
(2001) 03 KL CK 0030
In the High Court Of Kerala
Case No : W.A. No. 775 of 1999

Malappuram District Co-operative Bank Ltd.	APPELLANT
Vs	
Malappuram District Co-operative Bank Employees Welfare Fund Committee	RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 2 ILR (Ker) 275 : (2001) 2 LLJ 1390

Hon'ble Judges : S. Sankarasubban, J; A. Lekshmikutty, J

Bench : Division Bench

Advocate : U.K. Ramakrishnan, E.K. Madhavan and P.V. Lohithakshan, for the Appellant; G. Sukumara Menon, F. Rajendran and P.P. Jacob, for the Respondent

Judgement

S. Sankarasubban, J.—These Writ Appeals are filed against the common judgment delivered by KOSHY, J. and the judgments which have followed the same judgment. Appeals have been filed by the Kerala State Co-operative Bank Employees Welfare Fund Committee, Kerala State Co-operative Bank Ltd., Pathanamthitta District Co-operative Bank Ltd., Kozhikode District Co-operative Bank Employees Welfare Fund Committee, The Kozhikode District Co-operative Bank Ltd., The Malappuram District Co-operative Bank Ltd., Malappuram District Co-operative Bank Employees Welfare Fund, the Committee of Management of the Ernakulam District Co-operative Bank Welfare Fund. O.P. No. 483/2000 is filed by certain persons challenging the non-payment of benefits under the welfare fund scheme.

2. The Government framed what is called "Rules for the Kerala State Co-operative Bank Employees Welfare Scheme and District Co-operative Bank Employees Welfare Scheme" (hereinafter referred to as the "Scheme"). This was approved on March 21, 1991 by the Government. As per the Scheme, when a contribution is made by an employee to the welfare fund, an equal contribution is made by the Bank also. The employee has to deposit 2% of the salary and the

bank has to deposit 30% of what the employee has deposited. Then all the co-operative banks are to deposit Rs. 50,000/- as their initial share. The amount under the Fund is used for treatment of diseases, expenses for the funeral ceremonies, higher education, marriage, retirement benefits, family welfare etc. Under the retirement benefit, it is stated that, when a person retires from the bank or leaves the service of the bank after 28 years, or leaves the bank due to certain contingencies mentioned in the rule, he will be entitled to a minimum amount of Rs. 35,000/-. The maximum amount is calculated on the basis of the following formula.

$$A \times B \times C \times \frac{2}{4} \times \frac{2}{2}$$

"A" is the length of service; "B" is the last salary drawn, and "C" is the number of years after the fund is introduced. The fund is to be managed by a committee which is to consist of President of the Bank, Vice President of the Bank, General Manager of the Bank, a person elected from the grade of Branch Managers, a person elected from the clerks cadre and a person elected below the cadre of clerks. The Scheme deals with the rules of the Committee etc. Clause 14 enables the Government to amend the rules. It seems there were existing similar welfare fund or rules in the banks. But after the coming into force of the present rule, the old rules ceased to exist and the persons who were members of the earlier welfare fund were asked to join the present welfare fund. After the scheme came into existence, as per the rules the amounts were deposited and some of the banks paid retirement benefits also. But then, many of the banks faced a difficulty and found that the retirement benefits that was envisaged under the rules was a larger amount than what was contributed by the employer and the employee. In the result, representations were made to the Government from both sides, one side stating that they were not getting the benefits from the fund, and the other side stating that if the scheme under the welfare fund is allowed to function, it may lead to bankruptcy. When this was the position, the Registrar of Co-operative Societies issued a letter dated June 10, 1997 stating that payment of the Employees Welfare Fund Scheme to the employees of the bank shall be kept in abeyance until further orders. Thereafter, the Government appointed a Committee to go into the working and to review the Welfare Fund Scheme of the employees. That committee was constituted as per Government Order dated May 28, 1997. The Committee filed its report on March 28, 1998. The committee recommended changes in the Welfare Fund Scheme and on the recommendations of the Committee, the Government amended the Welfare Fund Rules. They were introduced by G.O. (MS) No. L33/98/Co-op. TVM. dated August 24, 1998. The following amendments were made: (1) Clause 7(2) of the Rules was amended. The amount to be deposited by the bank was increased to 50% of the amount deposited by the employee. (2) Clause 8(5) was amended. As per the rules, a person who retires on superannuation or who ceases to be in service on the basis of the serious disease like paralysis etc., then the employee is entitled to an amount which is equal to the amount deposited by the employee and the amount contributed by the Bank plus 11 percent compound interest on

that amount. The minimum amount was fixed at Rs. 75,000/-. It was also stated that if a person dies while in service, he will be entitled to the same amount as stated in amended Clause 8(5) of the Rules. By order dated October 8, 1998, it was stated that amended rules will come into effect from June 10, 1997. The original petitions were filed when orders were issued suspending payment by the Registrar, as well as when the amendment was made retrospectively from June 10, 1997.

3. The contentions urged by the, appellants/petitioners are many. One set of contentions urged was that the amendment cannot affect even those who are in service since they have already contributed on the basis of the original rules. Hence, according to them, they are entitled for the benefits as per the original rule. The other set of contentions were by those who were retired when the amendment was made. According to them, the amendment cannot affect who retired prior to October 8, 1998. Hence, they challenged the Government Order by which the amendment was brought into force from June 10, 1997. The Government filed a counter affidavit in all these cases. The Government submitted that the original rules could not be carried out because it caused great financial constraints to the Banks and it was necessary to amend the rules. If it was not amended, no employee will get any benefit under the Fund. Particular reference was made to the working of unamended rules of the Welfare Fund Scheme. Counter affidavit was filed in O.P. No. 11104/98 and along with that Ext. R2(b) was produced. It showed the amounts contributed by the employees and the amounts disbursed to them at the time of retirement. A perusal of these two columns will show that there was no proportion between the amounts contributed and the amounts disbursed. Particular attention was made to Sl. No. 28, General Manager. He contributed Rs. 22,351/- to the fund, and the amount disbursed was Rs. 3,28,404/-. Such anomalies were found in various District Banks and it was to rectify this, that a Committee was constituted by the Government Order dated May 26, 1997. A report was filed by the Committee on March 28, 1998. In the meanwhile, it was found that if the original welfare fund rules were allowed to function, it would create great financial problems. So, the Registrar issued an order suspending payment from June 10, 1997. After the amendment was made, it was brought into force from June 10, 1997. It was submitted on behalf of the State that the Welfare Fund has no statutory background. It was formed by the participation of the employees and the employer. The Government only helped them by framing the rules. The rules itself give power to the Government to amend the rules. Hence, it cannot be said that always the rules should remain the same, whatever may be the repercussions. It is stated that nobody can be said to have vested right for the amount that are due to them under the rules that it is actually only a contract among the employees and the employer and that does not give right for the petitioner under Article 226 of the Constitution of India. Further submission is that in any event, Government has to see that no financial burden is created by disbursing amounts which had no relevance considering the amount deposited by

the employer and the employee. The learned single Judge considered the contentions of the parties and the Government. Learned single Judge held that with regard to payment of benefits payable to an employee before June 10, 1997, who became members as per Ext. R2(a) rules they are entitled to get retirement benefit as per the unamended rules. There cannot be any dispute over this proposition because, the bank accepted the scheme and paid their contribution. Employees also joined the scheme and paid their share of contribution. The Fund was bound to pay the amount. Even if they have no fund, they have to get money by way of loans from bankers and pay the amount. Thus the learned single Judge found that those who have retired prior to June 10, 1997 are entitled to get the retirement benefits as per the original Rules. The learned single Judge did not accept the contentions that the amended rules are invalid. Learned single Judge referred to the power of the Government to amend the Rules and after referring to certain decisions of the Supreme Court held that, it is applicable to those who are continuing in service. Learned single Judge held that the employees who retired upto August 24, 1998 are entitled to get the benefit of Ext. R2(a) scheme and retrospective operation of the amended rules is invalid. With regard to the existing employees, it is held that amendment applies to them. It is against the above judgment the appeals are filed.

4. Counsel appearing for the Co-operative Banks, the Welfare Committee and the Government submitted that the direction of the learned single Judge to pay the money to those who have retired as per the unamended rules is not correct. Further, according to them, the learned Judge was not correct in issuing a mandamus to the Bank for payment of money inspite of the fact that the Court was informed that banks will not be able to pay the amount since funds were not available. It was submitted that the welfare fund scheme was evolved in order to better the prospects of the employees at the time of retirement and at certain times when the employees become sick etc. According to them, even though the Scheme is termed as a Rule, it is not issued under any statutory provision. The banks and the employees wanted a scheme to be evolved. Since there were various District. Co-operative Banks, Government thought of bringing the rules so that there is uniformity in all the District Co-operative Banks and State Co-operative Bank. According to the appellants, the rules themselves say that the Government is entitled to amend the rules. Hence, the power of the Government to amend the rules cannot be denied. Learned counsel then submitted that original Clause 8(5) was fixed without any basis. According to this clause, a person will be entitled to the benefit taking his total length of service also. This created a problem which is reflected in Ext. R2(b). Ext. R2(b) was shown to us. Learned counsel brought to our notice the said two columns of Ext. R2(b) which showed that there was no comparison between the amount contributed by the employee and the amount disbursed to him. The amount became so large that the banks found it difficult to disburse the amount from the fund created to the employees who retire. Counsel submitted that bank cannot draw amounts from other deposits as it will weaken the banks. Even if they take loans, they will have

to give more interest than what is being paid under the scheme. Hence, it was contended that the continuance of the scheme will create great financial crisis for the banks. It was in that circumstance, the Government appointed a Committee. The report of the Committee was placed before us. Our attention was brought to certain portions of the report. The Committee found that disbursements made by the bank including the disbursements due and payable to the retired members are exceeding the collections in the fund account. The excess payments were effected after taking loans from the bank. No provision for interest is made in the accounts for the loans taken by the Fund for the bank. It also took into account that a pension scheme has been formed for the employees. We take note that Sub-clause (5) of Clause 8 is contradictory in nature to Sub-clause (7) of Clause 8. The employer has no right to pay any amount over and above the amount paid by the employee including the employer's contribution and interest. The welfare fund was started only from 1991 onwards and hence, each member is entitled to the benefits of the fund only after joining as a member of the fund. The retrospective benefit given to the members who have not contributed anything to the fund will be an injustice to the existing members who are serving the bank at present.

5. Learned counsel submitted that in fixing the retirement benefit, the original rule took into consideration the length of period during which the employee did not contribute any amount to the fund, and it was because of this, there was difficulty in disbursement of the fund. Sri Mathew Zachariah appearing for the Kerala State Co-operative Bank submitted that no writ will lie against the Bank. According to the counsel, the scheme was only an agreement between the employee and the employer. It was only a contract. There was no public duty performed by the co-operative bank and hence, banks cannot be compelled to pay amount as per the unamended rules.

6. Petitioners in the Original Petition are employees of the District Co-operative Bank and the State Co-operative Bank. The District Co-operative Bank and the State Co-operative Bank are societies registered under the Kerala Co-operative Societies Act. It is defined u/s 2(i)(a) that the District Co-operative Bank means a central society having jurisdiction over one revenue district and having as its members Primary Agricultural Credit Societies and Urban Co-operative Banks and the principal object of which is to raise funds to be lent to its members, including nominal or associate members. State Co-operative Bank means an apex society having only District Co-operative Banks as its members. The Co-operative Societies Act states what should be the conditions of service of employees of the Co-operative Societies. Section 80(1) of the Act states that the Government shall classify the societies in the State according to their type and financial position. Section 80(3) says that the Government shall in consultation with the State Co-operative Union make rules either prospectively or retrospectively regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies specified in Sub-section (1). Section 80-A of the Act speaks of a pension scheme. As per this Section, the

Government may by notification in the Gazette framed a Self Financing Pension Scheme for the establishment of a Pension Fund for payment of pension to the employees of the societies. Under the rules, we find a Chapter dealing with Establishments. Rule 188 states that every society shall adopt the staff pattern indicated in Appendix III to these rules, according to the type and class to which it belongs. Under Rule 186 it is stated that, no person shall be eligible for appointment in any post, unless he possesses the qualifications prescribed for the post. Rule 189 deals, with remuneration. Rule 198 deals with disciplinary action.

7. Thus, we find that, even though a co-operative society cannot be strictly said to be a statutory body, so far as the employees of the societies are concerned, the Act and the Rule envisages certain conditions of service and individual societies have to comply with these conditions. To that extent, it can be said that if the conditions of service is not implemented by any society, this Court may extend its jurisdiction to see that those rules are performed.

8. In this case, we are concerned with the employees Welfare Fund Rules. The Preamble of the rules do not trace the power of the Government to the Kerala Co-operative Societies Act. The Kerala Co-operative Societies Rules do not refer to Welfare Fund Rules. It refers to retirement benefit u/s 80-A. We are told that a Pension Scheme has been promulgated u/s 80-A of the Act. Hence, the present Welfare Fund Rules cannot be said to be rule u/s 80-A. The appellants contended that scheme is a welfare scheme for the employees of the bank. The bank is not under an obligation under any statute or rule to provide for welfare fund scheme. However, the bank attempted to help the employees after their retirement by introducing the scheme. The bank decided to stop the same when it was understood that the scheme is not workable. This was from the date on which the payment under the scheme was stopped. According to us, strictly it cannot be said to be a statutory scheme even though it is framed by the Government. The question in dispute is with regard to Clause 8(5) of the Scheme. As per the original rule, the minimum amount a person will get at the time of retirement is Rs. 35,000/-. The maximum amount is as per the formula stated in the rule. The formula is

$$A \ B \ C \ ___ \times ___ \times ___ \ 2 \ 4 \ 2$$

Thus, the length of service of an employee is taken into consideration even though he would not have contributed for a major portion of the length of service. In this above formula, "A" is "length of service" at the time of retirement, "B" is "last drawn pay", and "C" is "service" when the unified rules came into force, in the case of persons who are already members of other welfare fund, the date of entry in that fund. Now, this has been amended, by stating that a person at the time of retirement will be entitled to a minimum amount of Rs. 75,000/-. The maximum amount is the sum total of amount contributed by the employer, and amount contributed by the employee with 11 per cent compound interest. Clause 7(2) of the Scheme was amended by

directing the employer to deposit 50% of the amount deposited by the employee instead of 30% as per the original scheme. The amendment in Clause 8(5) has resulted in a reduction in the maximum amount that is payable at the time of retirement. The banks and the Committee found that if the formula under the unamended rule is applied, there will be great disparity between the amount collected and amount disbursed. A statement has been filed as Ext. R2(a). This statement shows, that there is no proportion between the amount collected through the employee and the amount disbursed to him at the time of retirement. It could be seen that in most of the cases, the amount that has been disbursed is 10 times of the amount collected from the employee. It is in these circumstances, that the amendment was carried out. Before the amendment was carried out, when the banks were finding it difficult to disburse the amount, the Registrar issued an order stopping payment of the fund from June 10, 1997.

The amendment was notified by Government Order dated August 24, 1998. By another order dated October 8, 1998, it was brought into force from June 10, 1997.

9. As we stated earlier, there were two sets of contentions on behalf of the petitioners. One of that is persons whether retired or in service, who had paid contribution as per the original scheme will be entitled to get the retirement benefit as per the original scheme and that the amendment will not apply to them. The second contention is that the retrospective effect given from June 10, 1997 is invalid. The first question to be considered is whether the Government is entitled to amend the rules. In the scheme itself, Clause 14 gives a right to the Government to amend the rules. The next question is whether the persons who had been members before the amendment have obtained any right that they should be given the original amount, that is the amount as stipulated in the Clause 8(5) of the unamended rules. According to us, this contention cannot be accepted. Clause 8(5) states the amount that an employee is entitled to get at the time of retirement or when he leaves the bank. The Scheme itself states that rules under the scheme are subject to amendment. With respect to persons who are in service, whether they have obtained a vested right for the amount as per the original rule? At best, it can be said that, they had a right to receive the amount, but that right is subject to amendment. Once they have agreed that Government has power to amend, they will also have to bear the consequences of such amendment. We are of the view that, those persons who are in service now are bound by the amendment and they can get the benefit only as per the amended rules.

10. The next important question is with regard to the retrospectiveness of the amended rules. The amendment was published on August 24, 1998. The amendment was introduced by Government Order No. G.O.(MS). 133/98/Co-op./TVM. dated August 24, 1998. So according to us, those persons thus in service upto August 24, 1998 are entitled to payment as per the unamended rules. But by G.O. dated October 8, 1998, the amended rules are brought into force from

June 10, 1997, with the result that those who retire after June 9, 1997 will be entitled to the benefit only as per the amended rules. As per the Government Order, the amended rules are brought into force from June 10, 1997. Thus, the effect is that rules in Clauses 8(5) and 7(2) as amended are deemed to be in force on June 10, 1997. Thus those who retire or who are entitled to the benefit under Clause 8(5) after June 9, 1997 will be guided by the amended rule. The question is whether this retrospective operation is valid. The contention of the petitioners is that, when such persons retire upto August 24, 1998, i.e., the date when the amendment was introduced, it was the original scheme that was in force. Hence, according to them, those who retired on or before August 24, 1998 and after June 10, 1997 are also entitled to the benefit of the unamended rules. As already stated, their argument is that it is vested right which they have obtained at the time of retirement and it cannot be taken away retrospectively.

11. In the decision of the Supreme Court, reported in *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, it was held that retrospective amendment which affected vested or accrued right is invalid. Retrospective amendment of statutory rule adversely affecting pension of employees who already stood retired on the date of notification was held invalid. The Supreme Court in that case held that pension as admissible in the rules in force at the time of retirement should be paid and retrospective reduction of pension to already retired employees is not possible. Counsel also relied on a Division Bench decision reported in *Kerala State Beverages Corporation v. McDowell Co. Ltd.* 1998 (2) KLT 1087 where it was held that retrospective withdrawal of an undertaking is violative of Article 14 of the Constitution.

12. According to the petitioners, there is an undertaking by the Fund under the original scheme that those who retire will be given the benefit as per scheme. It is on the basis of that undertaking the subscriptions were made by them. It is true that legislation or a rule which takes away a vested right or accrued right will not be held to be valid. But, the question here is, whether the right of the petitioners to get the welfare fund was a statutory right or whether there is an accrued or vested right so far as the persons who have retired between June 10, 1997 and August 24, 1998 are concerned. In this context, it is pertinent to note that on June 10, 1997, on the basis of the instructions of the Government, the Registrar of Co-operative Societies stopped payment of the benefits under the Welfare Fund Scheme. That is why, the date June 10, 1997 has been chosen for the commencement of the amended rules.

Thus, after June 10, 1997, the right to get the benefit of the welfare fund was suspended. The Government appointed a Committee and it found that it was a great financial burden to the Co-operative Banks. That is why, Clause 8(5) was amended, and the maximum amount payable was reduced. According to us, we cannot compare this case with the decision reported in *Rangadhamaiah's* case (supra). There the retrospective amendment of a statutory rule adversely affected the payment of pension already effected. Fundamental rights under

Article 14 and 16 were considered in that case. It was in that context, the Hon"ble Supreme Court held as follows:

"Pension was payable to the respondents after their retirement. They were no longer in service on the date when the impugned notifications were issued. The amendments in the rules are not restricted in their application in future but apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued. Pension is determined on the basis of emoluments payable at the time of retirement (R. 2301). The impugned amendments take away the right of the employees to have their pension computed on the basis of their average emoluments in accordance with the provisions applicable at the time of their retirement. The amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced".

The Supreme Court further held that the retrospective operation are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

13. According to us, the question of violation of Articles 14 and 16 of the Constitution does not come into play here. It is not established that District Co-operative Banks, and State Co-operative Bank are "other authorities" coming under the definition of State, to contend that violation of fundamental rights arise. Further, as already stated, petitioners are not able to prove before us that, the Welfare Fund Scheme was issued on the basis of any statute. We can only say that it is on the basis of a contract between the employer and the employee that the Welfare Fund Rules has been framed. It has no statutory basis. Further, according to us, when the Registrar, Co-operative Societies issued a notice suspending the payment of benefits under the fund, a clog has been created in the right of the employees to receive the amounts as per the rules. We cannot expect that Government would overnight amend the rules. The Government has to consult the experts. That is why it appointed a Committee. The date June 10, 1997 was chosen for giving retrospective effect to the amendment because it was on that date the Registrar issued the order suspending payment under the Welfare Fund Scheme. Nothing was produced before us to show that Registrar was not competent to issue such order. Further question before us is whether the Court should not heed to the realities of the amendment. The amendment was forced because it was found that Clause 8(5) as it originally stood has arbitrarily fixed the amount to be paid to the employees and it has no correlation to the amount collected. This actually led to a financial crisis to the banks. It is to put a stop to such financial crisis that the amendment was necessitated. Hence, we are of the view that no vested or accrued right of the parties have been affected by retrospectively bringing this notification from June 10, 1997. According to us, this case is different from a case of promotion and other rights which are accrued to a party. The Supreme Court as well as various High Courts have held that when the age of retirement is reduced, that reduction cannot be said to have affected any vested right. The age of retirement was reduced taking into account

certain factors including the unemployment of youngsters. In the same way, Government considered certain matters relevant and decided to reduce the payments. In this context we refer to the decision reported in *West v. Gwynne* 1911 (2) CD 1, where BUCKLEY, J. held as follows:

"During the argument the word "retrospective" and "retroactive" have been repeatedly used, and the question has been stated to be whether Section 3 of the Conveyancing Act, 1892 is retrospective. To my mind, the word "retrospective" is inappropriate, and the question is not whether the section is retrospective. Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of lease is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law".

In the decision reported in *Trimbak Damodhar Raipurkar Vs. Assaram Hiran Patil and Others*, , the Supreme Court followed the above passage of BUCKLEY, J. in *West v. Gwynne*, and held in that case that, "the amendment affected only future existing rights and all leases whether executed before or after the date of the Act". In the decision reported in *Mohd. Rashid Ahmad Vs. State of U.P. and Another*, , it is stated as follows:

"A retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards the matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. But where, it is expressly stated that an enactment shall be retrospective, the Courts will give it such an operation. It is obviously competent for the legislature, in its wisdom, to make the provisions of an Act of Parliament retrospective."

14. Thus according to us, on June 10, 1997, it cannot be said that petitioners had an accrued right to receive the amount as per Clause 8(5) of the Scheme and hence, retrospective operation of the rule from June 10, 1997 is valid. Hence, we are of the view that those who have retired prior to June 10, 1997 will be entitled to the benefit of the unamended rule. Learned counsel for the Bank submitted before us that, they have no money and a writ cannot be issued for payment of money as arrears of amounts cannot be paid immediately. According to us, this is a matter which they should take with the Government. Anyhow, we give three months time to pay the amount.

15. The appeals and O.P. No. 483/2000 and O.P. No. 4180/2001 are disposed of as above.