(2015) 10 KL CK 0038

In the High Court Of Kerala

Case No : W.P.(C). No. 21863 of 2014 (G)

Nazimuddin M. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 10 KL CK 0038

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : K.P. Pradeep, Advocate, for the Appellant; G. Gopakumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—The petitioner, having joined the services of the third respondent Bank in 1977, got promoted in 1991 and eventually retired on 31.05.2008, on his attaining the age of superannuation. But, in the interregnum, certain developments took place: on 03.01.1997 the petitioner was placed under suspension and on 21.12.1998, after departmental inquiry, he was terminated from service.

2. In the light of the subsequent judicial proceedings initiated by the petitioner, through Exhibit P1 order, the Joint Registrar directed the petitioner''s reinstatement with full back-wages. Nevertheless, when the third respondent Bank took the matter to this Court, it rendered Exhibit P2 judgment on 05.02.2008 modifying Exhibit P1 only to the extent of back-wages. In other words, the petitioner was directed to be reinstated with all service benefits, save the back-wages. Thus, the petitioner retired on 31.05.2008.

3. On 12.12.2008, aggrieved by the delay in having the pension sanctioned to him, the petitioner submitted Exhibit P3 representation to the Pension Board, the fourth respondent, to extend the said benefit without further delay. Questioning the fourth respondent''s inaction in that regard, the petitioner filed a writ petition

and invited Exhibit P4 judgment.

4. A perusal of Exhibit P4 judgment reveals that this Court directed the third respondent Bank to remit the pension contribution to the fourth respondent to enable it to pay pension to the petitioner. Questioning the quantum of contribution to be remitted, the third respondent Bank filed a review, which was disposed of by this Court through Exhibit P5 order dated 18.07.2013. This Court, in fact, extended the benefit of one-time settlement to the third respondent Bank and permitted it to remit a lesser amount than what had been mentioned in Exhibit P4 judgment. Save this concession, the Court has not disturbed Exhibit P4 judgment.

5. In compliance with Exhibit P5 order in review, the third respondent Bank, apart from submitting Exhibit P6 statement of computation, remitted the amount to the fourth respondent on the same day, i.e. on 04.09.2013. As a consequence, the fourth respondent issued Exhibit P8 proceedings on 17.05.2014 fixing the petitioner''s monthly pension at Rs. 6,008/-. But, the fourth respondent decided to grant the pension prospectively from 01.09.2013, the date of remittance of the contribution by the third respondent Bank, rather than from 31.05.2008, the date of the petitioner''s retirement. Aggrieved, the petitioner has filed the present writ petition.

6. The learned counsel for the petitioner has submitted that the petitioner, as is evident from Exhibit P11, joined the contributory pension scheme in the very year of his joining the service, i.e. in 1997. Thus, it is deemed that once the Self-Financing Pension Scheme was introduced in 1993, the petitioner for all practical purposes continued to be a member of the new Scheme, for the third respondent Bank, too, joined the Scheme. He has also submitted that in the light of Exhibit P4 judgment and Exhibit P5 order of this Court, the third respondent Bank remitted the entire contribution along with interest. Since the fourth respondent has challenged neither Exhibit P4 judgment nor Exhibit P5 order of this Court, it cannot, claims the learned counsel, now turn around and limit its obligation. In other words, it cannot be permitted to pay the pension from 01.09.2013--only prospectively.

7. Per contra, the learned Standing Counsel for the fourth respondent Pension Board, in tune with the averments made in the counter affidavit, has submitted that the petitioner was terminated from service on 21.12.1998 and was reinstated only on 31.05.2008. According to him, the third respondent Bank did not remit any amounts towards the petitioner''s pension contribution until it approached this Court and, finally, invited Exhibit P5 order in the review of Exhibit P4 judgment.

8. The learned Standing Counsel has further drawn my attention to Clause 20(3) of the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 (''the Scheme'' for brevity). The fourth respondent is obligated to pay the pension arrears, according to him, only from the date of the employer actually

remitted the amount; in other words, from the date when the beneficiary employee was enrolled into the Scheme.

9. In elaboration of his submissions, the learned Standing Counsel would contend that indisputably the petitioner was enrolled only at the time of the third respondent Bank remitting the contribution. Summing up his submissions, the learned Standing Counsel would submit that Exhibit P8 is unexceptionable and cannot be interfered with.

10. In reply, the learned counsel for the petitioner has submitted that the fourth respondent has received the contribution along with interest up to date; it cannot negate its responsibility of paying the pension from the petitioner''s actual date of retirement. In the alternative, he has submitted that the proviso to clause 20(3) of the Scheme was brought on the Statute Book through an amendment in 2010, but the petitioner stood retired in 2008. In other words, the proviso to clause 20(3), if at all has any application, can only have prospective application, thereby, not affecting the rights of the petitioner, who had retired before the incorporation of the proviso.

11. Heard the learned counsel for the petitioner and the third respondent Bank; and the learned Standing Counsel for the respondent Pension Board, as well as the learned Government Pleader, apart from perusing the record.

12. The bone of contention in this writ petition is whether the petitioner is entitled to the arrears of pension from the date of his retirement.

13. On the issue of retroactive benefit, the learned Standing Counsel for the fourth respondent Pension Board has raised twin objections: First, though at the time of the petitioner''s re-instatement there was a direction to continue the petitioner in service, it was without back-wages. According to him, no pay; no pension contribution. Second, an employee, who has retired and who has not already been enrolled in the pension scheme, shall, in terms of the proviso to clause 20(3) of the Scheme, get arrears of pension only with effect from the month the employer remits the contribution with interest thereon.

14. In so far as the first contention is concerned, it may be stated that this Court in an unreported judgment dated 27.01.2015 in W.P.(C) No. 25840/2008 has squarely answered it. As can be seen from paragraph 4 of the judgment, the petitioner therein was also re-instated in service with continuity, but without back-wages. In that context, a learned Single Judge of this Court has observed as follows:

"It is true that, as per Section 61 no payment to the Employees Provident Fund is permissible after the society enrolls under the Pension Scheme. However, the said prohibition does not place any impediment against making good any short fall that may be detected at a later point of time. It is not in dispute that, upon the first respondent joining the Pension Scheme the amount standing to the credit of the employees under the said scheme had been transferred to the second respondent. It is also worth noticing that, the amount remitted was received by the second respondent and is still being retained. The above being the position, there is no justification for denying to the petitioner the full pension on the basis of the remittances made. The delay for the remittance can be attributed only to the first respondent society for which there is no justification for penalising the petitioner who is the employee. There has been no lapse or omission on the part of the petitioner. Therefore, it is only appropriate that the petitioner is paid pension computing the period that he was kept out of service also."

15. I am in respectful agreement with the ratio laid down by his Lordship and accordingly hold that the contention of the learned Standing Counsel cannot be countenanced.

16. Concerning the arrears of pension, the learned Standing Counsel has tried to draw parallels between what is said to be an analogous provision in the State and District Co-operative Bank Employees Pension Scheme and the Scheme applicable to the petitioner. As can be seen, clause 5(2) of the said Scheme mandates that all the employees of the Bank and those who have retired from the service of the Bank between January 1974 and 31st March, 2015 shall be paid pension only from the succeeding month of the month on which the entire portion of the employer''s contribution has been remitted. It is further specified that no arrears of pension shall be payable till the month of such remittance. According to the learned Standing Counsel, the proviso to clause 20(3) is also similar. Accordingly, it shall be concluded, contends the learned Standing Counsel, that the petitioner shall not be entitled to the arrears of pension.

17. I am afraid the contention of the learned Standing Counsel fails to pass the judicial muster. We may assume that the proviso restricts the right of a retired employee to have arrears of pension. Still, the very proviso, indisputably, was incorporated on 27.01.2010, whereas the petitioner retired from service on 31.05.2008. There is no gainsaying the fact that the proviso has got only prospective application.

Under these facts and circumstances, the writ petition is allowed setting aside Exhibit P8 order. Consequently, this Court further directs the fourth respondent to pay the arrears of pension to the petitioner from the date of retirement as expeditiously as possible.

In the light of the ratio laid down by this Court in W.P.(C) No. 25840/2008, the period during which the petitioner had been out of service shall be reckoned for the purpose of quantifying the pension. And, it is entirely open to the fourth respondent to recover from the third respondent Bank any shortfall of the fund in the light of the directions given hereinabove.

No order as to costs.