

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 34920 of 2014 (L)

PETITIONER(S):

**THE MOONILAVU SERVICE CO-OPERATIVE BANK LTD
NO.K.163, MOONILAVU, KOTTAYAM DISTRICT
REPRESENTED BY ITS SECRETARY.**

**BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH**

RESPONDENT(S):

- 1. M.T.THOMAS
S/O.LATE THOMAS, MUTHALAKUZHI HOUSE, PLASSINAL P.O.
PANNAKKAPALAM, ERATTUPETTA, KOTTAYAM DISTRICT-686 579.**
- 2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), KOTTAYAM-686 001.**
- 3. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO CO-OPERATIVE DEPARTMENT
SECRETARIT, THIRUVANANTHAPURAM-695 001.**

**R1 BY ADV. SRI.SHAJI THOMAS
R1 BY ADV. SRI.BINU PAUL
R1 BY ADV. SRI.T.V.VINU
R1 BY ADV. SRI.CHERIAN MATHEW POOTHICOTE
R2-R3 BY ADV. V.K. RAFEEQ, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015, ALONG
WITH WPC. 1153/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 34920 of 2014 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. COPY OF THE ORDER DATED 21/2/2007 ISSUED BY THE 2ND RESPONDENT

EXT.P2. COPY OF THE APPEAL MEMORANDUM DATED 5/4/2007 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT

EXT.P3. COPY OF THE STAY PETITION ALONG WITH THE AFFIDAVIT DATED 5/4/2007 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT

EXT.P4. COPY OF THE JUDGMENT IN WPC NO.14545/07 DATED 8/5/2007.

EXT.P5. COPY OF THE ORDER DATED 4/7/2007 ISSUED BY THE 3RD RESPONDENT

EXT.P6. COPY OF THE ORDER DATED 22/9/2014 OF THE 3RD RESPONDENT ALONG WITH THE COVERING LETTER TO THE 1ST RESPONDENT DATED 1/10/2014.

EXT.P7. COPY OF THE ORDER DATED 3/12/2014 ISSUED BY THE 2ND RESPONDENT TO THE PRESIDENT OF THE PETITIONER BANK WITH COPY TO THE PETITIONER

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

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W.P.(C) Nos.34920 of 2014 & 1153 of 2015
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Dated this the 19th day of October, 2015

JUDGMENT

W.P.C.No.34920/2014 is filed by the Moonilavu Service Co-operative Bank Limited, seeking a writ of certiorari to quash Ext.P6 order dated 22.09.2014 of the 3rd respondent and Ext.P7 order dated 03.12.2014 of the 2nd respondent and seeking a declaration that the 1st respondent, who retired from the service of the petitioner Bank on 31.11.2002 is not entitled to the benefits of Exts.P6 and P7 orders since Ext.P5 order dated 4.7.2007 of the 3rd respondent (wrongly typed as Ext.P4) has become final.

2. W.P.(C).No.1153/2015 is filed by the 1st respondent in W.P.(C).No.34920/2014, seeking a writ of mandamus commanding the Moonilavu Service Co-operative Bank Limited to disburse the amount due to him by way of his pensionary benefits such as leave surrender (Rs.24,193/-), amount remitted to the employer's contribution to the Pension Fund (Rs.67,223/-), as directed by the 2nd respondent in Ext.P4 order, which is

confirmed by the 1st respondent in Ext.P5 decision, together with interest at the rate of 8% from 24.07.2003. The petitioner has also sought for a writ of mandamus commanding the 2nd respondent to take immediate action to disburse the amount (total sum of Rs.91426/-) as stated in Ext.P6 decision dated 22.09.2014 of the 1st respondent, together with 8% interest for the said amount from 24.07.2003. Another relief sought for in this writ petition is a writ of certiorari to quash Ext.P5 order to the limited extent it interferes with the direction of the 2nd respondent in Ext.P4 order to pay arrears of salary to the petitioner for the period from 31.01.2000 to 30.10.2002 and the monetary benefits of Dearness Allowance granted by the Government.

3. The parties and exhibits are referred to in this judgment as shown in W.P.(C). No.34920/2014.

4. The 1st respondent joined service of the petitioner Bank as Junior Clerk on 01.06.1970. He was promoted as Senior Clerk, Accountant, Assistant Secretary and thereafter as Secretary of the Bank. His promotion to the post of Secretary was on 02.05.1995 and he continued in that post till 30.11.2002. He submitted an application for voluntary retirement, which was

allowed by the Managing Committee of the Bank by resolution No.VII dated 11.11.2002 (Ext.P1 in W.P.(C). No.1153/2015). However, his terminal benefits like Leave Surrender, arrears of salary, Dearness Allowance, Staff Security Deposit and Employer's Contribution to the Pension Fund, etc. were withheld. It was in such circumstances, the 1st respondent-employee moved the Joint Registrar of Co-operative Societies, Kottayam, who passed Ext.P1 order dated 21.02.2007 granting certain benefits. Ext.P1 order was under challenge in Ext.P2 appeal filed by the Bank before the Government under Section 83 (1)(j) of the Kerala Co-operative Societies Act (hereinafter referred to as 'the Act'). By Ext.P5 order dated 04.07.2007, the Government allowed the said appeal and the operative portion of the aforesaid order reads thus;

"On a careful examination of the case it is observed that most of the findings by the Joint Registrar are not based on facts and the decisions are seen taken on extraneous conditions. The agreements taken by the Managing Committee of the bank and the employees of the bank for the survival of the establishment, were acceptable to the Joint Registrar while passing orders in CRP(1)1019/04/K Dis. dt.08.03.06, while disallowing similar claims (except some) of three

employees who retired voluntarily. But these very same agreements became unacceptable to him on 21.02.2007, while passing the impugned order. The grievances of employees are certainly important, but the very existence and survival of the establishment is more important. The statement of the Joint Registrar that the decision are of the staff council alone and that Managing Committee has not taken any resolution to this effect, is not correct. The differences in fixation of salary, arrears, DA etc are the outcome of the above agreements.

The liability observed in the audit has to be made good by the Secretary himself who being the Chief Executive Officer cannot evade from the responsibility. The audit of accounts of the Appellant Bank shall be completed up to the period for which the first respondent officiated as secretary of the bank immediately and if it is already completed by now and if the first respondent (secretary) is found to be liable for any amount to be remitted to bank it should be recovered from him then and there and subject to this condition his eligible pensionary benefits shall be paid, also taking into consideration of the relevant conditions in the agreement reported to have entered into by the employees and the bank, if any, and his pension be recommended to be sanctioned by the Pension Board without delay.

It is the bounden duty of the Secretary to remit

the pension contributions recovered from the employees towards pension fund including that of employer's contribution without delay. If the secretary (first respondent) due to scarcity of funds in the bank had remitted any amount utilising his own funds that also might have properly accounted in the books of accounts under the liability account of the bank, which in due course also shall be settled by the bank subject to availability of funds.

In the above circumstances, the appeal petition filed by Moonilavu Co-operative Bank is allowed with directions to the Joint Registrar (General), Kottayam to ensure the implementation of this order by the bank with immediate effect. The order number CRP (1)8928/06/KDis is set aside."

5. In spite of Ext.P5 Government Order, the terminal benefits due to the 1st respondent was never disbursed. The Government by Ext.P6 letter dated 22.09.2014 directed the Registrar of Co-operative Societies to take appropriate steps to see that the 1st respondent is paid with his terminal benefits, which resulted in Ext.P7 communication dated 03.12.2014 issued by the 2nd respondent addressed to the President of the Bank to disburse the terminal benefits payable to the 1st respondent-employee and to report compliance before the Assistant Registrar (General), Meenachil, within 15 days. It is mainly

aggrieved by Exts.P6 and P7, the Bank is before this Court in W.P.(C). No.34920/2014 seeking various reliefs.

6. As far as W.P.(C).No.1153/2015 is concerned, it is a writ petition filed by the employee concerned seeking implementation of Ext.P1 order dated 21.2.2007 as modified by Ext.P5 Government Order dated 04.07.2007, by disbursing the consequential monetary benefits. He is also challenging Ext.P5 Government Order dated 04.07.2007 to the extent it interferes with Ext.P1 order dated 21.02.2007 of the 2nd respondent.

7. In W.P.(C). No.34920/2014, a counter affidavit has been filed on behalf of the 2nd respondent stating that by Ext.P6, the Government has only directed the Registrar of Co-operative Societies to take necessary steps to ensure that the monetary benefits payable to the 1st respondent in terms of Ext.P5 Government Order dated 04.07.2007 is disbursed without further delay, pursuant to which the 2nd respondent has issued Ext.P7 letter to the President of the Bank.

8. I heard arguments of the the learned Standing Counsel for the Bank, the learned counsel for the petitioner in W.P.(C). No.1153/2015 and also the learned Government Pleader appearing for the official respondents.

9. The issue that arises for consideration in these writ petitions centers around Ext.P1 order dated 21.02.2007 of the 2nd respondent as modified by Ext.P5 Government Order dated 04.07.2007.

10. As I have already noticed, the 1st respondent, who was working as Secretary of the Bank took voluntary retirement on 31.11.2002. When payment of his terminal benefits were withheld, he moved the 2nd respondent which culminated in Ext.P1 order dated 21.02.2007, directing the Bank to disburse all his terminal benefits. The said order was under challenge before the Government in an appeal filed by the Bank, which was disposed of by Ext.P5 order dated 04.07.2007, by which Ext.P1 order passed by the 2nd respondent was modified. At the same time, the Government has directed the Bank to disburse the monetary benefits payable to the 1st respondent under different heads. Ext.P5 order attained finality, in the absence of any challenge made by the Bank. Though in W.P.(C). No.1153/2015, there is a challenge to Ext.P5 order, to the extent certain benefits were denied to the 1st respondent employee, it cannot be entertained at this belated stage, after a lapse of more than 7 years. However, it has to be noticed that the benefits payable to

the employee in terms of Ext.P5 Government Order dated 04.07.2007 are yet to be disbursed by the Bank. It was in such circumstances, the Government issued Ext.P6 communication dated 22.09.2014, by which the Registrar of Co-operative Societies was directed to take necessary steps to ensure that the monetary benefits arising out of Ext.P5 Government Order dated 04.07.2007 is disbursed to the employee concerned forthwith.

11. Now the grievance of the Bank is that, Ext.P6 Government communication is issued without notice to them, as such the procedure adopted by the Government is in violation of the principles of natural justice.

12. Though in Ext.P5 order, the Government modified Ext.P1 order of the 2nd respondent dated 21.02.2007, it was found that the employee concerned is entitled for certain monetary benefits. Though the aforesaid order attained finality, till date the Bank has not taken any steps to disburse the monetary benefits payable to the 1st respondent in terms of the aforesaid order. A reading of Ext.P6 Government letter dated 22.9.2014 makes it explicitly clear that, by issuing the said communication, the Government has only directed the Registrar of Co-operative Societies to ensure that the benefits due to the

employee in terms of Ext.P5 Government Order dated 04.07.2007 is disbursed to him without any further delay. Ext.P7 is only a consequential order issued by the 2nd respondent. In that view of the matter, the Bank has absolutely no legal right to challenge Exts.P6 and P7. Further, there is no violation of the principles of natural justice since Ext.P6 is only to ensure compliance of Ext.P5 Government Order.

In such circumstances, I find absolutely no reason to entertain the challenge made by the Bank against Exts.P6 and P7. In the result, W.P.(C). No.34920/2014 fails and the same is dismissed.

In view of the dismissal of W.P.(C). No.34920/2014 as aforesaid, W.P.(C). No.1153/2015 is disposed of directing the Bank to disburse the monetary benefits in terms of Ext.P5 Government Order dated 04.07.2007 to the petitioner employee, within a period of one month from the date of receipt of a certified copy of this judgment, together with interest at the rate of 8% from 24.07.2003 till payment.

SD/-
ANIL K. NARENDRAN,
JUDGE