

(2022) 02 KL CK 0219

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 28907 Of 2019 & 3997 Of 2020

Karannur Service Co Operative Bank Ltd. No.F.1244

APPELLANT

Vs

Nirmala Xavier

RESPONDENT

Date of Decision : 24-02-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Kerala Co Operative Societies Act, 1969 — Section 66A, 69, 69(2)(d)

Citation : (2022) 02 KL CK 0219

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : R.T.Pradeep, M.Bindudas, K.C.Harish, C.N.Prabhakaran, P.P.Jacob

Final Decision : Disposed Of

Judgement

Murali Purushothaman, J

1. W.P.(C).No.28907/2019 is filed by the Karannur Service Co-operative Bank Ltd. (hereinafter referred to as 'society') and W.P.(C).No.3997/2020 is filed by Smt. Nirmala Xavier, who retired from the service of the society as Accountant (hereinafter referred to as 'employee').

2. For the sake of convenience, I shall refer to the exhibits marked in W.P.(C).No.28907/2019. The employee joined the service of the society as Junior Clerk on 02.01.1986. Alleging that she had committed certain misconduct, she was suspended on 22.09.1990 and was compulsorily retired from service by order dated 31.05.1991. This dispute was the subject matter of ID. No.33/1993 on the file of the Labour Court, Kozhikode and the Labour Court, by award dated 28.01.2000, directed the management to reinstate her with continuity of service and payment of Rs.25,000/- in lieu of back wages.

3.The society filed O.P. No.14892/2000 before this Court challenging the award and pursuant to an order passed in application filed under Section 17B of the Industrial Disputes Act, 1947, Rs.20,000/- was paid to the employee.

4. During the pendency of the Original Petition, on the basis of various discussions, the employee submitted Ext. P1 terms of settlement before the society. The terms and conditions of the settlement are as follows:-

"i) I should be reinstated in service as Junior Clerk in Karannur Service Co-operative Bank Limited, forthwith, and the Bank should give me promotion to the higher post as and when vacancies occur, foregoing my claim for seniority.

(ii) I should be given continuity in service on condition that I shall not claim any monetary benefits for the period from 30-5-1991 till the actual date of reinstatement.

(iii) A sum of Rs. 20,000/- (Rupees Twenty Thousand only) paid by the Karannur Service Co-operative Bank Limited to me on 22-08-2001 can be adjusted towards the sum of Rs.25,000/-(Rupees Twenty five thousand only) awarded by the Labour Court, Kozhikode in its Award dated 28.1.2000, in lieu of back wages. Balance amount of Rs.5,000/- (Rupees five thousand only) should be paid by the Karannur Service Co-operative Bank Limited, within one week from today.

(iv) I shall not claim any amount on the basis of the interim order dated 6.2.2002 in C.M.P. No. 58891/2000 in O.P. No.14892/2000 W of the Honourable High Court of Kerala, towards section 17 B wages.

(v) I hereby undertake not to file any Execution Petition before the Labour Court, Kozhikode for executing the Award dated 28.01.2000 in I.D. No. 33/1993."

5. Ext. P1 terms of settlement was accepted by the Board of Directors of the society and by resolution dated 08.03.2002 resolved to appoint the employee as Junior Clerk, for the time being, with continuity of service and reinstated her in service on 11.03.2002 as Junior Clerk w.e.f 30.05.1991. Following her reinstatement, O.P. No.14892/2000 was dismissed as withdrawn.

6. While the employee was continuing in service as Junior Clerk, the Secretary of the society retired from service and consequential vacancies arose in the society and she made a claim in the consequential vacancy of Accountant, having regard to the fact that the reinstatement was with continuity of service. However, the society declined her claim and promoted and posted some other person as Accountant. The employee took up the matter with the Joint Registrar and the Registrar and being unsuccessful, filed appeal before the Government and the Government, by order dated 28.11.2008, allowed her appeal and directed the society to reinstate her in service with effect from 30.05.1991 with seniority and continuity in service.

7. The society filed W.P.(C).No.36732/2008 challenging the aforesaid order of the Government and the employee filed W.P.(C).No.2671/2009 for implementing the said order. This Court, by Ext. P2 common judgment, held that the direction of the Government cannot be upheld in toto in view of certain sacrifices agreed to be made by the employee in Ext. P1 settlement. However, it was declared that she was entitled to be promoted as Accountant in the vacancy which arose on

01.07.2002 as a result of retirement of the Secretary of the society on 30.06.2002. Accordingly, this Court set aside the order passed by the Government to the extent it ordered restoration of the entire benefits awarded in I.D. No.33/1993 and directed that the employee will be given the benefits as provided in the settlement accepted by the Board of Directors of the society.

8.The society preferred W.A. No. 1736/2009 against the said judgment and the Division Bench of this Court, by Ext. P3 judgment, dismissed the Writ Appeal with a clarification that though the employee has to be promoted as Accountant w.e.f 01.07.2002, she shall be paid the arrears of salary only with effect from the date, when other employees were paid the arrears i.e., from 30.9.2003.

9. According to the society, they have implemented the above judgments and the employee was given promotion as Accountant w.e.f 01.07.2002 and she retired from service on 30.11.2013. It is also the case of the society that they have paid the contribution payable towards the pension fund covering the period of suspension and the employee is getting full pension. The society refers to Ext. P4 proceedings of the Assistant Registrar which objected to the entry regarding earned leave in the service book of the employee during the period she has not worked. The society has also produced Ext.P6 letter of the employee acknowledging that she has verified her service book and she has no complaint regarding the entries therein regarding the loss of pay leave.

10. While so, three years after retirement, the employee preferred an application dated 02.02.2017 before the Government for their intervention for salary during the period of suspension, earned leave, promotion and other service benefits. Pursuant thereto, the Government passed Ext.P7 order after hearing the employee and the society directing the society to pay full salary as well as the earned leave benefits to the employee within 15 days from the receipt of the order.

11. The society filed W.P.(C)No.35367/2017 challenging Ext.P7 order contending that they have already paid off the entire amounts in terms of Ext. P2 judgment and that the Government was not justified in issuing Ext. P7, on the basis of a subsequent request made by the employee. This Court, by Ext. P8 judgment, remitted the matter to the society to decide and intimate the employee through an order as to any amounts or benefits are still due to be paid to her; and if the stand of the society thereafter is that no amounts are due, then it will be upto the employee to invoke appropriate remedies that are available to her in law against such order. The relevant portion of Ext.P8 judgment is extracted hereunder:

"...According to the learned Senior Counsel, there is no reason why the petitioner Bank should have challenged Ext. P7 because if, as asserted by them, nothing is due to his client, then they only have to inform her accordingly, so as to enable her to invoke and pursue other alternate remedies, including under Section 69 of the KCS Act.

4. I have examined Ext. P7 as also Ext. P2 judgment and I am of the view that it will not be justified or prudent for this Court at this stage to state affirmatively anything regarding the merits of the contentions of the rival parties. I am of the opinion that it will be better to leave it to the Bank to answer the claims of the petitioner pursuant to Ext.P7 and to direct them to communicate appropriately to the 1st respondent, so that she can then invoke legal redress, if so warranted.

In the afore perspective, I order this writ petition and direct the Bank to first afford an opportunity of being heard to the 1st respondent and intimate her through an order if any amounts or benefits are still due to be paid to her, within a period of one month from the date of receipt of a copy of this judgment; and if the stand of the Bank is thereafter that no amounts are due, then it will be upto the 1st respondent to invoke appropriate remedies that are available to her law against such order.”

12. Pursuant to Ext. P8 judgment, the society, by Ext. P9 proceedings, communicated its decision to the employee that no amount is due and payable to her.

13. The employee then preferred Ext. P10 complaint before the Joint Registrar stating that an amount of Rs. 23,45,241/- is due and payable to her and to issue direction to the society to release the amount with interest.

14. The Joint Registrar directed the society to verify the details of the claim raised by the employee and to report. A hearing was held and the society reported that no amount is due to the employee. The Joint Registrar passed Ext. P13 order directing the society to pay the amount as directed in Ext. P7 order by considering the claim statement to be filed by the employee and observing that in the event of not paying the amount, the employee is at liberty to invoke the provisions of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the 'Act', for short) to implement the order of the Government.

15. The society has filed W.P.(C).No.28907/2019 challenging Ext.P13 order and the employee has filed W.P.(C).No.3997/2020 to implement Ext. P13 (Ext. P6 in the said writ petition). This Court, by order dated 29.10.2019 in W.P. (C).No.28907/2019, has stayed all consequential proceedings pursuant to Ext. P13 for one month which was extended until further orders on 22.01.2020.

16. According to the society, no amounts are due or payable to the employee. The Joint Registrar has passed Ext. P13 order directing the society to pay the amount as directed in Ext. P7 order. In Ext.P7 order, the Government has directed the society to pay full salary as well as the earned leave benefits to the employee. In Ext. P2 judgment which was confirmed by Ext. P3 judgment, this Court had set aside order dated 28.11.2008 passed by the Government to the extent it ordered restoration of the entire benefits awarded in I.D. No.33/1993. Therefore, the society contends that, the Government has no authority to reopen issues that are decided and attained finality as per Exts. P2 and P3 judgments. The society further contends that the only remedy available against Ext. P9

proceedings of the society is to approach the Co-operative Arbitration Court invoking the provisions under Section 69 of the Act. Accordingly, the society prays for setting aside Ext. P13 order of the Joint Registrar.

17. The employee would contend that Ext. P13 order is legal and valid and the attempt of the society is to delay the payments due to her. It is also contended that the writ petition filed by the society is not maintainable as the society has an alternative remedy under Section 83 of the Act against Ext. P13 order. It is further contended that the dispute raised by the employee against Ext. P9 is purely a monetary dispute and the Joint Registrar has jurisdiction to pass Ext.P13. According to the employee, her contentions in Ext. P10 are entirely different from the issues addressed by this Court in Exts. P2 and P3 judgments and what has been directed in Ext. P13 is compliance of Ext. P7 order of Government after verification of the claim made by her in tune with the records with the society. It is also contended that Ext. P7 order is not set aside in Ext. P8 judgment and is binding on the society. Accordingly, the employee prays for direction to implement Ext. P13 order of the Joint Registrar.

18. The Joint Registrar of Co-operative Societies has filed a counter affidavit stating that Ext. P13 order has been passed in terms of Ext. P8 judgment of this Court and also Ext.P7 order of the Government. It is further stated that Ext. P13 order has been passed as the Government directed to take appropriate decision on the representation of the employee. Summarising the circumstances that led to issuance of Ext. P13 order, the deponent who issued Ext. P13 states that, the society violated Ext. P8 judgment and there is no dispute coming under the purview of Section 69 of the Act and the issue is not a monetary or non-monetary dispute, but only compliance of the order of this Court.

19. The learned Government Pleader has filed a statement dated 17.11.2021 in W.P.(C).No.3997/2020 stating that Ext. P7 was passed by the Government under Rule 189 (f) (sic) of the KCS Act, 1969 and Ext. P13 order is passed by the Joint Registrar under Section 66(a) (sic) of the Act.

20. Heard Sri. P.P. Jacob, the learned counsel for the petitioner in W.P. (C).No.28907/2019, Sri. R.T. Pradeep, the learned counsel for the petitioner in W.P. (C).No.3997/2020 and Sri. K.M. Faizal, the learned Government Pleader for the official respondents.

21. This Court attempted to find out whether an amicable settlement could be arrived at and Sri. P.P. Jacob, the learned counsel for the society, on instructions, maintained the stand that no amounts are due to the employee and all amounts as per Ext. P1 settlement and Exts.P2 and P3 judgments have been paid to the employee and the amounts were received by the employee without any objection. The counsel for the society also filed a statement dated 06.12.2021 relating the amounts paid to the employee pursuant to her retirement. It is stated that an amount of Rs. 8,13,742/-was paid by the society to the employee pursuant to her retirement. Accordingly, the writ petitions were heard on merits.

22. In Ext.P2 judgment confirmed by Ext. P3 judgment, this Court had set aside the order dated 28.11.2008 passed by the Government to the extent it ordered restoration of the entire benefits awarded in I.D. No.33/1993 and directed that the employee will be given the benefits as provided in Ext. P1 settlement accepted by the Board of Directors of the society. In Ext. P7 order, the Government has directed the society to pay full salary as well as the earned leave benefits to the employee. The Joint Registrar has passed Ext. P13 order directing the society to pay the amount as directed in Ext. P7 order. Clause 5 (ii) of Ext. P1 settlement accepted by the Board of Directors of the society reads as under:-

"(ii) I should be given continuity in service on condition that I shall not claim any monetary benefits for the period from 30-5-1991 till the actual date of reinstatement."

(emphasis supplied)

Therefore, as observed and held by this Court in Ext. P2 judgment, in view of certain sacrifices agreed to be made by the employee in Ext. P1 settlement, the Government cannot order restoration of the entire benefits awarded in I.D. No.33/1993 and the employee can be given the benefits as provided in Ext. P1 settlement accepted by the Board of Directors of the society. The employee is, therefore, not entitled for salary for the period from 30.05.1991 to 11.03.2002, the date of reinstatement. The said issue has become final by Exts. P2 and P3 judgments to the above extent and cannot be re-agitated before any forum.

23. The employee approached the Government for their intervention for salary during the period of suspension, earned leave, promotion and other service benefits and pursuant thereto, the Government passed Ext. P7 order directing the society to pay full salary as well as the earned leave benefits to the employee. The society challenged Ext. P7 order contending that no amount is due and payable to the employee. This Court, by Ext. P8 judgment, remitted the matter to the society to decide and intimate the employee through an order as to any amounts or benefits are still due to be paid to her; and if the stand of the society thereafter is that no amounts are due, then it will be upto the employee to invoke appropriate remedies that are available to her in law against such order.

24. Pursuant to Ext. P8 judgment, the society, by Ext. P9 proceedings, took a decision to the effect that no amount is due and payable to the employee. The claim of the employee was declined. According to Sri. Jacob, Ext. P7 order does not survive in the light of Ext. P9 decision of the society passed pursuant to Ext. P8 judgment and the only remedy available against Ext. P9 proceedings is to approach the Co-operative Arbitration Court invoking the provisions under Section 69 of the Act. However, Sri. Pradeep would contend that, the dispute raised by the employee against Ext. P9 is purely monetary and the Joint Registrar has jurisdiction to pass Ext. P13. Sri. Pradeep would further contend that the contentions of the employee in Ext. P10 is entirely different from the

issues addressed by this Court in Exts. P2 and P3 judgments.

25. Chapter IX of the Act deals with Settlement of Disputes and Section 69 deals with disputes to be decided by the Co-operative Arbitration Court and Registrar and the relevant part of Section 69 is extracted hereunder:-

"69. Disputes to be decided by Co-operative Arbitration Court and Registrar.-- (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

.....

(h) between the society and a creditor of the society, such dispute shall be referred to the Co-operative Arbitration Court constituted under S.70A, in the case of non - monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute; and no other Court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:

(d) Any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub - section (1) of S.80, including their promotion and inter se seniority."

(emphasis supplied)

26. After Ext. P8 judgment and Ext. P9 proceedings issued by the society, the employee preferred Ext. P10 complaint before the Joint Registrar claiming a total amount of Rs. 23,45,241/- with interest towards back wages for the period from 22.09.1990 to 30.11.2013, promotion salary, amounts due under provident fund, bonus, benefits towards medical aid, leave salary, earned leave, gratuity and such other amounts as may be due to her on examination by the Joint Registrar. The stand of the society is that no amount is due and payable to the employee. According to the employee, her contentions in Ext. P10 are entirely different from the issues addressed by this Court in Exts. P2 and P3 judgments. On going through Ext. P10, the various claims made by the employee therein cannot be considered as claims for monetary reliefs pure and simple which is to be adjudicated by the Joint Registrar, but these are disputes arising in connection with her employment under the society to be adjudicated by the Co-operative Arbitration Court. The issue of monetary benefits can only be a consequential one subject to the outcome of the adjudication by the Co-operative Arbitration Court. Though this Court in Exts. P2 and P3 judgments have found that employee is not entitled for salary for the period from 30.05.1991 to 11.03.2002, the date of reinstatement, in Ext. P10 she has claimed back wages for the period 22.09.1990 to 30.11.2013, besides other benefits arising in connection with her employment under the society. Her entitlement for earned leave has to be determined with reference to Ext. P4 proceedings of the Assistant Registrar

which objected to the entry regarding earned leave in the service book of the employee during the period she has not worked. If the contention of the employee is that her claims in Ext. P10 are different from the issues addressed by this Court in Exts. P2 and P3 judgments, the same require adjudication under Section 69 (2) (d) of the Act. None of the amounts stated to be due to her has been determined and quantified and therefore the employee cannot contend that the dispute raised by her against Ext. P9 is purely monetary. The Division Bench of this Court in Thalassery Co-operative Rural Bank Ltd. v. Mukundan [2021 (1) KLT 663] has held that a claim for monetary reliefs pure and simple is a matter to be adjudicated by the Registrar; on the other hand, if incidental questions or matters relating to service, by virtue of his past employment in the bank are involved, such questions cannot be adjudicated by the Registrar and in that event it will fall within the jurisdiction of the Co-operative Arbitration Court. The Joint Registrar has passed Ext. P13 order directing the society to pay the amount as directed in Ext. P7 order. When Ext. P7 was impugned before this Court by the society, the Court, by Ext. P8 judgment, remitted the matter to the society to decide and intimate the employee through an order as to any amounts or benefits are still due to be paid to her; and if the stand of the society thereafter is that no amounts are due, then it will be upto the employee to invoke appropriate remedies that are available to her in law against such order. The society has accordingly issued Ext. P9, wherein the stand of the society is that no amounts are due to the employee. In the light of Ext. P9 issued by the society pursuant to Ext. P8 judgment, it cannot be said that Ext. P7 has become conclusive. Thus, there can be no doubt that, the remedy available to the employee against Ext. P9 is to invoke Section 69 (2) (d) of the Act.

27. Sri. Faizal, the learned Government Pleader would submit that Ext. P13 order is passed by the Joint Registrar under Section 66A of the Act. Ext. P13 order does not recite or indicate that the same has been issued exercising powers under Section 66A of the Act. Therefore, the statement that Ext. P13 has been issued under Section 66A cannot make the order as one issued under the provisions of Section 66A of the Act. The Hon'ble Supreme Court, in Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others [AIR 1978 SC 851], has held:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

Section 66A of the Act, as modified by Act 7 of 2010, stipulates that, subject to the provisions of the Act and the Rules made thereunder, the Registrar may issue general directions and guidelines to any or all of the Co-operative societies in furtherance of the purposes of the Act or for implementing government policies

for the benefit of the members and the general public. The Section unequivocally stipulates that, the directions and guidelines to be issued by the Registrar shall be for the purpose of implementing the Government policies for the benefit of the members and the general public and subject to the provisions of the Act and the Rules. Ext. P13 order directing the society to pay full salary and earned leave benefits to Smt. Nirmala Xavier cannot, by any stretch of imagination, be stated to be for the benefit of the members or the general public or in furtherance of the purposes of the Act. A dispute arising in connection with employment of officers and servants of Co-operative societies has to be decided by Co-operative Arbitration Court under Section 69. The Registrar cannot invoke Section 66A of the Act and issue directions in respect of disputes arising in connection with employment which call for adjudication by Co-operative Arbitration Court. Section 66A will not clothe the Registrar the authority to issue an order in the nature of Ext. P13.

The upshot of the above discussions is that Ext. P13 order needs to be interfered with, as one passed without jurisdiction. Accordingly, without prejudice to the right of the employee to challenge Ext.P9 order before the Co-operative Arbitration Court under Section 69 of the Act, Ext.P13 order is set aside. If the employee takes recourse to such remedy within one month from date of receipt of the certified copy of the judgment, the same shall be entertained and considered by the Arbitration Court on merits and a decision thereon shall be taken within three months from the date on which the petition is filed.

Writ petitions are disposed of with the above directions. No order as to costs.