**(2014) 03 KL CK 0032**

**In the High Court Of Kerala**

**Case No :** W.P. (C). No. 3509 of 2011

C.K. Narayanan APPELLANT

Vs

The Mathil Service Co-Op. Bank Ltd. RESPONDENT

**Date of Decision :** 06-03-2014

**Acts Referred:**

**Citation :** (2014) 2 KLJ 703

**Hon'ble Judges :** A.V. Ramakrishna Pillai, J

**Bench :** Single Bench

**Advocate :** M. Sasindran, Advocate for the Appellant; M.V. Amaresan, V.N. Ramesannambisan, P.V. Mohanan, (SC) and K.R. Sunil, (SC), Advocate for the Respondent

**Final Decision :** Allowed

## Judgement

A.V. Ramakrishna Pillai, J.—The petitioner has come up before this Court seeking a direction against the second respondent to forward the pension papers of the petitioner to the fifth respondent Pension Board forthwith and also to quash Ext. P3 in so far as it orders that the exemption from qualification of the petitioner would take effect from the date of the said order.

2. The petitioner, who was working as the Assistant Secretary of the first respondent, was promoted as Chief Accountant on 01.10.1999. Since the petitioner did not require the requisite qualification, the respondent Society by Ext. P2 had made a request for exempting the petitioner from acquiring the degree which is the required qualification for being promoted to the post of Chief Accountant with effect from 01.10.1999. The Registrar by Ext. P3 order, approved the Resolution of the Society granting exemption. However it was further ordered that, it would take effect only from the date of that order. The petitioner alleges that Ext. P3, to that extent, is illegal in view of the judgment of this Court in K.K. Dasan Vs. Registrar of Co-operative Societies and Another . After retirement of the petitioner, his pension papers were forwarded to the second respondent for onward transmission to the Pension Board. The petitioner

 

alleges that the second respondent is not forwarding the pension papers of the petitioner. Thus, the petitioner has come up before this Court.

3. The fifth respondent has filed an affidavit wherein they have stated that, as per the interim order of this Court dated 29.07.2011, this Court directed the second respondent to forward the application for pension submitted by the petitioner to the Pension Board and also the Pension Board was directed to process it and fix the pension payable to the petitioner within one month thereafter. It was submitted that the said order has been complied with on 19.10.2011 by the respondent Board.

4. In the detailed counter affidavit filed by the first respondent Society, they have averred that the petitioner was paid his Gratuity, Provident Fund and Dearness Allowance arrears and as such prayer Nos. 1, 5 and 6 have become infructuous. The stand taken by the first respondent is that the nature of duty of the Chief Accountant and its lower post is more or less identical, and the duty of Chief Accountant is less laborious that the one in his previous post. They maintained the stand that the petitioner is not entitled to re-fixation of salary.

5. Arguments have been heard.

6. The main grievance of the petitioner is that, as the second respondent has issued Ext. P4 order stating that the exemption from qualification is only from 09.06.2005, the difference in pay from 01.10.1999 to 09.06.2005 in the post of Chief Accountant will have to be refunded. Ext. P5 is the consequential order issued by the Society to refund a sum of Rs. 46,050/-. This, according to the learned counsel for the petitioner, is illegal in view of the judgment of this Court referred to above. It was submitted by the learned counsel for the petitioner that the first respondent on account of Ext. P4 have retained Rs. 50,000/- which otherwise would have been payable to the petitioner. In support of the case of the petitioner, Ext. P1 resolution dated 30.10.1999 by the first respondent is produced. The decision was to promote the petitioner from the post of Branch Manager to the post of Chief Accountant with effect from 01.10.1999. What was observed by this Court in Dasan v. Registrar of Co-operative Societies (cited supra) is that what is being approved by the Registrar is the Resolution adopted by the Society and the power of the Registrar is only to approve or reject the Resolution and when the Resolution is approved, the date from which the employee is benefited is from the date of the Resolution and not with effect from the date of the order of the Registrar.

7. In this context, the learned Government Pleader inviting my attention to Ext. P1, argued that the promotion of the petitioner can only be from 30.10.1999 which is the date of Ext. P1 Resolution. It was also pointed out that in Dasan''s case (see supra) there was a decision by the society to give promotion to the petitioner as well as to grant exemption from the required educational qualification. These decisions were taken on the same day. In the instant case, the decision in Ext. P1 was only to give promotion to the petitioner. However on

30.11.2004 by Ext. P2 Resolution, the first respondent decided to grant exemption to the petitioner from the requisite qualification w.e.f. 01.10.1999. The request of the first respondent was approved by the Registrar by Ext. P3. Though the decision of the society to grant exemption was subsequent in point of time i.e. 30.11.2004, it relates back to 01.10.1999.

8. It is an admitted fact that the petitioner has been discharging the duties of the Chief Accountant and even assuming it was provisional, he is entitled to the salary attached to the post. There is no justification in the direction for refund, when the petitioner has already worked in that post.

Therefore this writ petition is allowed. Ext. P4 and P5 are quashed. Ext. P3 is quashed so far as it orders that the exemption from qualification will take effect from the date of that order only. It is hereby declared that the promotion of the petitioner to the post of Chief Accountant would take effect from 30.10.1999, which is the date of Ext. P1 Resolution. Needless to say that the consequential benefits should follow. The first respondent shall release the amount to the petitioner without delay in terms which has been stated above.