

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 10TH DAY OF FEBRUARY 2014/21ST MAGHA, 1935

WA.No. 36 of 2014 () IN WP(C).17617/2012  
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AGAINST THE JUDGMENT IN WP(C) 17617/2012 OF HIGH COURT OF KERALA  
DATED 23-10-2013

APPELLANT/ADDL. 4TH RESPONDENT:  
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C.M. RAMANUNNY  
BRANCH MANAGER  
MALAPPURAM DISTRICT CO-OPERATIVE BANK LTD  
MARANCHERY BRANCH, MALAPPURAM - 679 581  
NOW WORKING AS SENIOR MANAGER, PONNANI  
MALAPPURAM - 679 577

BY ADVS. SMT. VP. SEEMANDINI (SR.)  
SMT. K.P. GEETHA MANI  
SRI. M.R. ANISON

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 TO 3:  
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1. THE GENERAL MANAGER,  
MALAPPURAM DISTRICT CO-OPERATIVE BANK LTD. NO.4329,  
MALAPPURAM, MALAPPURAM DISTRICT - 676 505.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER  
KOZHIKODE, SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN  
ERANHIPALAM P.O., KOZHIKODE - 673 006.
3. THE KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD  
REP. BY ITS SECRETARY  
KERALA STATE EMPLOYEES CO-OPERATIVE PENSION BOARD  
P.B.NO.85, KALA NIVAS, T.C.NO.27/156  
157 CHINMAYA LANE, KUNNUMPURAM AYURVEDA COLLEGE  
THIRUVANANTHAPURAM - 695 001.
4. THE STATE OF KERALA  
REP. BY ITS SECRETARY, MINISTRY OF LABOUR  
THIRUVANANTHAPURAM - 695 001

R1 BY ADV. SRI. E.S.M. KABEER, SC, MALAPPURAM DIST. CO-OP. BANK  
R2 BY ADV. SRI. THOMAS MATHEW NELLIMOOTTIL, SC, P.F.  
R3 BY ADV. SRI. K.R. SUNIL, SC, CO-OP. EMP. PENSION BOARD  
R4 BY SR. GOVERNMENT PLEADER SRI S. JAMAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2014, , ALONG  
WITH W.A.NO.77/14 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ANTONY DOMINIC & ANIL K.NARENDRA, JJ.**

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**Writ Appeal Nos.36 & 77 of 2014**  
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**DATED THIS THE 10<sup>th</sup> DAY OF FEBRUARY, 2014**

**JUDGMENT**

**ANTONY DOMINIC, J.**

The issues raised in these appeals are common and therefore, the appeals were heard together and are disposed of by this common judgment.

2. For convenience, we shall deal with Writ Appeal No.36/2014, first. This appeal is filed by the 4<sup>th</sup> respondent in W.P. (C)No.17617/2012. The said Writ Petition was filed by the 1<sup>st</sup> respondent herein challenging Exhibit P3 proceedings issued by the 2<sup>nd</sup> respondent under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The learned Judge by the impugned judgment directed that coercive proceedings initiated by the 2<sup>nd</sup> respondent against the 1<sup>st</sup> respondent shall be kept in abeyance, subject to the result of S.L.P.No.37019/2012. It is aggrieved by this judgment, the appeal is filed.

3. We heard the counsel for the appellant, concerned Standing Counsel for respondents 1 to 3 and the learned

Government Pleader appearing for the 4<sup>th</sup> respondent.

4. Briefly stated, the facts of the cases are that after the introduction of the State Co-operative Bank and District Co-operative Bank Employees Self Financing Pension Scheme, 2005, orders dated 26.5.2009 and 30.6.2009 were issued by the Employees Provident Fund Commissioner and the Government of Kerala excluding the employees of the State and District Co-operative Banks from the purview of the EPF Act in exercise of their power under Section 16(1)(b) of the Act. These orders were challenged before this Court in a batch of Writ Petitions and insofar as this appeal is concerned, W.P.(C)No.33534/2010 was filed by the appellant along with a staff organisation. By Exhibit R4(d) order dated 10.11.2010, this Court restrained the Bank from transferring the EPF accumulation to the Pension Board. It is also submitted before us that another Writ Petition was filed by 133 employees of the 1<sup>st</sup> respondent-Bank for the same relief. On account of the interim orders passed in these two cases, the Provident Fund accumulation was kept in a suspense account of the Bank. Finally, the batch of Writ Petitions were disposed of by

Exhibit P2 judgment rendered on 31.1.2012. By that judgment, the Writ Petitions were allowed and the two orders mentioned above, issued by the EPF Organisation and the Government of Kerala were quashed.

5. The Pension Board filed appeal against these judgments and by Exhibit R4(a) judgment rendered on 27.6.2012, the appeals were disposed of confirming the judgment of the learned Single Judge, however clarifying that those of the employees who opt for coverage by the Pension Board will be allowed to exercise such option and that in the event of exercising such an option, respective accumulation will be transferred from the EPF organisation to the Pension Board.

6. It is the common case of the parties that among the batch of cases dealt with by this Court, S.L.P.No.37019/2012 and S.L.P.No.38054/12 were filed by the Pension Board and the State Government respectively against the judgment in W.A.No.1019/2012 concerning the Thrissur District Co-operative Bank. Though, these SLPs are stated to be pending, no interim orders have been passed by the Apex Court and no SLP has been

filed against Exhibit P2 or Exhibit R4(a) judgment concerning the 1<sup>st</sup> respondent-Bank.

7. It appears that by Exhibit R4(c) letter dated 8.3.2012, the concerned employees of the Bank sought transfer of their accumulated contribution which is now kept in the suspense account of the Bank to the EPF organisation. That was not done by the Bank. Later, Exhibit R4(b) letter was issued by the EPF Organisation on 22.3.2012 requesting for transfer of the accumulated funds. That request was also not complied with. In such circumstances, proceedings under Section 7A of the EPF Act were initiated by the 2<sup>nd</sup> respondent and Exhibit P3 notice was issued. It was thereupon that the 1<sup>st</sup> respondent-Bank filed W.P. (C)No.17617/2012, which resulted in the impugned judgment.

8. Thus from the facts narrated by us, it is obvious that as at present Exhibit P2 and Exhibit R4(a), the judgments in W.P. (C)No.33534/2010 and W.A.No.1217/2012 have attained finality. In the absence of any challenge before the Apex Court, these judgments required the 1<sup>st</sup> respondent-Bank to transfer the accumulated fund to the EPF organisation and it was on account

of the Bank's failure in doing so that proceedings under Section 7A were initiated.

9. Insofar as the pendency of S.L.P.Nos.37019/2012 and 38054/2012 are concerned, as we have already noticed, those were filed against the judgment in W.A.No.1019/2012 concerning the employees of the Thrissur District Co-operative Bank. Therefore, the outcome of those SLPs cannot have any impact insofar as the inter party judgments evidenced by Exhibits P2 and R4(a) are concerned. If that be so, the pendency of the aforesaid SLPs before the Apex Court cannot justify the failure or delay on the part of the 1<sup>st</sup> respondent-Bank in complying with Exhibits P2 and R4(a). If that be so, there was absolutely no justification for the learned Judge to order that the proceedings pursuant to Exhibit P3 be deferred until the disposal of the SLPs now pending before the Apex Court. The appeal is therefore allowed. The judgment in W.P.(C)No.17617/2012 will stand set aside and the Writ Petition will stand dismissed.

10. The facts in W.P.(C)No.20957/2012 against the judgment of which W.A.No.77/14 has been filed is similar, except

that in this case proceedings initiated are for realisation of damages as provided under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act. Here again, for the same reasons which we have assigned in our judgment in W.A.No.36/2014, there is no justification for deferring the proceedings during the pendency of the SLPs pending in connection with the judgment in the case of the Thrissur District Co-operative Bank. Therefore, here also, the judgment of the learned Single Judge in W.P.(C)No.20957/2012 will stand set aside. The Writ Petition is dismissed.

The Writ Appeal is allowed as above.

Sd/-  
**ANTONY DOMINIC,**  
**JUDGE**

Sd/-  
**ANIL K.NARENDRA,**  
**JUDGE**

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