

(2014) 02 KL CK 0014
In the High Court Of Kerala
Case No : WP (C). No. 37357 of 2008 (V)

Gangadharan Pillai K.

APPELLANT

Vs

The Sasthamkotta Service Co-Operative Bank Ltd.

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2014) 02 KL CK 0014

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : B.S. Swathy Kumar, Smt. Anitha Ravindran and Smt. M.G. Aiswarya, Advocate for the Appellant; K.S. Manu (Punukkonnoor), Sri. P. Sreekumar, Advocates for R1, Sri. K.R. Sunil, S.C. and Sri. P.V. Mohanan, S.C. R4 and R5, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Muhamed Mustaque Ayumantakath, J.—This writ petition is filed with the following reliefs:

i) To declare that the petitioner is entitled to count the entire length of the petitioner's service in the 1st respondent Co-operative Bank commencing from 01.03.1985 till 30.09.2007 as qualifying service for the purpose of pension under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994.

ii) To issue a Writ of Mandamus or other appropriate Writ, Order or direction directing the 5th respondent to disburse to the petitioner all the pensionary benefits due under the Kerala Co-operative Societies Employees Self Financing Scheme, 1994 by reckoning the service rendered by the petitioner in the 1st respondent Co-operative Bank commencing from 01.03.1985 till 30.09.2007.

2. According to the petitioner, he entered in the service of the first respondent Bank as a Sweeper on 01.06.1979 and his service is regularized with effect from 01.01.2000.

According to him, since his name has been registered under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 (for short, "the Pension Scheme"), he is entitled for the benefit of pension from 01.03.1985. He relies on Ext. P2 request made by the Bank for registration of the employees working under them, in which the petitioner's name is referred in column No. 8. However, the petitioner states that he is granted pension only with effect from 01.01.2000, the date on which he was regularised in the service as per Ext. P1.

3. Heard the learned counsel for the petitioner, learned counsel for the Bank and the learned standing counsel for the 4th respondent-Board.

4. The learned standing counsel for the 4th respondent-Board submits that qualifying service can only be reckoned from the date in which an employee is regularised in the Service. He relies on the definition accorded to "employee" in paragraph 2(f) of the Pension Scheme. In the light of the said definition, it is submitted that the petitioner will be entitled for pension by reckoning service only with effect from 01.01.2000. However, the learned counsel appearing for the petitioner refers to the judgment of this Court in N. Sukumaran Vs. Kerala State Co-operative Employees Pension Board and Another, , wherein it was held that for the purpose of computing the qualifying service, the length of service commencing from the date of joining the contributory provident fund is relevant.

5. On going through the above judgment, this Court finds that what is laid in the above case is that an employee cannot contend that he is entitled to reckon qualifying service from an anterior date based on joining the service which can only be calculated with reference to the date of joining Pension Scheme. The above approach does not lay down the principle that person whose service has not been regularized as on the date of joining Pension Scheme would also be entitled to reckon unregularized service as qualifying service. The petitioner is not entitled to reckon qualifying service on a date on which his service is not regularized or not valid in terms of paragraph 2(f) of the Pension Scheme. The learned counsel also relies on the decision of this Court in V.N. Narayana Kuruppu Vs. Kerala State Co-Operative Employees Pension Board, , wherein it has been held that the Board has no jurisdiction to look into the question relating to validity of appointments. However, the Board necessarily has to refer an appointment date which is validly reckoned in terms of paragraph 2(f) of the Pension Scheme. In this case, the Board is not adjudicating upon the validity of appointment and on the other hand, refers and relies on Ext. P1 only for the purpose of reckoning qualifying service for the purpose of calculating pension of the petitioner under the Pension Scheme. Therefore, the above ruling also has no relevance in this context. In view of the definition accorded to the "employee" under paragraph 2(f) of the Pension Scheme, this Court finds that the petitioner is not entitled to reckon any anterior period during which his name appears to have been registered for the purpose of pension as per Ext. P2. If at all the Board had received any contribution based on Ext. P2, they are bound to return such contribution to the employee. However, as that issue is not raised in this

case, the petitioner is free to make any representation in that regard. If the petitioner makes any representation based on Ext. P2 for return of the contribution made for the period during which his employment has not been recognized or reckoned for the purpose of qualifying service, necessarily, such application shall be entertained by the Board and the Board shall pass appropriate orders on such request.

In such circumstance, this writ petition is dismissed with liberty to the petitioner to approach the Board for return of the contribution, if any, made prior to 01.01.2000.