(2011) 09 KL CK 0046

In the High Court Of Kerala

Case No : W.A. No. 1098 of 2011

Purushothaman, K. and another APPELLANT

Vs

Kerala State Co-operative Employees'' Pension Board and another RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : (2011) 4 ILR (Ker) 382 : (2011) 4 KLJ 354

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S.P. Aravindakshan Pillay, Smt. N. Santha, Sri K.A. Balan, Sri Peter Jose Christo and Sri S.A. Anand, for the Appellant; P.V. Mohanan, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—The appellants are the petitioners in W.P.(C) No. 16953/2011. Having failed before the learned Single Judge, they

have come up in appeal. The brief facts leading to the case are as follows:

Appellants 1 and 2 entered the service of the 2nd respondent, a duly constituted Co-operative Society as per the Kerala Co-operative Societies

Act, 1969, on 6-5-1981 and 27-7-1981 respectively. On completing their probation, they were regularised, continued in the service and retired

from service on superannuation while working as Assistant Secretary and Head Clerk on 30-11-2010 and 31-12-2010 respectively. At the time

of their entry in service, there was no provision for pension. With effect from 3-6-1993, Contributory Pension was introduced as per the Kerala

Co-operative Societies Employees'' Self Financing Pension Scheme, 1994 (hereinafter referred to as the ''Pension Scheme''). Upon commencement of the Pension Scheme, they were enrolled on 1-5-1982 and 1-10-1983 respectively, the dates on which their probation was

satisfactorily completed. From the above respective dates onwards the 2nd respondent had been remitting their contribution to the 1st respondent,

the Kerala State Co-operative Employees Pension Board (hereinafter referred to as the ''Pension Board''). While so, the 2nd respondent wrote

Ext.P-3 letter to the Secretary of the Pension Board requesting the Pension Board to reckon the period during which the appellants and seven

other employees were on probation as qualifying service for computation of pension. The request was accompanied by a copy of the resolution

adopted by the Board of Directors of the 2nd respondent. The Pension Board in turn sent Ext.P-4 letter dated 26-12-2007 asking the 2nd

respondent to remit the pension contribution. Accordingly, by Ext. P-6, the 2nd respondent remitted a sum of Rs. 60,000 on 31-7-2009. But, to

the surprise of the appellants, on their retirement, when they got Exts. P-1 and P-2 pension orders, it was noticed that their period of probation

was not counted for computing pension. Thereupon, they preferred Exts. P-7 and P-8 representation to the Secretary of the Pension Board

requesting to reckon the period of their probation as qualifying service for the purpose of pension and also to refix the pension accordingly.

Responding to Exts. P-7 and P-8, by Ext. P-9 letter dated 18-5-2011 the request of the appellants was declined. Assailing Exts.P-1, P-2 and P-

9, with a contention that as per the Pension Scheme, the appellants are entitled to count their period of probation as qualifying service for the

purpose of pension, the Writ Petition was filed seeking a writ to quash Exts.P-1, P-2 and P-9 and also for a declaration that they are entitled to

count their period of probation as qualifying service for pension and to issue a writ of mandamus commanding the 1st respondent Board to

recompute the pension accordingly.

2. The 1st respondent took up a defence that, the appellants were not on probation as on the date of the commencement of Pension Scheme and

that they had enrolled in the Scheme only from 1-5-1982 and 1-10-1983. Therefore, they are not entitled to count their period of probation as

qualifying service for computing pension. The learned Single Judge, after upholding the defence, dismissed the Writ Petition. The contribution remitted as per Ext. P-6 by the 2nd respondent was ordered to be refunded. Now this Writ Appeal.

3. We have heard Sri S. P. Aravindakshan Pillay, the learned counsel appearing for the appellants as well as Sri P.V. Mohanan, the learned

counsel appearing for the 1st respondent and perused the records.

4. It is not disputed that the appellants enrolled in the Scheme only with effect from 1-5-1982 and 1-10-1983 respectively upon the

commencement of the Pension Scheme on 3-6-1993. According to the learned counsel for the appellants, by virtue of the 3rd proviso to

paragraph 19(1)(a) of the Pension Scheme the appellants are entitled to count their period of probation as qualifying service for pension. On the

other hand, according to the learned counsel for the 1st respondent, the appellants are governed by paragraph 19(1)(a) and that the appellants

would not come within the purview of the 3rd proviso and therefore, they are not entitled to count their period of probation as qualifying service for

pension. For a correct appraisal, a reading of para 19(1)(a) with its provisos would be relevant:

19. Qualifying Service.--Qualifying service for granting pension under the Scheme shall be--

(1)(a) in the case of an employee who was in the service of a society on the date of application of this Scheme to that society the length of service

commencing from the date of joining the Contributory Provident Fund:

Provided that the qualifying service shall be limited to the period for which the employer''s contribution towards the Provident Fund has been fully

paid by the Society in respect of that employee:

Provided further that where the employee was a Subscriber to any pre-existing Provident Fund Scheme implemented in that Society and

contribution made thereon has been transferred to the Pension Fund, such period will also qualify for pension:

Provided also that an employee who was on probation and on whose behalf the Contributory Provident Fund contribution has not been remitted at

the time of implementation of the Scheme, such period of probation shall also qualify for pension, if proportionate employers'' contribution together

with interest thereon has been credited to the Pension Fund:

(emphasis supplied)

Provided also that in the case of an employee who was in the service of a society coming under the purview of functional Registrars as on the date

of application of this Scheme to that society, the length of service shall commence from the date from which the society resolves to contribute the

amount towards Pension Fund in respect of each of the employees, at the time of enrollment in the Pension Scheme.

(rest omitted)

A careful reading of para 19(1)(a) and the 3rd proviso quoted above would show that the benefit of the 3rd proviso would be applicable only to

the employees who were on probation at the time of commencement of the Scheme and on whose behalf the contribution of the employer towards

the Pension Scheme was remitted at the time of implementation of the Scheme or subsequently with interest. Admittedly, the probation of the

appellants were declared with effect from 1-5-1982 and 1-10-1983 from which dates the appellants enrolled in the Pension Scheme. Therefore,

the appellants were not on probation at the time of implementation of the Scheme. Whereas the appellants were in the service of the Society on the

date of the commencement of the Scheme. They had enrolled in the Pension Scheme with retrospective effect from 1-5-1982 and 1-10-1983

respectively as stated earlier. The benefit of the 3rd proviso was declined to the appellants by the learned Single Judge on finding that the

appellants were not on probation at the time of the implementation of the Scheme. Referring to the 3rd proviso, the learned Single Judge found that

the 3rd proviso is applicable only to those who were on probation at the time of implementation of the Scheme. In concluding so, the learned

Single Judge had also relied upon another decision of a learned Single Judge in Sukumaran, N. v. Kerala State Co-operative Employees'' Pension

Board, Tvm. and another 2010 (4) K.H.C. 859. We find no error committed by the learned Single Judge so as to be rectified in appeal. We, on

an anxious consideration, hold that the employees of the Co-operative Society, who were on probation before the introduction of the Pension

Scheme, are not entitled to count their period of probation to count the qualifying service for pension. Such persons are entitled to count the

qualifying service for pension only from the date on which they enrolled in the Pension Scheme. Whereas in the case of employees, who were on probation as on the date of commencement of the Scheme, are entitled to count the period of probation to reckon the qualifying service for

pension in the event the employer had remitted the contribution covering the period of probation. Therefore, we find that the appeal is devoid of

merits.

In the result, the Writ Appeal fails. Accordingly, it is dismissed. No costs.

