(2022) 03 KL CK 0134

In the High Court Of Kerala

Case No : Writ Petition (C). 10542 Of 2015

N.T.Ramanathan APPELLANT

Vs

Nenmara Co Operative Urban Bank Ltd RESPONDENT

Date of Decision : 18-03-2022

Acts Referred:

Kerala Co operative Societies Act, 1969 — Section 80
Kerala Co operative Societies Act, 1969 — Rule 189

Citation : (2022) 03 KL CK 0134

Hon'ble Judges : Mohammed Nias, C.P. J

Bench : Single Bench

Advocate : M.Sasindran, V.Venugopal, K.Mohanakannan, Premchand R.Nair

Final Decision : Allowed

Judgement

Mohammed Nias, C.P. J.

1. Petitioners are the retired employees of the first respondent Bank, a Co-operative Society registered under the Kerala Co-operative Societies Act. By Ext. P1 dated 28-8-2005, the Government purportedly invoking their power under Section 80 of the Co-operative Societies Act and 189 of the Co-operative Societies Rules which gives them the power to regulate the remuneration, allowances and other conditions of the officers and servants of the different classes of the societies specified in the Act, revised the scale of pay of the employees of the Co-operative Societies with effect from 1-4-2003. By Ext. P1, the Government had come up with a revision. It is the petitioner's case that though they retired from service subsequent to the pay revision, the first respondent declined to grant the benefit of Ext. P1 revision which forced them to approach the 2nd respondent Joint Registrar by filing Exts. P2 to P5 which was transferred to the 3rd respondent, who after consideration of the claims rejected the same by Ext. P9 order. Challenging Ext. P9 and claiming the benefits of Ext. P1, this Writ Petition is filed.

2. The first respondent filed a counter affidavit contending inter alia that the petitioners had agreed to the decision of the Board of Management of the first respondent Bank that the pay revision will be effected only from 1-11-2006 and that claims until then had been relinquished by the petitioners, given the poor financial condition of the society. Thus according to the bank, the pay revision was not implemented on the dates of their retirement and as such the petitioners are not entitled to get the benefit of Ext. P1 pay revision. It is also contended that the petitioners had an alternate remedy which was not availed and prayed for the dismissal of the Writ Petition.

3. This Court by order dated 17-2-2020 directed the society to produce materials to show that the financial position of the Bank during the period from 2003 to 2006 so as to ascertain whether the benefits of pay revision can be extended to the petitioners.

4. The Bank filed an additional counter affidavit pursuant to the above order re-iterating that the petitioners' had given undertaking not to claim any arrears of pay revision as the banks financial position during the periods 2003 to 2006 was weak. The affidavit, however stated that the financial position has since improved and the bank has overcome the situation of running at a loss.

5. I have heard the learned counsel for the petitioner Sri. M.Sasindran, the learned counsel for the first respondent Sri. Mohanakannan and also the learned Government Pleader.

6. At the outset itself, it is to be noted that the Government had come up with the pay revision as per Ext.P1 and in normal circumstances the petitioners would have been entitled to the same. The right of the pensioners as such is not denied by the Bank as their only contention is projecting their poor financial condition and urging that the petitioners' had undertaken not to claim the benefit of Ext. P1 revision. These contentions fortifies the right of the petitioners to get the benefit of the pay revision as their entitlement is not disputed.

7. Retiral benefits are benefits available to the employees retired, reckoning their past service rendered and in ordinary circumstances, it cannot be withheld and the bank cannot be allowed to claim any exemption from such payment. It is relevant to note that in Ext. P8 Circular issued by the Registrar dated 20/10/2005 regarding pay revision of the employees, Clause No. 21 specifically states that in order to claim exemption, the society is to take a decision citing the reasons for claiming the exemption from paying the hike and that the Registrar has to be satisfied with such decision taken by the society. Thus, it is the Registrar who is to exempt the societies from paying the revised pay. Admittedly no such exercise was done in the instant case and no exemption is granted by the Registrar. The Bank did pass a resolution citing its poor financial condition but did not approach the Registrar who was obliged to consider the question of exemption. This is not in accordance with clause 21 of Ext. P8. The reason given in Ext. P9 in this regard that non-compliance of the order of the

first respondent to approach the Registrar, is only a technical defect, cannot be countenanced. It is contended by the learned counsel for the first respondent that the petitioners have an effective remedy to challenge Ext. P9 order. It is to be noted that the Writ Petition is filed in the year 2015, and pleadings are already completed. As noticed by this Court in its earlier order dated 17-2-2020, to relegate the petitioners at this distance of time would be inequitable besides driving them to a further litigation.

8. The contention of waiver raised on behalf of the bank cannot be accepted as the documents produced pertained to the period prior to Ext. P1. It is relevant to note that the only ground on which the bank resisted the claim of the petitioner was the poor financial condition which even as per their additional affidavit has improved and in such circumstances, the petitioners cannot be deprived or robbed of their benefits due to them. It is pertinent to note that the entitlement of the petitioners is not resisted on any other grounds. The petitioner's cannot be deprived of the benefits under Ext.P1, taking the poor financial condition of the bank as a reason. The upshot of the above discussion is that the petitioners are entitled to succeed. Ext. P9 is quashed. It is declared that the petitioners are entitled to the benefits of Ext. P1. The benefits shall be quantified and paid by the first respondent Registrar to the petitioner within three months from the date of receipt of a copy of this judgment.

This Writ Petition is allowed as above.