

(2016) 05 KL CK 0019
In the High Court Of Kerala
Case No : W.P. (C). No. 915 of 2008 (H)

Chandran P.

APPELLANT

Vs

Kerala State Co-Operative Employees Pension Board

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CLR 786 : (2016) LIC 3609

Hon'ble Judges : Shaji P. Chaly, J.

Bench : Single Bench

Advocate : C. Muralikrishnan (Payyanur), Advocate, for the Appellant; P.V. Mohanan, SC, Sri. K.R. Sunil, Advocates and M. Sasindran, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.—This writ petition is filed by the petitioner seeking to quash Ext.P4 order, whereby the 1st respondent declined the reliefs sought for by the petitioner to calculate the pension taking into account the period of suspension also.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner joined the service of the 2nd respondent Bank on 10.10.1966 and retired on 31.01.2005. Pension was sanctioned to the petitioner by Ext.P1 Pension Payment Order. While sanctioning pension, the entire qualifying service was not reckoned for pension which resulted in drop in quantum of pension. Petitioner joined the contributory provident fund on 01.04.1970 and as such, the service from the said date till 31.01.2005 is to be treated as qualifying service. But the 1st respondent omitted certain period of service for reckoning the qualifying service, stating that the period of suspension and dismissal underwent by the petitioner cannot be treated as qualifying service, is the contention advanced by the petitioner. It is the further contention of the petitioner that, the

said reasoning adopted by the 1st respondent in Ext.P4 cannot be sustained under law. That apart, it is contended that since the petitioner was re-instated by the award passed by the Labour Court with continuity in service, and lump sum compensation, the period under suspension is also to be reckoned as in service for the purpose of quantifying pension and other benefits.

4. 1st respondent has filed a counter affidavit refuting the allegations and statements and demands made by the petitioner and reiterated the reasons given by the 1st respondent in Ext.P4 order passed by it to the claim raised by the petitioner. According to learned counsel for the 1st respondent, even though petitioner was directed to be reinstated in service with continuity of service, there was no back wages in its entirety. But what was directed to be paid is only a lump sum compensation of an amount of Rs. 10,000/- which cannot be treated as back wages for the purpose of calculating the qualifying service for pension.

5. Heard learned counsel for the petitioner and learned counsel for the respondents.

6. The question to be decided in this writ petition is whether Ext.P4 order suffers any legal infirmity so as to warrant interference by invoking the discretionary jurisdiction of this Court conferred under Article 226 of the Constitution of India. Learned counsel for the 2nd respondent, in order to consider the subject issue in this writ petition, has invited my attention to the judgment of the Gujarat High Court in "Swastik Textile Engineers Pvt. Ltd. v. Virjibhai Mavjibhai Rathod" [(2008) 1 GLR 670]. Learned counsel has specifically invited my attention to paragraphs 11 to 13 in the said judgment, in order to canvass the proposition that merely a lump sum amount is provided by a Labour Court in lieu of back wages, same need not be taken into account for the purpose of calculating the pension amount. I think it is only worthwhile to extract paragraphs 11 to 13 in the said judgment in order to consider the question effectively:

"11. As recorded herein-above, the service of the workman was terminated, which was held to be illegal and the workman had been reinstated in service with continuity in service. Whether, the "continuity in service" ordered by the Labour Court would amount to the period spent on duty. If it is to be treated as the period spent on duty, then necessarily, the workman would be entitled to receive the entire salary; would be liable to make contribution to the provident fund, and in that case, the employer would be liable to make statutory contribution to the provident fund. But, in my view, the "continuity in service" does not carry the meaning "the period spent on duty". The purpose to allow continuity in service would be that such period would not be treated as break in service for the purpose of service benefits like; pay, increments, leave, allowances, pension, etc. In absence of a specific order that such period should be treated as period on duty, such period cannot be held to be the period spent on duty. Besides, the fact that the Labour Court had awarded only part of the back wages, would also tend to show that the period of absence from duty on account of termination from

service was not intended to be treated as the period spent on duty.

12. In my view, when the Court awards back wages for the period the employee was kept away from duty, what the Court does is to award damages assessed in terms of whole or part of the wages the workman would have earned had he been continued in service without interruption. It is not the same as payment of wages for the duties performed or for the period deemed to have been spent on duty. The amount of damages or the compensation awarded by a Court would not constitute the "basic wages" as envisaged by the Act.

13. For the aforesaid reasons, I am of the opinion that the amount of back wages paid to the workman did not constitute the "basic wages" as envisaged by the Act. The petitioner, was therefore, under no obligation to make statutory contribution to the provident fund under the Act."

7. So also, learned counsel for the 1st respondent has contended that, the order passed by the 1st respondent as per Ext.P4 is legal and valid and no interference is called for, by invoking the writ jurisdiction of this Court.

8. Having considered the rival submissions made across the Bar, the pleadings put forth and the evidence on record, I am of the considered opinion that the principles of law laid down in the aforesaid judgment is aptly applicable to the facts and circumstances of this case. According to me, even though the Labour Court ordered reinstatement of the petitioner in service with continuity of service, there was no back wages ordered, but only provided the petitioner with a lump sum compensation which cannot be treated as back wages. Therefore, the wages during the period of suspension cannot be reckoned for the purpose of calculating the pension.

9. In that view of the matter, I am of the considered opinion that petitioner failed to establish the points raised by him before this Court.

10. Resultantly, the writ petition fails and accordingly the same is dismissed.