

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 34058 of 2014 (F)

PETITIONER:

T.S.SELVARAJAN,
THALAPOTTA HOUSE, KINAVALLLOOR P.O, PARALI,
PALAKKAD DISTRICT.

BY ADVS.SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF CO-OPERATION(C), SECERETARIAT,
THIRUVANANTHAPURAM 695 001
2. THE JOINT REGISTRAR(GENERAL) OF CO-OPERATIVE
SOCIETIES, PALAKKAD 678 001.
3. BOARD OF DIRECTORS, MANKARA SERVICE CO-OPERATIVE
BANK LTD NO. P 363, MANKARA P.O 678 613,
REPRESENTED BY THE PRESIDENT.
4. THE MANKARA SERVICE CO-OPERATIVE BANK LTD NO. P 363,
REPRESENTED BY ITS SECRETARY, MANKARA P.O.,
PALAKKAD DISTRICT - 678 613.

R3-R4 BY ADV. SRI.N.RAGHURAJ
R3-R4 BY ADV. SRI.A.V.RAVI
R3-R4 BY ADV. SMT.K.AMMINIKUTTY
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 34058 of 2014 (F)

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APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 24-09-2003 OF THIS HON'BLE COURT IN OP NO 23635/02.

EXHIBIT P2 TRUE COPY OF THE ORDER NO 755/2004/C.R.P/L/DIS DATED 25-5-2005 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE ORDER NO 6377/2005 CRP DATED 22-2-2006 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P4 TRUE COPY OF THE G.O(RT) NO. 405/2007/CO-OP DATED 8-6-2007 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 34058 of 2014 (F)

Dated this the 16th day of September, 2015.

JUDGMENT

The petitioner, now retired, while working as the Secretary of the respondent Bank, was subjected disciplinary proceedings that culminated in his removal from service. Since much water has flowed subsequently, without reference to dates in particular, it can further be narrated that on the petitioner's approaching the second respondent questioning his removal from service, the said authority, invoking powers under Rule 176 of the Kerala Co-Operative Societies Rules, set aside the removal from service and directed the petitioner's reinstatement. Though the respondent Bank, in turn, challenged the order of the Joint Registrar before the first respondent, it did not meet with any success as the Government re-affirmed the order of the second respondent.

2. On one hand, the respondent Bank filed O.P. No. 23663 of 2002 assailing the order of the Government; on the other hand, the petitioner, too, filed W.P.(C) No. 23635 of 2002 seeking enforcement

of the order of reinstatement. This Court through Ext.P1 judgment dated 24.09.2003 partially modified the order of the Government. In effect, the respondent Bank is permitted to continue its disciplinary proceedings after rectifying the procedural irregularities but only subject to the condition of reinstating the petitioner in service. In other words, this Court in Ext.P1 judgment did not interfere with the finding of the second respondent as has been confirmed by the first respondent that the petitioner be reinstated.

3. As can be seen from the record, in compliance with Ext.P1, the respondent Bank reinstated the petitioner but has not paid the arrears of salary and other benefits to the petitioner. Aggrieved, the petitioner once again filed an appeal before the second respondent who issued Ext.P2 order dated 25.05.2005 directing the respondent Bank to pay to the petitioner arrears of salary and other service benefits for the period from 01.10.1998 on 07.01.2004. Nevertheless, the respondent Bank approached the first respondent questioning Ext.P2 order of the second respondent. In turn, the first respondent after setting aside Ext.P2 further directed the second respondent to take a fresh decision concerning the payment of arrears

of salary and other benefits to the petitioner. In compliance with the directions of the first respondent, having reconsidered the issue, the second respondent issued Ext.P3 order dated 22.02.2006 re-affirming Ext.P2. Once again, the respondent Bank approached the first respondent and invited Ext.P4 order in which the first respondent has observed that there is no justification on the part of the respondent Bank in persistently denying the arrears of salary and other benefits to the petitioner.

4. As a matter of subsequent developments, it appears, the respondent Bank further continued with its disciplinary proceedings and once again removed the petitioner from service. After other rounds of litigation, finally the petitioner is said to have filed O.P.(C) No. 2911 of 2013 before this Court questioning his removal from service for the second time. At any rate, both the learned counsel have fairly submitted that the said writ petition has nothing to do with the issue in the present writ petition.

5. In the above factual background, the learned counsel for the petitioner has contended that the petitioner, having retired in 2013, has been running from pillar to post to get arrears of salary and other

benefits to be paid by the respondent Bank. According to him, Ext.P4 order of the first respondent has already attained finality, and that it is absolutely inequitable and illegal for the respondent Bank not to pay to the petitioner the benefits he is justly entitled to.

6. The learned counsel for the respondent Bank, on the other hand, has submitted that the claim of the petitioner has been hit by latches. According to him, though Ext.P4 order was filed in 2007, up to this point of time, the petitioner has not approached any judicial forum, including this Court, seeking its enforcement. As regards the retirement, the learned counsel would contend that in the light of the subsequent dismissal, the petitioner's retirement is only notional in nature.

7. In other words, it is the specific contention of the learned counsel for the respondent Bank that after reinstatement, the petitioner worked only for two months.

8. In further elaboration of his submissions, the learned counsel has also submitted that initially the order of removal against the petitioner was set aside by the second respondent as has been affirmed by the first respondent and later modified by this Court in

Ext.P1 judgment; it is only on technical grounds. Summing up his submissions, the learned counsel has submitted that, leaving aside every other ground, the petitioner has to suffer on the grounds of latches on his part.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, apart from perusing the record.

10. As has been agreed to by both the learned counsel, there is not much factual dispute. The singular issue is whether the respondent Bank is justified in denying the petitioner the payment of arrears of salary and other service benefits for the period from 01.10.1998 to 07.01.2004 i.e., from the date of his initial suspension till the date of his reinstatement. In addition, whether the Bank is further justified in taking a plea that the claim of the petitioner is barred by latches.

11. Indisputably, as has been rightly contended by the learned counsel for the petitioner, Ext.P4 order of the first respondent attained finality way back on 08.06.2007. Though the respondent Bank initiated subsequent proceedings concerning the disciplinary action against the petitioner and took them to the logical end of the

petitioner's removal from service, it has, in fact, nothing to do with the issue of paying arrears of salary etc. to the petitioner for the period he was out of service. It is very pertinent to observe that the second respondent, in fact, directed reinstatement of the petitioner with all consequential benefits. Though this Court in Ext.P1 partially modified the order of the first respondent, which was in affirmation of the order passed by the second respondent, essentially the order of reinstatement and payment of service benefits to the petitioner remained undisturbed.

12. In fact, the learned counsel for the respondent Bank has submitted that it is not clear from Ext.P1 whether there is any express judicial directive that the petitioner be paid arrears of salary. On the contrary, Ext.P4 is explicitly clear in its mandate that the petitioner be paid all the arrears of service benefits to the petitioner. It was, admittedly, not questioned by the respondent Bank.

13. On the issue of latches raised by the learned counsel for the respondent Bank, it is pertinent to observe that on more than one occasion, the Apex Court has observed that the employer or any instrumentality of the State could not take any equitable defence

such as limitation or adverse position vis-a-vis its subjects. I do not see any reason why the said principle of law should not be extended in the case of the employer, i.e., the respondent Bank. Further, there is no debtor-creditor relationship between the petitioner and the respondent Bank to hold that the claim of the petitioner is barred by limitation. In the light of the clear directive from the first respondent in Ext.P4, it is the duty of the respondent Bank to seek the petitioner and pay to him the arrears of salary and other benefits. After all, it is the statutory duty of the employer.

In the facts and circumstances, I find sufficient strength in the case of the petitioner and accordingly allow the writ petition with a direction to the respondent Bank to pay to the petitioner's the arrears as have been quantified in Ext.P4 along with interest at the rate of 6% per annum, 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.

