

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 5TH DAY OF DECEMBER 2022 / 14TH AGRAHAYANA, 1944

WP(C) NO. 15550 OF 2022

PETITIONER:

LIJI THANKAPPAN, JUNIOR CLERK,
(UNDER ORDERS OF DISMISSAL),
VELLOOR SERVICE CO-OPERATIVE BANK, MAVELLOOR P.O.,
VAIKOM, KOTTAYAM, RESIDING AT OOREDATH HOUSE,
MAVELLOOR P.O., VAIKOM, KOTTAYAM-686 141.

BY ADVS.P.N.MOHANAN
GILROY ROZARIO

RESPONDENTS:

- 1 VELLOOR SERVICE CO-OPERATIVE BANK LTD.NO.785,
REPRESENTED BY ITS SECRETARY, MAVELLOOR P.O.,
VAIKOM, KOTTAYAM-686 141.
- 2 THE MANAGING COMMITTEE OF VELLOOR SERVICE
CO-OPERATIVE BANK LTD NO.785,
REPRESENTED BY ITS PRESIDENT,
MAVELLOOR P.O., VAIKOM, KOTTAYAM-686 141.

BY ADV S.A.ANAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05.12.2022, ALONG WITH WP(C)No.27522/2019 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 5TH DAY OF DECEMBER 2022 / 14TH AGRAHAYANA,

1944

WP (C) NO. 27522 OF 2019

PETITIONERS:

- 1 THE VELLOOR SERVICE CO-OPERATIVE BANK LTD.NO.785, VELLOOR, MEVELLOOR P.O, VAIKOM, KOTTAYAM, REPRESENTED BY ITS SECRETARY-IN-CHARGE.
- 2 ADMINISTRATIVE COMMITTEE, VELLOOR SERVICE CO-OPERATIVE BANK LTD. NO.785, VELLOOR, MEVELLOOR P.O, VAIKOM, KOTTAYAM, REPRESENTED BY ITS CONVENER.

BY ADVS.S.P.ARAVINDAKSHAN PILLAY
SRI.S.A.ANAND

RESPONDENTS:

- 1 LIJI THANKAPPAN, OOREDATH HOUSE, MEVELLOOR P.O, VAIKOM, KOTTAYAM, PIN-686 609.
- 2 JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, KOTTAYAM, COLLECTORATE P.O, KOTTAYAM, PIN-686 002.
- 3 THE CO OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM, PIN-685 035.

BY ADVS. SRI.S.VIDYASAGAR
SRI.JOSHY THANNICKAMATTAM, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.12.2022, ALONG WITH WP(C)15550/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 5TH DAY OF DECEMBER 2022 / 14TH AGRAHAYANA,

1944

WP (C) NO. 27538 OF 2019

PETITIONERS:

- 1 THE VELLOOR SERVICE CO-OPERATIVE BANK LTD.NO.
785, VELLOOR, MEVELLOOR P.O,
VAIKOM, KOTTAYAM,
REPRESENTED BY ITS SECRETARY IN CHARGE.

- 2 ADMINISTRATIVE COMMITTEE,
VELLOOR SERVICE CO-OPERATIVE BANK LTD. NO.785,
VELLOOR MEVELLOOR P.O.
VAIKOM, KOTTAYAM,
REPRESENTED BY ITS CONVENER.

BY ADVS.

S.P.ARAVINDAKSHAN PILLAY

SRI.S.A.ANAND

RESPONDENTS:

- 1 LIJI THANKAPPAN,
OOREDATH HOUSE, MEVELLOOR P.O. VAIKOM,
KOTTAYAM, PIN 686 609.

- 2 JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE
SOCIETIES, KOTTAYAM, COLLECTORATE, P.O,
KOTTAYAM, PIN - 686 002.

- 3 THE CO-OPERATIVE ARBITRATION COURT,
THIRUVANANTHAPURAM, PIN - 695 035.

WP (C) Nos. 15550/2022, 27522/2019, 27538/2019, 30414/2019

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BY ADVS.
SRI.S.VIDYASAGAR
SRI.JOSHY THANNICKAMATTAM, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.12.2022, ALONG WITH WP(C) No.27522/2019
AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 5TH DAY OF DECEMBER 2022 / 14TH AGRAHAYANA,

1944

WP (C) NO. 30414 OF 2019

PETITIONER:

LIJI THANKAPPAN, AGED 44 YEARS,
D/O THANKAPPAN, OOREDATH VEEDU,
MEVELLOOR.P.O, VAIKOM TALUK,
KOTTAYAM DISTRICT.

BY ADV S.VIDYASAGAR

RESPONDENTS:

- 1 THE STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, CO-OPERATIVE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 2 THE REGISTRAR, OFFICE OF THE REGISTRAR, CO-OPERATIVE SOCIETIES, JAWAHAR SAHARANA BHAVAN, OPPOSITE DPI JUNCTION, THYCAD.P.O, PIN-695014.
- 3 JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE JOINT REGISTRAR, KOTTAYAM, PIN-686002.
- 4 ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, OFFICE OF THE ASSISTANT REGISTRAR, VAIKOM TALUK, KOTTAYAM DISTRICT, PIN-686141.

5 VELLOOR SERVICE CO-OPERATIVE BANK LTD.NO.785,
VELLOOR, MEVELLOOR.P.O, 686009, VAIKOM TALUK,
KOTTAYAM, REPRESENTED BY ITS SECRETARY.

6 ADMINISTRATIVE COMMITTEE,
VELLOOR SERVICE CO-OPERATIVE BANK LTD NO.785,
VELLOOR, MEVELLOOR.P.O, 686609, VAIKOM TALUK,
KOTTAYAM, REPRESENTED BY ITS CONVENOR.

BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.S.A.ANAND
SRI.JOSHY THANNICKAMATTAM, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.12.2022, ALONG WITH WP(C)No.27522/2019
AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

JUDGMENT

**[WP (C) Nos. 15550/2022, 27522/2019, 27538/2019,
30414/2019]**

I am considering the afore four cases together, since the factual circumstances involved are analogous and the reliefs sought for therein are interdependent, if not, opposing each other.

2. Out of the afore four cases, two writ petitions have been filed by 'Velloor Service Co-operative Bank' ('Society', for short) and its Administrative Committee; While the other two, namely W.P.(C)Nos.15550/2022 and 30414/2019, have been filed by Smt.Liji Thankappan, who was working as a Junior Clerk in their services and against whom disciplinary action was initiated.

3. To state compendiously, certain imputations were made against Smt.Liji Thankappan and a Charge Memo was issued to her

by the statutory Disciplinary Sub Committee - constituted under the provisions of Rule 198(3) of the Kerala Co-operative Societies Rules ('KCS Rules', for short). This led to a sequence of events, with Smt.Liji Thankappan challenging the order of suspension by approaching the competent Arbitration Court and also seeking that she be paid her subsistence allowance.

3. The Arbitration Court passed an order, directing Smt.Liji Thankappan to be reinstated in service; with a resultant order to the Society to pay her eligible subsistence allowance within the time frame fixed and that the disciplinary action be not concluded against her.

4. The afore directions of the Arbitration Court was challenged by the Society, filing W.P. (C) Nos. 27538/2019 and 27522/2019. The order to pay subsistence allowance was challenged through

another writ petition, namely W.P. (C) No. 27472/2019, which, however, has now been rendered infructuous, because the Society says that they have honoured the order impugned therein and I have already closed the said writ petition.

5. While so, W.P. (C) No. 15550/2022 has been filed by Smt. Liji Thankappan, asserting that the entire disciplinary action initiated against her is vitiated on account of the affirmative declarations of this Court in ***Kodanchery Service Co-operative Bank Ltd. & Others v. Joshy Varghese & Others*** [2020 KHC 5394]; and prior to it, she filed W.P. (C) No. 30414/2019, challenging the Enquiry Report, as well as the order issued by the Society recording that they had taken a decision to dismiss her.

6. It transpires that, when the afore writ petitions were considered by this Court on an

earlier occasion, a learned Judge stayed every aforementioned directions of the Arbitration Court, except payment of subsistence allowance; and it is thus asserted by the Society that they have issued a final dismissal order against Smt.Liji Thankappan - which is on record as Ext.R5(b) along with W.P.(C)No.30414/2019.

7. I have heard Sri.S.Vidyasagar - learned counsel appearing for Smt.Liji Thankappan in W.P.(C)No.30414/2019; Sri.C.P.Sabari - learned counsel for Smt.Liji Thankappan in W.P.(C)No.15550/2022; Sri.S.P.Aravindakshan Pillay - learned Counsel for the Society and Sri.Joshy Thannickamattam - learned Government Pleader appearing for the official respondents.

8. Even though the learned counsel for the rival parties have made submissions in extenso, the fact remains that there is no dispute to the contention of Smt.Liji Thankappan, even by the

Society, that **Joshy Varghese** (supra) renders it perspicuous that the Charge Memo issued by the statutory Disciplinary Sub-Committee is incompetent and void *ab initio*.

9. In fact, even to a pointed question from this Court, the learned counsel appearing for the Society agreed to this; but argued that, in spite of it, since disciplinary action was allowed to be taken forward by the Arbitration Court and by this Court in these writ petitions, it should be allowed to be concluded, through an appropriate order.

10. As an alternative contention, the learned counsel for the Society argued that, even if this Court is inclined to find that the Charge Memo is vitiated, then Smt. Liji Thankappan must challenge it through an apposite proceedings before the Arbitration Court and could not have approached this Court under

Article 226 of the Constitution of India.

11. The afore rival positions of the parties are crucial in these cases because, if the Charge Memo issued to Smt.Liji Thankappan stands vitiated on account of the declarations in **Joshy Varghese** (supra), then all the proceedings pursuant thereto will fall flat, because it is built-up on the foundations of such Memo.

12. Pertinently, no one has a case against the proposition that **Joshy Varghese** (supra) has declared the law conclusively that a Charge Memo cannot be validly issued by the Disciplinary Sub Committee, but only by the Managing Committee. As I have said above, this is conceded to by the Society also.

13. Axiomatically, the only question now to be decided by this Court is whether I must relegate Smt.Liji Thankappan to the Arbitration Court; in which case also, the inevitable

decision can only be that the Charge Memo is vitiated, because **Joshy Varghese** (supra) makes no room for doubt in that regard.

14. Obviously, therefore, any relegation of Smt.Liji Thankappan to such an alternative remedy could only be a formality, since the result would be no different.

15. Since the learned counsel for the Society also does not have a case against this, I am certain that this Court will be justified, even while acting under Article 226 of the Constitution of India, to find against the Charge Memo, particularly when such cannot be allowed to conclude in any order of punishment in a disciplinary action against any employee.

16. This is more so because, even when this Court is to hold so, the Society will be fully empowered to initiate further action against Smt.Liji Thankappan as per law, without being

trammelled by any of these proceedings.

17. Presumably being aware of the mind of this Court as afore, the learned counsel for the Society submitted that, if this Court is so inclined, then even if the Charge Memo is quashed, liberty of his client to proceed against Smt.Liji Thankappan in terms of law, by issuance of a new Charge Memo may be left open.

In the afore circumstances, I dispose of these writ petitions with the following directions:

(a) W.P.(C)No.15550/2019 is allowed and Ext.P6 Charge Memo is quashed, finding it to be vitiated it having been issued contrary to the declarations in **Joshy Varghese** (supra).

(b) Consequentially, W.P.(C)No. 30414/2019 is allowed and Ext.P5

Enquiry Report and Ext.P6 decision of the Society, along with Ext.R5(b) final order, shall stand set aside; however, reiteratingly clarifying that the Society will be at full liberty to initiate fresh action against Smt.Liji Thankappan, if they are so interested.

(c) Since the period of suspension of the petitioner has exceeded one year, admittedly, without any prior permission obtained from the jurisdictional Authority for its extension, I further declare that same shall stand terminated with effect from the date on which the one year period expired. The subsistence allowance, if any, paid for the period beyond that, shall

be adjusted against the eligible salary and emoluments payable to Smt.Liji Thankappan.

(d) W.P. (C) Nos. 27522/2019 and 27538/2019 are dismissed in terms of the afore directions.

Sd/-
DEVAN RAMACHANDRAN
JUDGE

akv

APPENDIX OF WP (C) 15550/2022

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE SUSPENSION ORDER
DATED 08.05.2018 ISSUED BY THE FIRST
RESPONDENT BANK
- EXHIBIT P2 A TRUE COPY OF THE ORDER DATED
11.04.2019 IN ARC NO.25/2019
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED
18.08.2019 IN IA NO.17/2019 IN ARC
NO.25/2019
- EXHIBIT P4 A TRUE COPY OF THE ORDER DATED
18.08.2019 IN IA NO.18/2019 IN ARC
NO.25/2019
- EXHIBIT P5 A TRUE COPY OF THE COMMON INTERIM
ORDER DATED 16.10.2019 IN WPC
NO.27522/2019
- EXHIBIT P6 A TRUE COPY OF THE CHARGE MEMO DATED
10.09.2018 OF THE SUB COMMITTEE
- EXHIBIT P7 A TRUE COPY OF THE REPLY DATED
10.10.2018 SUBMITTED BY THE PETITIONER
BEFORE THE CONVENER OF THE
SUBCOMMITTEE
- EXHIBIT P8 A TRUE COPY OF THE SHOW CAUSE NOTICE
DATED 25.10.2019 OF THE CONVENER OF
THE ADMINISTRATIVE COMMITTEE
- EXHIBIT P9 A TRUE COPY OF THE REPLY DATED
30.10.2019 SUBMITTED BY THE PETITIONER
BEFORE THE SECOND RESPONDENT
- EXHIBIT P10 A TRUE COPY OF THE DISMISSAL ORDER
DATED 04.11.2019 OF THE ADMINISTRATIVE

COMMITTEE

EXHIBIT P11

A TRUE COPY OF THE JUDGMENT DATED
21.11.2019 IN WPC NO.22228/2019

EXHIBIT P12

A TRUE COPY OF THE JUDGMENT REPORT IN
2020 (4) KLT 129

APPENDIX OF WP (C) 27522/2019

PETITIONER EXHIBITS

- EXHIBIT P1 THE COPY OF THE RESOLUTION NO. 34,
DATED 12.09.2019 OF THE ADMINISTRATIVE
COMMITTEE OF VELLOOR SERVICE CO-
OPERATIVE BANK LTD. NO. 785.
- EXHIBIT P2 THE COPY OF THE MEMO OF CHARGE DATED
17.9.2018.
- EXHIBIT P3 THE COPY OF THE ARC NO. 25/2019 ON THE
FILE OF CO-OPERATIVE ARBITRATION
COURT, THIRUVANANTHAPURAM.
- EXHIBIT P4 THE COPY OF THE I.A. NO. 18/2019 IN
ARC NO. 25/2019 OF THE HON. CO-
OPERATIVE ARBITRATION COURT OF KERALA
(NORTHERN REGION), ERNAKULAM.
- EXHIBIT P5 TRUE COPY OF THE COUNTER AFFIDAVIT
FILED ON BEHALF OF THE 1ST PETITIONER
NO. 18/2019 IN ARC NO. 25/2019 OF THE
HON. CO-OPERATIVE ARBITRATION
THIRUVANANTHAPURAM.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 18.7.2019
I.A. NO.18/2019 IN ARC NO. 25/2019 OF
THE HON. CO-OPERATIVE ARBITRATION
COURT, THIRUVANANTHAPURAM.

APPENDIX OF WP (C) 27538/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RESOLUTION NO. 34,
DATED 12.9.2019 OF THE ADMINISTRATIVE
COMMITTEE OF VELLOOR SERVICE CO-
OPERATIVE BANK LTD, NO. 785.
- EXHIBIT P2 TRUE COPY OF THE MEMO OF CHARGES NO.
SC/1/2018 DATED 17.9.2018.
- EXHIBIT P3 TRUE COPY OF THE ARC NO. 25/2019 ON
THE FILE OF CO-OPERATIVE ARBITRATION
COURT, THIRUVANANTHAPURAM .
- EXHIBIT P4 TRUE COPY OF THE I.A. NO. 16/2019 IN
ARC NO. 25/2019.
- EXHIBIT P5 TRUE COPY OF THE COUNTER AFFIDAVIT
FILED ON BEHALF OF THE 1ST PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 18.7.2019
ON I.A. NO.16/2019 IN ARC NO.25/2019.

RESPONDENT EXHIBITS

- EXHIBIT R1 (A) THE TRUE COPY OF THE ARC WITH AL THE
IA'S AND THE MEMORANDUM OF ASSOCIATION
OF THE BANK, WITH ITS BYE-LAWS AND
OTHER DOCUMENTS, FILED ALONG WITH ARC
25/2019.

APPENDIX OF WP (C) 30414/2019

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE ARC 25/2019 FILED WITH THE COPY OF DOCUMENTS OF INTERIM REPORT, FINAL REPORT, CHARGE MEMO, SUSPENSION ORDER, SUSPENSION EXTENSION ORDER AND OTHER DETAILS PERTAINING TO THE MATTER.
- EXHIBIT P2 THE TRUE COPY OF THE ORDER IN I.A.NO.16/2018 IN ARC NO.25/2018
- EXHIBIT P3 THE TRUE COPY OF THE ORDER DATED 8N I.A.17/2019 IN ARC NO.25/2018
- EXHIBIT P4 THE TRUE COPY OF THE ORDER DATED IN IA 18/2019 IN ARC NO.25/2018
- EXHIBIT P5 THE TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER BEFORE THE 5TH RESPONDENT BANK, RECOMMENDING DISMISSAL OF THE PETITIONER FROM SERVICE
- EXHIBIT P6 THE TRUE COPY OF THE SAID TEMPORARY DECISION TAKEN BY THE ADMINISTRATIVE COMMITTEE BY LETTER DATED 25.10.2019, TO DISMISS THE PETITIONER.
- EXHIBIT P7 THE TRUE COPY OF THE REPLY FILED BY THE PETITIONER TO EXHIBIT P6

RESPONDENT EXHIBITS

- EXHIBIT R5 (a) TRUE COPY OF THE POSTAL COVER.
- EXHIBIT R5 (b) TRUE COPY OF THE ORDER NO.1/2019 DATED 04.11.2019 OF THE CONVENER, ADMINISTRATIVE COMMITTEE.