

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF SEPTEMBER 2013/3RD ASWINA, 1935

WP(C) .No.11253 of 2012 (F)

PETITIONER:

K.M.ABDULKHADER, AGED 63 YEARS,
S/O.MOIDEEN, XI/396, SHAVOLIN GRAMAM,
MULLASSERY.P.O., PIN-680 509, CHAVAKKAD,
TRISSUR (RETIRED SECRETARY,
TIRUR CO-OPERATIVE AGRL.&
RURAL DEVELOPMENT BANK LTD.,
TIRUR)

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS:

1. REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001.
2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL) ,
TIRUR-676 101.
3. THE KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
PIN-695 001.
4. THE BOARD OF DIRECTORS OF THE TIRUR
CO-OPERATIVE AGRICULTURE AND RURAL
DEVELOPMENT BANK LTD.NO.M11,
TIRUR, MALAPPURAM-676 191.
5. THE TIRUR CO-OPERATIVE AGRICULTURE AND
RURAL DEVELOPMENT BANK LTD.NO.M11,
TIRUR, MALAPPURAM-676 101,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.V.G.ARUN

BY ADV. SRI.T.R.HARIKUMAR

BY SRI.V.G.ARUN

BY GOVERNMENT PLEADER, SRI.NOUSHAD THOTTATHIL

BY SRI.T.R.HARIKUMAR

BY SRI.K.R.SUNIL, SC, CO-OPERATIVE EMPLOYEES PENSION BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-09-2013,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT.P1- TRUE COPY OF THE AWARD OF THE CO-OPERATIVE ARBITRATION COURT IN ARC NO.43/2011 DATED 27.12.2011.
- EXHIBIT.P2- TRUE COPY OF THE LETTER OF THE PETITIONER DATED 7.2.2012.
- EXHIBIT.P3- TRUE COPY OF THE COMMUNICATION DATED 28.3.2012 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT.P4- TRUE COPY OF THE LETTER DATED 17.4.2012 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT.P5- TRUE COPY OF THE REPRESENTATION DATED 19.4.2012 OF THE PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT.P6- TRUE COPY OF THE REPRESENTATION DATED 7.5.2012 OF THE PETITIONER TO THE 5TH RESPONDENT.
- EXHIBIT.P7- TRUE COPY OF THE LETTER DATED 22.05.2012.
- EXHIBIT.P8- TRUE COPY OF THE GOVERNMENT ORDER DATED 30.12.2002.
- EXHIBIT.P9- TRUE COPY OF THE JUDGMENT IN W.A.NO.1388 OF 2008 DATED 22.07.2008.
- EXHIBIT.P10- TRUE COPY OF THE LETTER DATED 06.07.2012.
- EXHIBIT.P11- TRUE COPY OF THE REPRESENTATION DATED 09.09.2012.

RESPONDENTS EXHIBITS:

- ANNEXURE-R5 (A) : TRUE COPY OF THE LETTER NO.A3/CD/12.13 DATED 17.04.2012 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES.

/TRUE COPY/

P.A.TO JUDGE.

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K.VINOD CHANDRAN, J.

W.P.(C)No.11253 of 2012

Dated this the 25th day of September, 2013

JUDGMENT

The petitioner an erstwhile Secretary of the fifth respondent Bank, was suspended from service on 30.03.2006 and after completion of the disciplinary proceedings, was dismissed with retrospective effect from the date of suspension; on 30.01.2008. If the petitioner had remained in service he would have superannuated on 30.05.2006. The dismissal of the petitioner was challenged in the Co-operative Arbitration Court, which challenge, culminated in Ext.P1 award, setting aside the dismissal order passed against the petitioner.

2. The Bank's contention that a valid domestic enquiry was conducted into the charges levelled against the petitioner was negated in Ext.P1 award. The Arbitration Court observed that the entire enquiry file including the proceedings and the documents were not produced before the court, nor was the Enquiry Officer examined. The Bank sought to sustain the dismissal of the petitioner by mere production of the enquiry report, which was found by the Arbitration Court to be

insufficient. The Arbitration Court also found further that the petitioner had superannuated on 30.05.2006 and there was no provision under the Kerala State Co-operative Societies Act, 1969(hereinafter referred to as "the Societies Act") or Rules framed thereunder, by which, the petitioner could have been deemed to be in service, after the date of superannuation, for the purpose of conducting a domestic enquiry. On the above findings, the claim of the petitioner was allowed and his dismissal order was set aside.

3. The Bank did not challenge the award as provided under Section 82 of the Societies Act. It is the contention of the respondent bank that a revision has been filed under Section 84, which is numbered as R.P.No.57 of 2012 and is pending consideration of the Tribunal.

4. The learned counsel for the petitioner submits that Ext.P1 award has become final, the same being passed under Section 70 of the Societies Act and can only be challenged by way of appeal under Section 82, as is specifically provided under Section 70. It is also contended that the powers of revision by

the Tribunal is to be exercised *suo motu* and none can claim a right to approach the Tribunal for invoking the revisory power of the Tribunal.

5. The learned counsel for the respondent bank, however, would contend that serious charges were made against the petitioner and there is loss caused to the bank, which has to be recovered, if the allegations against the petitioner are proved. The learned counsel appearing for the Bank would maintain that the issuance of a non-liability certificate as provided under sub-rules (7) and (8) of Rule 198 would prejudice the Director Board members of the bank insofar as; if eventually the petitioner is found to have caused loss to the bank, then by virtue of the said provisions, proceedings would be taken against the Directors of the Bank for recovery of the loss, thus caused to the Bank.

6. The learned counsel appearing for the Pension Board does not join issue on the controversy raised in the writ petition, but would only submit that the payment of the proportionate pension has, already, been commenced and there is deficiency in

the deposit of the contribution to be made by the Bank *in lieu* of the self financing scheme; coming to around Rs.30,000/-, on deposit of which, the Pension Board is willing to compute, sanction and disburse the pension payable.

7. Admittedly, the dismissal of the petitioner has been set aside by Ext.P1 award. The award passed under Section 70 is specifically made appealable under Section 82, the latter of which provision, provides for limitation period of 60 days. It is also pertinent that the provision does not speak of any condonation of delay in filing the appeal. The Bank has not challenged Ext.P1 award by way of appeal. It is the contention of the Bank that they have filed a revision under Section 84.

8. The contention raised by the learned counsel for the petitioner is that, Section 84 contemplates only *suo motu* powers and not an exercise of revisory power, on application being filed by a party. If that be the case, the period of limitation provided under Section 80 would be rendered otiose since any person who has not filed an appeal, would be entitled to do so invoking Section 84; is the submission.

9. Though the above contention cannot be accepted *in toto*, the effect of an application said to have been filed under Section 84 of the Societies Act has to be considered.

Section 84 is extracted hereunder:

"Revision by Tribunal:- The Tribunal may call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or revised, the Tribunal may pass such order thereon as it may deem fit:

Provided that the Tribunal shall not take any action under this section if:-

(a) the time for appeal against the decision or order has not expired;or

(b) the decision or order has been made the subject matter of an appeal;

Provided further that no order shall be made under this section unless notice has been given to all interested parties and they have been given a reasonable opportunity of being heard."

10. The provisions contained in Section 67F of the Abkari Act, 1077(Kerala)(hereinafter referred to as "the Abkari Act") is

also extracted hereunder:

67F. Revision:-

1. *The Commissioner may, before the expiry of thirty days from the date of an order passed under section 67B or section 67E, of his own motion, call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit;*

Provided that the Commissioner shall not all for and examine the record of any order passed under Section 67B if an appeal against such order is pending before the appellate authority;

Provided further that no order prejudicial to a person shall be passed under this Section without giving him an opportunity of being heard.

2. *An order of the Commissioner under sub-section (1) shall be final and shall not be called in question in any court.*

11. Considering the scope of Section 67F of the Abkari Act, the Hon'ble Supreme Court has held in ***State of Kerala v. Avinasiappan [2004(1) KLT 867]*** that when an application is filed before the authority under the said provision, seeking revision; the Commissioner examines the application only for

the limited purpose of finding as to whether it is a fit case where *suo motu* powers are to be exercised and no *lis* between the parties can be said to be pending. Though the decision was rendered in the context of declining an opportunity for hearing at the stage of arriving at a satisfaction as to whether it is a fit case where *suo motu* powers are to be exercised, the dictum is equally applicable herein. Section 84 also indicates the exercise of *suo motu* powers and an application filed cannot be treated as a revision in exercise of a remedy granted under the Act. The Tribunal has to first satisfy itself that it is a fit case where *suo motu* powers are to be exercised and only after such satisfaction is rendered there would be a *lis* pending between the parties. There is nothing on record to show that the application filed has gone beyond the process of being accepted to the records of the Tribunal. In such circumstances, the pension to the petitioner cannot be kept in abeyance awaiting the anticipated exercise of *suo motu* revisory power under the Act.

12. The contention of the respondent Bank that loss has been caused and same is to be recovered remains

unsubstantiated. Even going by the resolution passed by the respondent Bank, wherein, a decision was taken not to issue non-liability certificate(Ext.P4); the Bank relies on the pendency of the proceedings before the Judicial First Class Magistrate and Vigilance Court, Thrissur, against the petitioner; which is stoutly denied by the petitioner. In fact, but for the assertion of the proceedings pending before the Vigilance Court and the Judicial First Class Magistrate, the Bank does not place any material to substantiate the same nor does it even reveal the number of the proceedings, so stated to be pending.

13. It is also pertinent that but for the disciplinary enquiry initiated against the petitioner, which culminated in Ext.P1 award, no proceedings have been initiated for computation of loss. In the context of there be no proceedings initiated against the petitioner for computation of loss, the Bank cannot contend that the pension contributions and the retirement benefits are to be retained, to effect recovery in the event of the penal proceedings going against the petitioners. If the petitioner is found guilty in the penal proceedings, that would necessarily

result in penal consequences but not a claim for recovery of the loss sustained; without any computation of loss as such made by the Bank.

14. Looking at the provisions of sub-rules (7) and (8) of Rule 190, it is evident that the same has been brought to the statute with effect from 02.11.2010 and the petitioner's date of superannuation is 30.05.2006. The issuance of non-liability certificate is not at all an issue interdicting the sanction and disbursal of pension. Already, the Pension Board has released the proportionate pension on the basis of the contribution remitted by the Bank to the Board.

15. Ext.P1 award has become final since there is no appeal pending under Section 82. The retirement benefits of the petitioner including the pension cannot be permitted to be retained by the respondent Bank, merely for the reason of pendency of an application under Section 84. The writ petition filed, to implement the award; on the strength of the findings above is to be allowed. The fifth respondent Bank is directed to make the balance contribution towards the self-financing

pension scheme within a period of three months from today, failing which, the petitioner shall be entitled to interest at the rate of 6% from the date of award, ie., 27.12.2011 to the date of payment; which interest the Pension Board shall be entitled to realise from the respondent Bank.

16. The Pension Board on receipt of such contribution, shall compute the balance pension payable and disburse the same within two months thereafter.

The writ petition is allowed as above. No costs.

Sd/-

K.VINOD CHANDRAN, JUDGE.

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