IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

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THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WA NO. 334 OF 2014

AGAINST THE JUDGMENT DATED 06.12.2013 IN WPC NO.24318 OF 2012 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 AND 2:

1 THE KADAVOOR SERVICE CO-OPERATIVE BANK LTD KADAVOOR.P.O., MUVATTUPUZHA. PIN-686 671. REP. BY ITS SECRETARY.

2 THE ADMINISTRATOR,KADAVOOR SERVICE CO-OPERATIVE BANK LTD.NO.1882, KADAVOOR.P.O., MUVATTUPUZHA, PIN-686 671.

BY ADV SRI.K.A.SALIL NARAYANAN

RESPONDENTS/PETITIONER AND RESPONDENTS 3 AND 4:

1 P.J.CHACKO,RETIRED ACCOUNTANT, THE KADAVOOR SERVICE CO-OPERATIVE BANK LTD.NO.1882, KADAVOOR.P.O., MUVATTUPUZHA, RESIDING AT PITTAPILLIL VEEDU, KADAVOOR.P.O., KOTHAMANGALAM. 686 671.

2 THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES OFFICE OF THE ASSISTANT REGISTRAR, KOTHAMANGALAM, PIN-686 691.

3 KEALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD P.B.NO.85, KALA NIVAS, T.C.27/156, CHINMAYA LANE, KUNNUMPURAM, NEAR AYURVEDA COLLAGE, THIRUVANANTHAPURAM, PIN-695 001. REP. BY ITS SECRETARY.

BY ADV P.P.JACOB
SMT.VINITHA.B, SR.G.P
SRI.M SASINDRAN, SC, KSCEPB

THIS WRIT APPEAL WAS FINALLY HEARD ON 19.03.2025, THE COURT ON 10.04.2025 PASSED THE FOLLOWING:

JUDGMENT

Muralee Krishna, J.

This writ appeal is filed under Section 5(i) of the Kerala High Court Act, 1958, by respondents 1 and 2 in W.P.(C)No.24318 of 2012. The writ petition was one filed under Article 226 of the Constitution of India by the 1st respondent herein who is a retired Accountant of the 1st appellant Society, seeking a writ of mandamus commanding the 1st appellant to release the retirement benefits like gratuity, earned leave surrender, provident fund, welfare fund and dearness allowance arrears with 12% interest from 01.04.2012; to direct the appellants and respondents 2 and 3 herein to forward the pension book of the 1st respondent to the 3rd respondent; and direct the 3rd respondent Pension Board to pay eligible pension to the 1st respondent with effect from 01.04.2012. After considering the pleadings and materials on record and the rival submissions of the parties, the learned Single Judge allowed the writ petition by the impugned judgment dated 06.12.2013. Paragraph No.6 of that judgment reads thus:

> "6. The facts revealed from the records would indicate that the refusal of the respondent Society to forward the pension

papers and pay the contributions on pension, as also the refusal to disburse the retirement benefits are unjustifiable. The respondent Society, hence, is directed to immediately take steps to disburse the retirement benefits as also forward the pension papers. The petitioner is directed to make an application before the Society within a period of two weeks from today, upon which, the application for pension shall be forwarded to the respondent Board through the 3rd respondent Assistant Registrar and on the respondent Board scrutinizing the application and making a demand for contribution, the respondent Society shall make the contribution within a period of one month from the date of demand of made by the Board, if the same is not otherwise disputed on computation. The respondent Society shall also disburse the retirement benefits of the petitioner within a period of three months from the date of receipt of a copy of this judgment. If the retirement benefits are not paid by the Society within three months, then the petitioner shall be entitled to interest from the date of his retirement till the date of his payment, which interest shall be paid by the Society and recovered from the employees who is responsible for the said delay."

2. The 1st respondent entered the service of the 1st appellant on 16.09.1976 as a Junior Clerk and was subsequently promoted to higher posts and superannuated on 31.03.2012 while holding the post of Accountant. According to the 1st respondent, due to wilful negligence and ill-motive his pension book was not

forwarded to the 3rd respondent by the 1st appellant. Therefore, his retirement benefits were not paid.

3. The appellants filed a counter affidavit dated 18.01.2013 in the writ petition opposing the averments in the writ petition and producing therewith Exts.R1(a) to R1(i) documents. It is contended by the appellants that the 1st respondent owed a huge amount to the appellant Bank on various counts. The 1st respondent was under suspension during various periods and was dismissed from service on 23.10.2007 and reinstated on 05.05.2008. The General Body of the 1st appellant by a resolution dated 24.03.2012 decided not to forward the pension-related papers of the 1st respondent, until he clears the entire liability towards the Bank.

4. The learned Single Judge in the impugned judgment noticed that in Ext.R1(e) judgment, this Court found that the salary drawn by the 1st respondent in the post of Assistant Secretary is entitled to him since the same is remuneration for work done in the promoted post. The learned Single Judge further noted that in Ext.R1(e), it was said that any excess salary drawn, with respect to that drawn during the period of suspension, will be

liable to be recovered and it was under that circumstance, by Ext.R1(e), this Court directed the Joint Registrar to consider the same and pass orders. The learned Single Judge further noted that though the Joint Registrar considered the same as evident from Ext.R1(f), it is seen that the very same amounts demanded by Ext.R1(d) which was under challenge in Ext.R1(e) has been directed to recover from the 1st respondent. The learned Single Judge further opined that this would definitely go against the specific finding in Ext.R1(e) with respect to the entitlement of the 1st respondent for salary for the period which he has worked in the promoted post.

5. Heard the learned counsel for the appellants, the learned counsel for the 1st respondent and the learned Senior Government Pleader.

6. The learned counsel for the appellant would submit that as per Rule 198(7) of the Kerala Co-operative Societies Rules ('KCS Rules', in short) which was inserted with effect from 18.08.2010, there is a specific bar against the Society from sanctioning any retirement benefits to an employee against whom disciplinary proceedings are pending. The learned Single Judge

failed to note the fact that in such circumstances the Bank cannot issue a non-liability certificate in favour of the 1st respondent. An arbitration case is pending before the Assistant Registrar of Co-operative Societies for an amount of more than Rs.9,00,000/- due from the 1st respondent. If the directions in the judgment of the learned Single Judge are complied and if the arbitration case is allowed, the appellants will not be in a position to recover any amount from the 1st respondent.

7. The learned counsel for the 1st respondent argued that in Ext.R1(e) judgment dated 29.01.2009 in W.P.(C)No.38125 of 2008 which was one filed by the 1st respondent, it was found that if the 1st respondent had discharged his duties and responsibilities attached to the office to which he was promoted, his entitlement to remuneration for the work done cannot be denied. If there were overdraws, the same has to be taken care of while adjusting the total amount that may be due to the 1st respondent. This judgment is not challenged by the appellants and hence they cannot now deny retirement benefits to the 1st respondent.

8. The learned Senior Government Pleader would argue that while passing the impugned judgment the effect of Rule 198 (7)

of the KCS Rules was not considered by the learned Single Judge.

9. Rule 198(7) of the KCS Rules which was inserted with effect from 18.08.2010 reads thus:

> "(7) In the event of any pendency of disciplinary proceedings against any employee of a co-operative society or any co-operative institution pursuant to any charge of grave misconduct, irregularity, corruption or other charge involving moral turpitude, no retirement benefits shall be sanctioned to such employee or retired employee and in case of sanctioning of any retirement benefits to any such employee or retired employee, the name and designation of the sanctioning authority together with the reason for such sanctioning shall be recorded by the sanctioning authority by himself and such authority shall be held responsible for any loss to the society owing to such sanctioning of retirement benefits if found that such sanctioning was unwarranted."

10. The 1st respondent who was in service of the 1st appellant with effect from 16.09.1976 was under suspension during different periods, such as from 19.11.1987 to 06.02.1991, 19.12.1994 to 21.02.1997, 22.03.1997 to 02.07.1998, 11.03.2007 to 22.10.2007, 10.01.2009 to till dismissal on 05.10.2009 and then reinstated on 20.07.2010. In the meantime, he was earlier dismissed from service on 23.10.2007 but reinstated on 05.05.2008. There were serious allegations of

mismanagement raised against the 1st respondent. According to the appellants, when the audit was conducted in the Bank it was found that the 1st respondent had drawn an excess salary of Rs.3,05,554/-. It is true that in Ext.R1(e) this Court directed the Joint Registrar to take a decision regarding the entitlement of the 1st respondent for the salary drawn during the period he worked as Assistant Secretary or the Secretary. In that Judgment, it was found that the impact of the decision of the Joint Registrar refusing to approve the suggestion of the Society to grant exemption from educational qualification to the 1st respondent would entitle only to be at least the re-positioning of the 1st respondent in the hierarchy of the establishment. But in that judgment, it was not found categorically that the 1st respondent was not liable to repay any amount to the appellant Bank in respect of the excess salary drawn. In pursuance to the direction in Ext.R1(e) judgment, Ext. R1(f) order was passed by the Joint Registrar. In that order it was found that the 1st respondent is liable to pay the excess drawn salary to the appellant Bank.

11. It is stated in the appeal memorandum that another matter is pending between the parties before the Arbitration Court

for recovery of more than Rs.9,00,000/- from the 1st respondent. In view of Rule 198(7) of KCS Rules, the Bank cannot issue a non-liability certificate for disbursal of pensionary benefits due to the 1st respondent. The learned Single Judge failed to consider this aspect while passing the impugned judgment. In such circumstances, the impugned judgment is only liable to be set aside.

In the result, the writ appeal is allowed by setting aside the judgment dated 06.12.2013 in W.P.(C)No.24318 of 2012 and the writ petition stands dismissed.

Sd/-

ANIL K.NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

sks