

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 10TH DAY OF JANUARY 2024 / 20TH POUSHA, 1945

WP(C) NO. 13983 OF 2020

PETITIONER:

VENUGOPALAN V.V.
AGED 58 YEARS
S/O.ACHUTHAN, RESIDING AT VELOOR VALAPPIL HOUSE,
PERINTHALMANNA.P.O., MALAPPURAM DISTRICT-679322.

BY ADVS.
SURAJ.S
SRI.NIRMAL V NAIR

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT
OF CO OPERATION, SECRETARIAT, THIRUVANANTHAPURAM-
695001.
- 2 THE REGISTRAR OF CO OPERATIVE SOCIETIES,
JAWAHAR SAHAKARANA BHAVAN, DPI, JUNCTION, THYCAUD.P.O.,
THIRUVANANTHAPURAM-14.
- 3 THE ASSISTANT REGISTRAR (GENERAL)
OF CO-OPERATIVE SOCIETIES, D/O.THE ASSISTANT REGISTRAR
(GENERAL) OF CO OPERATIVE SOCIETIES, PERINTHALMANNA,
MALAPPURAM DISTRICT-679322.
- 4 THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL), MALAPPURAM,
MALAPPURAM DISTRICT - 679322.
- 5 THE PERINTHALMANNA TALUK RURAL
HOUSING CO-OPERATIVE SOCIETY LTD.NO.A270,
PERINTHALMANNA, MALAPPURAM DISTRICT-679322, REPRESENTED
BY ITS ADMINISTRATOR.

- 6 PART TIME ADMINISTRATOR,
THE PERINTHALMANNA TALUK RURAL HOUSING CO-OPERATIVE
SOCIETY LTD.NO.A270, PERINTHALMANNA, MALAPPURAM
DISTRICT-679322.
- 7 KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD,
KALA NIVAS, T.C.NO.27/156, 157, NEAR AYURVEDA COLLEGE,
KUNNUPURAM, P.B.NO.85, THIRUVANANTHAPURAM-695001,
REPRESENTED BY ITS SECRETARY.
- 8 ADDL.R8. LIQUIDATOR,
PERINTHALMANNA TALUK RURAL HOUSING CO-OPERATIVE SOCIETY
LTD. NO.M270, PERINTHALMANNA, MELATTOR UNIT INSPECTOR,
CO-OPERATIVE ASSISTANT REGISTRAR (GENERAL) OFFICE, MINI
CIVIL STATION, PERINTHALMANNA, MALAPPURAM - 679322
[ADDL.R8 IS IMPEADED AS PER ORDER DATED 25.09.2023 IN
I.A.1/2023 IN WP(C)13983/2020].

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
SRI.M.SASINDRAN

OTHER PRESENT:

GP SMT PRINCY XAVIER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

(Dated this the 10th day of January, 2024)

The petitioner commenced services under the 5th respondent society as a secretary from 01.07.1982. Section 65 enquiry was conducted into the affairs of the society and certain serious defects were noted. Thereafter, the elected committee of the society was superseded under Section 32 of the Kerala Co-operative Societies Act and an administrative committee was appointed.

2. The learned counsel for the petitioner submitted that, an application for voluntary retirement was submitted but, no action was taken. Therefore, he approached this court filing W.P(C) No. 31657 of 2013, and by Ext.P2 judgment of this Court, the Joint Registrar (General) was directed to take up his application for voluntary retirement and pass appropriate orders. In obedience to the direction of

this court, Ext.P4 order was passed, declining the petitioner's request for voluntary retirement since disciplinary/judicial proceedings have to be completed. The petitioner has approached this court for writ of Mandamus directing the respondents to pay his pension and pensionary benefits with effect from the date of his retirement on 31.03.2020 and also to pay interest @12% p.a from the date on which if any due.

3. A statement has been filed by the 4th respondent wherein it is stated that, an auditor has submitted a special report on 05.01.2013 for the period 20.12.2013 regarding serious financial misappropriation in the 5th respondent's society and therefore, an enquiry of Section 65 was initiated. After the enquiry under Section 65, a order under Section 68(1) surcharge was issued, and it is reported that the petitioner committed serious financial corruption to the tune of Rs.92,65,515/-

4. An FIR was also registered as Crime No.18 of 2017, and it is still pending as C.C. No. 520 of 2022. Since there are serious allegations of financial corruption to the tune of more than 90 lakhs, the petitioner's request for the grant of pensionary benefits cannot be entertained unless the proceedings initiated before the Arbitration Court is finalised. The petitioner has filed an additional document as Ext.P10 through I.A. No. 2 of 2023, which is a request to the 7th respondent, requesting a statement regarding the payment of the contribution towards the pension fund.

5. The learned counsel for the petitioner Adv. Nirmal V. Nair relies on this Court's judgment in ***Mohanan Nair P.G. V. Omallur Service Co-operative Bank Ltd. No. Q 228 and Others*** reported in [2022 KHC 433] contended that the petitioner's pensionary benefits could not be withheld under Rule 198 of the Kerala Co-operative Societies Service Rules, 1969, since no disciplinary proceedings

have been initiated against the petitioner and are pending. Taking into consideration the relevant aspects in respect of Rule 198 has held categorically in Paragraph 19 as follows:-

“ It is argued by the respondents that the impact of R. 198(8) of the Kerala Co-operative Societies Rules has not been considered by this Court in the aforesaid decisions. R.198(8) of the Kerala Co-operative Societies Rules read as follows:

*“R. 198. Disciplinary Action--(1) xxxx xxxx
xxxx xxxx xxxx xxxx*

(8) In respect of all employees save the Chief Executive Officer of a society, no retirement benefits shall be sanctioned and disbursed until after the due issuance of a non-liability certificate by the Chief Executive Officer and approval of the same by the committee of the society within thirty days from the date of retirement of such employee. In the event of the retirement of the Chief Executive Officer, the nonliability certificate shall be issued by the committee of the Society. For any loss to the society due to the non-adherence of the forgoing procedure, the Chief Executive Officer along with the committee of the

society, shall be held responsible collectively and severally in respect of the issuance of Non-liability Certificate to any employee other than the Chief Executive Officer and the members of the committee shall be held collectively and severally responsible for the issuance of Non-liability Certificate to the Chief Executive Officer”.

The first part of R. 198(8) stipulates that in the case of all the employees, other than the Chief Executive Officer of a society, no retirement benefits shall be sanctioned and disbursed, until after the due issuance of a non- liability certificate by the Chief Executive Officer and approval of the same by the committee of the society within thirty days from the date of retirement of such employee. Further, that, in the event of the retirement of the Chief Executive Officer, the non- liability certificate shall be issued by the committee of the society, etc. Further provision thereof says that, for any loss to the society, due to the non-adherence of the above said procedure, the Chief Executive Officer, along with the committee of the society, shall be held responsible, collectively and severally, in respect of the issuance of Non- liability Certificate, etc. the said provision is not relevant in the present case. The most

relevant part of the R.198(8), as regards the facts of this case, is the first part thereof. The said provision stipulates that no retirement benefits shall be sanctioned and disbursed until after the due issuance of a non- liability certificate by the Chief Executive Officer and approval of the same, by the committee of the society within thirty days from the date of retirement of such employee. The said provision does not confer any power on the co- operative employer bank to indefinitely postpone issuance of the non liability certificate. It is also all the more so, as the terminal benefits, like person, gratuity, etc., are proprietary rights of the pensioner concerned and Art.300A of the Constitution of India explicitly mandates that no person shall be deprived of his property save by the authority of law. The said provision clearly mandates that such non- liability certificate will have to be issued by the competent authority within 30 days from the date of retirement of such employee. So R. 198(8) only mandates that the non- liability certificate has to be issued within 30 days from the date of retirement of the employee/pensioner concerned.”

6. It is admitted that no proceedings under Rule 198 have been invoked against the petitioner and the learned Government Pleader submits that the arbitration proceedings have already been filed against the petitioner and are pending consideration.

7. In view of this court's categorical declaration of law in Mohanan Nair P.G case (*Supra*). Since no proceedings are initiated against the petitioner, the petitioner is entitled to a relief from this Court for a direction to the respondent to disburse the pensionary benefits and pension if the petitioner has fully complied his part for grant of the same.

8. It is submitted by the learned government pleader that, the petitioner has not filed an application for grant of pension till date. The petitioner has to prepare his pension papers and should be counter signed by the president along with the non- liability certificate and thereafter it should be counter signed by the concerned

Assistant Registrar General and sent to the Kerala State Co-operative Pension Board, then only the petitioner will be disburse with the pension. The said procedure it has not been complied by the petitioner till date.

Regarding the pensionary benefits regarding gratuity and provident fund, the petitioner is entitled to the same as per the statutory time limit prescribed under the Act.

Therefore, this writ petition is disposed of, directing the additional 8th respondent to quantify and pay the pensionary benefits due to the petitioner within a period of three months from the date of receipt of a copy of this judgment, and liberty is also given to the petitioner to apply for pension in accordance with the Act and Rules before the 7th respondent.

Sd/-

BASANT BALAJI

JUDGE

APPENDIX OF WP(C) 13983/2020

RESPONDENT ANNEXURES

Annexure R4 (a) True copy of Circular No. 44/2012 of Registrar of Co-operative Societies, Thiruvananthapuram, dated. 19/11/2012.

PETITIONER EXHIBITS

Exhibit P10 A TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE PETITIONER BEFORE THE 7TH RESPONDENT

EXHIBIT P2 A TRUE COPY OF THE JUDGMENT DATED 21.5.2014 IN WPC.31657/2013 ON THE FILES OF THIS HONOURABLE COURT.

EXHIBIT P4 A TRUE COPY OF THE ORDER NO.AEL/1365/14 DATED 17.10.2014 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P5 A TRUE COPY OF THE NOTICE NO.M1875/2014 DATED 27.3.2015 ISSUED BY THE 6TH RESPONDENT.

EXHIBIT P3 A TRUE COPY OF THE RESOLUTION NO.1 DATED 20.10.2014 ISSUED BY THE 6TH RESPONDENT.

EXHIBIT P7 A TRUE COPY OF THE COMPLAINT DATED 13.12.2016 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE PERINTHALMANNA POLICE.

EXHIBIT P8 A TRUE COPY OF THE FIR IN CRIME NO.18/2017 ON THE FILES OF THE PERINTHALMANN POLICE STATION.

EXHIBIT P9 A TRUE COPY OF THE JUDGMENT DATED 6.4.2015 IN WPC.16832/2014 ON THE FILES OF THIS HONOURABLE COURT.

EXHIBIT P6 A TRUE COPY OF THE INTERIM ORDER DATED 10.4.2015 IN WPC.12394/2015 ON THE FILES OF THIS HONOURABLE COURT.

EXHIBIT P1 A TRUE COPY OF ORDER NO.HMC/1713/2012 DATED 9.7.2012 ISSUED BY THE 4TH RESPONDENT.