenivasan Venugopalan (Adv) v. Justice M.M.Pareed Pillay (Retd) and another** and of a single Judge in WP(C) No. 22173 of 2013. It is submitted that the Lok Ayukta is vested with power to take such action as may be found fit. Further the Lok Ayukta is also empowered by Section 19 of the Act to punish for contempt of itself or its orders. In such circumstances, it is argued that the power to punish for contempt presupposes the power to issue directions and orders. The learned counsel also relied on the provisions of Section 24(2) of the Lok Ayukta Act and Rule 3 of the Kerala Lok Ayukta (Powers of Civil Court) Rules, 1999. The said provisions are extracted below:-

“24. Removal of doubts.

xxx xxx xxx xx

2) The provisions of this Act shall be in addition to the provision of any other enactment or any rule or law under which any remedy by way of appeal, revision , review or in any other manner is available to a person making a complaint under this Act, in respect of any action and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

Rule 3 : Powers of the Lok Ayukta or Upa-Lok Ayukta under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).- (1) Apart from the powers conferred on the Lok Ayukta and Upa-Lok Ayukta under Section 10 & 11 of the Ordinance the Lok Ayukta or an Upa-Lok Ayukta or any officer authorised in this behalf by the Lok Ayukta shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-

- (a) to grant injunction;
 - (b) to issue commission for local inspection;
 - (c) to make, during the pendency of any complaint, any interlocutory order, as may appear to the Lok Ayukta to be just and equitable to meet the ends of justice;
 - (d) to allow alteration of the complaints or applications;
 - (e) to implead as parties, the legal representatives of a deceased party in any complaint pending before it, subject to the provisions of Order XXII of the Code of Civil Procedure, 1908, in so far as they are applicable;
 - (f) to review its decisions or orders, on interlocutory applications;
 - (g) to dismiss a complaint for default or to decide it ex parte;
 - (h) to set aside an order of dismissal of a complaint for default or any order passed exparte;
- (2) The period of limitation for an application to implead the legal representatives of a party, shall be ninety days from the date of death of the party to the complaint.
- (3) The period of limitation for applications under clause (f) and (h) of sub-rule (1) shall be thirty days from the date of the decision or order, as the case may be.
- (4) The provisions of Section 5 of the Limitation Act, 1963 (Central Act 36"

Relying on the provisions of the Act and the Rules, it is contended that the power of the Lok Ayukta to issue orders and directions is clear and it has been held so by the Division Bench of this Court in the decision in **Joy Kaitharath v. State of Kerala** (supra).

6. I find considerable force in the submission made by the learned counsel for the Lok Ayukta. A close reading of the provisions of the Act would make it clear that the machinery of the Lok Ayukta was intended to combat the evils of corruption and mal-administration in Government and Government bodies. In the above view, the interpretation to be given to the statute must be one that advances the cause of the purpose of the Act and public good. To adopt an interpretation which would tend to narrow the powers of Lok Ayukta and render it only an advisory body would not be conducive to public interest. The orders passed by the Lok Ayukta in the instant case are only to hold that the qualifying service of the deceased employee has to be reckoned from 24.04.1980 as contended by the complainant. It was held that the complaint is entitled to get family pension at the rate of

Rs.4161/- from 31.07.2005 till 19.11.2013, and at the rate of Rs.2080/- from 20.11.2013. The 2nd respondent was directed to pay the amount and file the action taken report by the Lok Ayukta. I do not think that the orders issued are beyond the powers and jurisdiction of the Lok Ayukta. I therefore hold that the orders are sustainable and the challenge against them on the ground of lack of jurisdiction fail.

7. On the merits of the matter, it is stated by the learned counsel appearing for the Board that the qualifying service of an employee for computation of pension or family pension starts from the date on which he is admitted as a member of the contributory provident fund scheme. It is stated that in the pension docket sent up by the employer society, it was clearly mentioned that the employee had been enrolled as a member of the contributory provident fund scheme only w.e.f. 02.08.1993. However, it is the contention of the dependant of the employee as well as the employer that the employee Sri.Sundaresan had been appointed as salesman in the society on 01.11.1979. By Ext.P1 order dated 20.03.1997 produced in W.P.C.No.6356 of 2011

dated 20.03.1997, the employee's services were regularised w.e.f. 24.04.1980. It is submitted by the counsel for the petitioner in W.P.C.No. 6356 of 2011 that the provident fund contribution in respect of the employee could have been remitted only after the approval of the service by Ext.P1 order. By Ext.P2 dated 26.03.1998 the Provident Fund dues were forwarded and the employee was enrolled as a member in the contributory provident fund with effect from the date of his regularisation in service. By Ext.P3 demand dated 14.11.2006, the Pension Board directed the society to remit an amount of Rs.69,519/- which were in arrears in the account of the employee. This was also paid by the society in full. In such circumstances, it is contended that the Pension Board is duty bound to reckon the qualifying service of the employee w.e.f. 24.04.1980 for the purpose of award of family pension.

8. The learned counsel appearing for the pension board would on the other hand submit that the liability to pay pension arises only with reference to the qualifying service calculated from the date of enrollment in the contributory provident fund

and cannot relate back to any earlier date. It is contended that the payment of contribution at a belated stage cannot alter the date of such enrollment and the claimant cannot be paid family pension reckoning qualifying service from any earlier date. A decision of this Court in **Sukumaran v. K.S.C.E.P.B** (2010(4) KHC 859) is cited in support of this contention. After considering the provisions of the Kerala Co-operative Societies Act as well as the Pension Scheme, it was held that the date of joining the Employees Provident Fund is relevant in computing the qualifying service of an employee. Paragraphs 13, 14 and 15 of this decision are relevant and read as follows:-

" 13. As stated earlier, the relevant factor is what is the employers' contribution standing to the credit of the employee, for the purpose of remitting the same to the pension fund. For the purpose of computing the qualifying service, the length of service commencing from the date of joining the contributory provident fund is the relevant factor. If so, a unilateral act on the part of the employee paying the arrears of employees' contribution from 01/07/1974 would not compel the employer to pay the employers' contribution retrospectively, for the period for which the employee was not a member of the contributory provident fund.

14. Sri.P.V.Mohanan, learned counsel appearing for the Board,

supported the decisions of the Board in Ext.P11 and submitted that the employee cannot be allowed to decide from which date the qualifying service is to be reckoned without his joining in the provident fund. The employers' contribution is the corpus of the pension fund and that being so, the employee would not be entitled to get anything in excess of what is provided in the Pension Scheme, though it is intended for the benefit of the employees. He submitted that the relevant date is the date of resolution and, as seen from Ext.P1, the relevant date would be 17/02/1997, the date on which the Bank resolved to remit the arrears to the pension fund.

15. Going by the provisions mentioned above, I am not inclined to accept the contention of the petitioner in full. I am also not inclined to accept the contention raised by Sr.P.V.Mohanan that the relevant date is the date of the resolution passed by the society. Going by clause 19 read with clause 39 of the Scheme, the relevant date is the date of joining the contributory provident fund. The portion of the employees' contribution for the period during which the employee was contributing to the contributory provident fund shall be transferred and credited by the Society to the Pension Fund under the scheme. In such a case, the employee would be justified in contending that his qualifying service is to be reckoned from the date of joining the contributory provident fund. As seen from Ext.P7 resolution dated 28/01/1989, it is crystal clear that the contributory Provident fund Scheme was introduced in the Bank from 01/07/1984. There is no case for the Board that it did not receive the employer's contribution with reference to that date. If so, the

employee, namely, the petitioner is entitled to reckon his qualifying service with effect from 01/07/1984. At the same time, the employee is not entitled to contend that by making his contribution for the period from 01/07/1974 on a subsequent date and that too after coming into force of the Scheme, he would be entitled to compute the qualifying service from an anterior date, anterior in point of time of his joining the contributory provident fund."

9. In the said case, the contributory provident fund was introduced in the society only w.e.f. 01.07.1984. Though the resolution to implement the scheme w.e.f. 01.07.1984 was taken to the society only on 28.01.1989, the employee was held to be eligible to reckon the qualifying service with effect from the date on which his EPF contribution was duly paid by the employer. In the instant case also though the employee was regularised in service w.e.f. 24.04.1980, Ext.P1 orders sanctioning his appointment were issued by the Joint Registrar only in the year 1997. Thereafter, the employer remitted the contribution to the contributory provident fund w.e.f. 24.04.1980. Arrears demanded by the Board by Ext.P3 communication were also paid in full. In the above circumstances, I am of the opinion this is not a case where the society has resorted to payment of

contribution in a belated manner so that the employee may become eligible to pensionary benefits from a date anterior to his date of entitlement.

10. In the above view of the matter, I find no infirmity or illegality in the finding of the Lok Ayukta that the claimant is entitled to family pension reckoning the qualifying service of the employee w.e.f. 24.04.1980.

W.P (C).No.6356 of 2011 is therefore allowed. The orders of the Lok Ayukta shall be given effect to by the Kerala State Co-operative Employees Pension Board. W.P.(C).No.36209 of 2009 fails and is accordingly dismissed.

Anu Sivaraman, Judge

sj