

(2012) 07 KL CK 0197
In the High Court Of Kerala
Case No : W.A. No. 1232 of 2011

Kerala State Co-operative Employees Pension Board	APPELLANT
Vs	
T.P. Nanu and Others	RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Citation : (2012) 4 KLJ 349 : (2013) LabIC 741

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : P.V. Mohanan SC and K.R. Sunil SC, for the Appellant; P.P. Jacob and Saidu Alavi (GP), for the Respondent

Final Decision : Dismissed

Judgement

C.K. Abdul Rehim, J.—The Kerala State Co-operative Employees Pension Board is the appellant in these two appeals. The party respondents in these appeals, who were petitioners before the single Judge, were employees of co-operative Societies retired from service on attaining superannuation on different dates, within the years of 2004 to 2009. Issue involved in these appeals pertains to interpretation of clause 22 of the Kerala Co-operative Societies Employees' Self-Financing pension Scheme 1994. The method for calculation of pension to which a retired employee is entitled is prescribed under that clause, which says that the amount of superannuation pension other than the family pension need be determined on the basis of the length of service, based on a method of calculation indicated therein, i.e., the average pay multiplied with qualifying service and divided by 60. The "average pay" is defined in the scheme as the average of pay drawn by an employee of a society during the last 10 months of his qualifying service. Under clause 2(h) it is mentioned that "qualifying service" means service reckoned for the purpose of pension under the scheme. Clause 22 enumerates that qualifying service is the number of years of service, subject to a maximum of 30. By virtue of Ext. P1 amendment brought into clause 22 through G.O.(P) No. 129/06/Co-op. Dated 12-07-2006 (SRO No. 579/2006) an additional

proviso was introduced on the following terms;

provided further that for calculating pension, the average pay shall be limited to Rs. 20,000/- (Rupees twenty thousand only) in case the length of service is less than 30 years and the pension shall be calculated as follows:-

$$\text{Pension} = A.P \times Q.S./720 \text{ (in number of months)}$$

Contention in the writ petitions was that the amendment brought with effect from 12-07-2006 prescribing upper limit of "average pay" as Rs. 20,000/- is not applicable to the petitioners, because they have got service for more than 30 years. In the writ petitions, direction was sought against the Appellant-Board to consider settlement of the claim for pension on the basis of the unamended clause, notwithstanding Ext. P1. Learned Single Judge allowed the writ petitions holding that, with respect to applicability of the scheme the legal position remains settled through Ext. P2 judgment (produced in WA No. 1232/2011). In Ext. P2 judgment (W.P. (C) No. 4806/2007) a learned Judge of this court held that, the provisions contained in paragraph 2(d) of Ext. P1 amendment will not apply to those who have more than 30 years of serviced In the impugned judgment the learned Judge observed that the Appellant-Board has not chosen to challenge Ext. P2 judgment and therefore the legal position remaining settled is applicable in the present writ petitions.

2. The appeals are filed contending that, even without the amendment, going by provisions contained in clause 22(1), there is a limitation in calculating the qualifying service to a maximum of 30 years. Therefore, it is contended that the writ petitioners are not entitled to reckon their length of qualifying service beyond 30 years. Further contention raised is that, clause 22 of the scheme was again amended through G.O. (P) No. 239/08/Co-op. Dated 22-10-2008, wherein the wordings of the proviso introduced through cause 2(d) of Ext. P1 was further amended by omitting the words; "in case" the length of service is less than 30 years". Now the said proviso reads as follows:-

provided further that in the case of employees who are having less than Thirty years of qualifying service the pension shall be calculated as follows:-

$$\text{Pension} = A. P \times O.S./720 \text{ (in number of months)}$$

Provided also that for calculating pension, the average pay shall be limited to Rs. 20,000/- (Rupees Twenty thousand only) and the maximum amount of pension shall be limited to Rs. 10,000/- (Rupees Ten thousand only).

3. In the explanatory note to G.O. (P) No. 239/2008/Co-op dated 22-10-2008 it is mentioned that the amendment made to clause 22 by virtue of Ext. P1 has caused ambiguity to the effect that limitation was applicable only to those employees who are having qualifying service less than 30 years. Therefore the Government have decided to amend the scheme to remove the ambiguity and to make the provision applicable to all employees and also to limit the maximum pension under the scheme to Rs. 10,000/-. According to learned standing

counsel appearing for the appellant this subsequent amendment is only clarificatory in nature and the upper limit of Rs. 20,000/- with respect to average pay will be applicable irrespective of the length of qualifying service, even if it is beyond the period of 30 years.

4. Heard; Sri. K.R. Sunil appearing for the appellant Board, Sri. P.P. Jacob learned counsel appearing for the party respondents and the learned Government Pleader. We find force in the contentions of appellant that the upper limit of Rs. 20,000/- with respect to average pay as well as upper limit of Rs. 10,000/- with respect to monthly pension is applicable to all Go-operative employees irrespective of their length of qualifying service. So also the upper limit of 30 years with respect to qualifying service is also applicable in the case of all the employees. This is well clear from the amendment brought into clause 22 of the scheme. Apparently the learned single Judge while following Ext. P2 judgment has not considered the effect of the subsequent amendment. Hence we are inclined to allow the appeals. The impugned common judgment is hereby set aside. We decline relief in the writ petitions, holding that the writ petitioners are not entitled to get pension under the scheme notwithstanding Ext. P1 amendment and the subsequent amendment brought in clause 22 of the scheme. Accordingly the appeals are allowed and we dismiss the writ petitions.