

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 18TH DAY OF OCTOBER 2022 / 26TH ASWINA, 1944

WP(C) NO. 30637 OF 2022

PETITIONER:

C.K.ABDURAHIMAN
SHABNAM, CHERUVANNUR, KOLATHARA P.O, KOZHIKODE
- 673 655.

BY ADVS.
P.N.MOHANAN
C.P.SABARI
AMRUTHA SURESH

RESPONDENTS:

- 1 MALAPPURAM DISTRICT CO-OPERATIVE BANK
LTD.NO.4329,
REPRESENTED BY GENERAL MANAGER, P.B.NO.8,
MALAPPURAM - 676 505.
- 2 THE MANAGING COMMITTEE
OF MALAPPURAM DISTRICT CO-OPERATIVE BANK, LTD.
NO.4329, REPRESENTED BY ITS PRESIDENT,
P.B.NO.8, MALAPPURAM - 676 505.

SRI.E.S.M.KABEER -SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18.10.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DEVAN RAMACHANDRAN, J.

W.P (C) No. 30637 of 2022

Dated this the 18th day of October, 2022

JUDGMENT

The petitioner impugns Ext.P8 proceedings of Malappuram District Co-operative Bank ('the Society' for short), through which, his request for payment of gratuity of more than Rs.20 lakhs, has been rejected saying that he is not eligible for it, particularly because the Registrar of Co-operative Societies had issued an order, as early as on 22.11.2010, that only the provisions of the Payment of Gratuity Act, 1972 ('the Act' for short) could be made applicable.

2. Sri.P.N.Mohannan – learned counsel for the petitioner, vehemently argued that the law covering the field had been well settled through **Chandrasekharan Nair G & others v. Kerala State Co-operative Agricultural and Rural Development Bank Ltd. And others [2017 (4) KLT 276]**, which has declared affirmatively that when multiple choices are available to an employee as per the

Regulations/Bye-laws of the Society, the better among them should be granted. He pointed that, going by Regulation 21(a) of Ext.P2 Regulations of the Society, "an employee shall be paid gratuity at the rate of 15 days salary per year or the provisions of the Act, whichever is beneficial." (sic); and precedents covering the field, Ext.P8 becomes untenable.

3. Sri.E.S.M Kabeer – learned Standing Counsel for the Society, on the contrary, submitted that, as is evident from Ext.P8, his client is only acting as per the directions of the Registrar of Co-operative Societies and that as per order dated 02.11.2010, no employee of his client could have claimed more than what is eligible under the "Act". He thus submitted that there is no question of a better Term/Scheme being made available to the petitioner, and thus prayed that this Writ Petition be dismissed.

4. I notice from the pleadings on record and the materials available that the Society, while issuing Ext.P8, did not refer to any of the judgments of this Court, including **Chandrasekharan Nair G** (supra). They proceeded on the assumption that they are bound by the directions of the Registrar of Co-operative Societies; and in that line, they say that they have adhered with the order dated 02.11.2010,

which was published in the 'Kerala Gazette No.2427'. They assert that, this notification has the effect of amending Rule 59 of the Kerala Co-operative Societies Rules ('KCS Rules' for short) and therefore, that petitioner cannot seek any further benefit.

5. I am afraid that I cannot find full favour with the afore submissions of Sri.E.S.M Kabeer because, as rightly argued by Sri. P.N.Mohannan, various judgments referred to above declare the law unambiguously, that when there is a choice available to a retired employee under the applicable Regulations, then the better of them can be claimed by him.

6. That said, the question whether the Regulations of the Society offer a better term or whether there are compelling circumstances to deny the claim of the petitioner, are matters which will have to be decided by the Society in its proper perspective, however, only after adverting to the various judgments covering the area, including **Chandrasekharan Nair G** (supra). It was not proper for them to have issued Ext.P8 - particularly, when it seems to have done by its President - merely saying that they are bound only by the directions of the Registrar of Co-operative Societies.

7. In the above circumstances, I order this Writ Petition and set aside Ext.P8; with a consequential direction to the Competent Authority of the Society to reconsider the claim of the petitioner, advertent to the observations above and to the judgments of this Court, including **Chandrasekharan Nair G** (supra); thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than four months from the date of receipt of a copy of this judgment.

**Sd/-DEVAN RAMACHANDRAN,
JUDGE**

lsn

APPENDIX OF WP(C) 30637/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE PRINT OUT OF THE
SMS MESSAGE RECEIVED DATED 28.06.2022.
- Exhibit P2 A TRUE COPY OF THE SERVICE REGULATION
OF THE EMPLOYEES ADOPTED, APPROVED BY
THE GOVERNMENT.
- Exhibit P3 A TRUE COPY OF THE REPRESENTATION
25.05.2022 SUBMITTED BEFORE THE FIRST
RESPONDENT.
- Exhibit P4 A TRUE COPY OF THE REPRESENTATION
29.06.2022 SUBMITTED BEFORE THE FIRST
RESPONDENT.
- Exhibit P5 A TRUE COPY OF THE JUDGMENT REPORTED
IN 2021 (5) KLT 262.
- Exhibit P6 A TRUE COPY OF THE JUDGMENT AS
REPORTED IN 2022 (4) KLT 495.
- Exhibit P7 A TRUE COPY OF THE JUDGMENT DATED
22.07.2022 IN W.P. (C) .NO.22211/2022.
- Exhibit P8 A TRUE COPY OF THE ORDER DATED
19.09.2022 OF THE FIRST RESPONDENT.
- Exhibit P9 A TRUE COPY OF THE ORDER G.S
NO.4960/2000 DATED 31/5/2001 OF THE
CONTROLLING AUTHORITY

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

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