

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C) .No. 33923 of 2014 (M)

PETITIONER(S) :

ISSAC C.V
S/O.VARGHESE, CHANDANAPARAMBIL HOUSE, KOONAMMAVU P.O.
KOTTUVALLY VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT
PIN-683518, CHIEF MANAGER (RETIRED)
KERALA STATE (FINANCIAL ENTERPRISES LIMITED
(LOAN UNIT ERNAKULAM)

BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.P.S.SYAMKUTTAN

RESPONDENT(S) :

1. KERALA STATE FINANCIAL ENTERPRISES LTD
BHADRATHA, THRISSUR, PIN-680020
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE MANAGING DIRECTOR
KERALA STATE FINANCIAL ENTERPRISES LTD., BHADRATHA
THRISSUR, PIN-680020.

R1 & 2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1 & 2 BY ADV. SRI.P.BENNY THOMAS
R1 & 2 BY ADV. SRI.P.GOPINATH
R1 & 2 BY ADV. SRI.K.JOHN MATHAI
R1 & 2 BY ADV. SRI.JOSON MANAVALAN
R1 & 2 BY ADV. SRI.KURYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT P1: COPY OF THE DISABILITY CERTIFICATE ISSUED BY DR.U.S.BABU, ORTHOPEDIC SURGEON DATED 19/10/1995.

EXT P2: COPY OF THE LETTER IN REPLY DATED 7.4.2008 ISSUED BY THE KSFE.

EXT P3: COPY OF THE INTIMATION DATED 5/9/2008 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.

EXT P4: COPY OF THE REPRESENTATION DATED 29/1/2009 SUBMITTED BEFORE THE 2ND RESPONDENT.

EXT P5: COPY OF THE STATEMENT DATED 27.3.2013 FILED BY THE COUNSEL FOR THE RESPONDENT.

EXT P6: COPY OF THE COUNTER AFFIDAVIT FILED BY THE KSFE IN PURSUANCE TO THE DIRECTION OF THE HON'BLE COURT DATED 10.6.2013.

EXT P7: COPY OF THE REPLY AFFIDAVIT DATED 23.05.2013 FILED BY THE PETITIONER.

EXT P8: COPY OF THE JUDGMENT DATED 30.08.2013 IN WPC NO.34192/2009.

EXT P9: COPY OF THE LAWYER NOTICE DATED 12/02/2014 ISSUED TO THE RESPONDENTS.

EXT P10: COPY OF THE ORDER DATED 20.02.2014 ISSUED BY THE RESPONDENTS.

EXT P11: COPY OF THE JUDGMENT IN COC NO.338/14 DATED 6.6.2014.

RESPONDENT(S) ' EXHIBITS:NIL

True Copy/

P A to Judge

A.MUHAMED MUSTAQUE, J.
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W.P(C).No.33923 of 2014
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Dated this the 29th day of January, 2015

JUDGMENT

Petitioner is a retired employee from the first respondent Kerala State Financial Enterprises Ltd. This Writ Petition pertains to withholding an amount to the tune of ₹1,43,750/- from the total eligible terminal benefits due to the petitioner. It is admitted that all other benefits other than the above has been paid. The above amount is not paid to the petitioner for the reason that there is a dispute pending in relation to car loan sanctioned to one Lawrence Joseph by the petitioner while he was working as Chief Manager of the respondent. It seems that recovery proceedings are initiated against the loanee Lawrence Joseph to recover the loan amount but steps are still pending. It is the case of the Corporation that while petitioner was in service, he sanctioned the loan of ₹3,50,000/-, even though he was authorized to sanction loan only upto an amount of ₹2,75,000/-. This issue was initially the subject matter of judgment of this Court including a contempt arising from the judgment.

2. Learned counsel for the petitioner with reference to the judgment of this court in W.P(C).No.34192 of 2009 submits that, this Court had already made a finding that no recovery can be effected from the petitioner. However, learned Standing counsel for the Corporation would submit that this Court left open all the issues by relegating the Corporation to take decision in accordance with law. It is thereafter the impugned order was passed.

3. The question is whether petitioner is entitled for leave surrender benefit. There is no dispute as regards the entitlement of petitioner. The only reason for withholding the payment is stated as on account of non-recovery of loan amount from the loanee. This would clearly indicate that there is no proceeding by the Corporation to establish any loss suffered to the Corporation on account of the action of the petitioner. On the other hand, they deferred the payment for the reason that the proceeding relating to recovery from the loanee is pending. This Court in fact given opportunity to the Corporation by Ext.P8 judgment to adjudicate the issue relating to fixation of liability. However, it seems, instead of adjudicating any issue to establish loss to the Corporation,

Corporation has chosen to defer the payment till recovery proceedings of the above amount from the loanee is concluded. That means, there is no established loss as on the date. In such circumstance, I am of the view terminal benefits can be released to the petitioner after safeguarding the interest of the Corporation. The following directions are issued:

(i) Leave Surrender benefits shall be disbursed to the petitioner on executing a bond with two sureties.

(ii) Corporation can proceed against the petitioner only based on established loss suffered by the Corporation.

(iii) It is open for the Corporation to proceed against the petitioner for recovery of any amount sustained by way of the general damages. Direction by this Court to release the payment will not deemed as an exoneration of the petitioner from any liability otherwise found liable in accordance with the procedure established by law.

(iv) The amount shall be disbursed to the petitioner within a period of four weeks.

The Writ Petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.