

(2011) 06 KL CK 0246

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16953 of 2011 (T)

Purushothaman K., (Retired Assistant) and Sugunan. K.,
(Retired Head Clerk)

APPELLANT

Vs

The Kerala State Co-Operative Employees" and S.L. Puram
Service Co-Operative Bank Ltd.

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Citation : (2011) 4 ILR (Ker) 125

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillay, for the Appellant;

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The short question that arises for consideration in this writ petition is whether the employees of a co-operative society

who joined the Contributory Provident Fund established by the employer society in terms of section 61 of the Kerala Co-operative Societies Act,

1969 read with rule 58 of the Kerala Co-operative Societies Rules, long before the Kerala Co-operative Societies Employees Self Financing

Pension Scheme, 1994 was introduced, are entitled to have their service prior to the date on which they joined the Contributory Provident Fund

reckoned for the purpose of computing the of length of qualifying service for the purpose of determining the pension payable to them. The brief

facts of the case are as follows.

2. The petitioners are former employees of the second respondent bank. They entered service on 6.5.1981 and 27.7.1981 respectively. The

petitioners joined the Contributory Provident Fund established by the second

respondent bank u/s 61 of the Kerala Co-operative Societies Act, 1969 read with rule 58 of the Kerala Co-operative Societies Rules, 1969 on 1.5.1982 and 1.10.1983 respectively, the dates on which their probation in the entry post was declared as satisfactorily completed. While the petitioners were in service, the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 (hereinafter referred to as "the Pension Scheme" for short) was introduced and it came into force with effect from 3.6.1993. Thereafter, the employer's share of contribution made by the second respondent to the Contributory Provident Fund was transferred to the Kerala State Co-operative Employees Pension Board (hereinafter referred to as "the Pension Board" for short) constituted under the Pension Scheme in terms of Paragraph 39 thereof. The first petitioner retired from service on 30.11.2010 while he was working as Assistant Secretary and the second petitioner retired from service on 31.12.2010 while he was working as Head Clerk. Upon retirement, by Exts.P1 and P2 pension payment orders, the petitioners were sanctioned pension under the Pension Scheme. For the purpose of computing the pension payable to them, the length of qualifying service was reckoned only with effect from 1.5.1982 and 1.10.1983 respectively, the dates on which their probation in the entry post was declared as satisfactorily completed and they became members of the Contributory Provident Fund.

3. Before the petitioners retired from service, the second of the Pension Board requesting the Pension Board to reckon the period during which the 9 employees named therein including the petitioners were on probation, as qualifying service for computation of pension. Along with the said letter, copies of the resolutions adopted by the Board of Directors in respect of each of the 9 employees were enclosed. It was also stated that the Contributory Provident Fund was established in the bank on 1.6.1967. The Pension Board in turn sent Ext.P4 letter dated 26.12.2007 in reply wherein inter alia it was mentioned that the contribution relating to the period of probation can also be calculated and remitted. It is stated that accordingly on 31.7.2009 the second respondent bank remitted the proportionate share of employer's contribution for the period during which the petitioners and the other 7 employees were on probation along with interest. It is

further stated that though the second respondent bank had thus remitted the proportionate share of employer's contribution in respect of the petitioners and others, upon retirement, the period during which they were on probation was not reckoned as qualifying service for the grant of pension and therefore, the petitioners submitted Exts.P7 and P8 representations to the Secretary of the Pension Board requesting the Board to reckon the period during which they were on probation as service qualifying for the grant of pension Board informed the first petitioner that his request cannot be granted and that his qualifying service has been

properly fixed. Hence this writ petition seeking the following reliefs:

i) call for the records leading to Exts.P1, P2 and P9 and quash Exts.P1 and P2 to the extent by them the petitioner are not sanctioned monthly

pension treating the period of their probation as qualifying service and Ext.P9 in full by the issuance of a writ of certiorari or any other appropriate

writ, order or direction.

ii) declare that petitioners are entitled to pension treating the period of their probation also as qualifying service.

iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st respondent to re-compute the pension of the

petitioners, treating 27.7.1981 and 6.5.1981 respectively as their dates of entry in service and disburse the arrears within a time limit to be fixed by

this Hon''ble Court.

4. The main contention raised by the petitioners which was reiterated by the learned counsel appearing for the petitioners during the course of

arguments is that under the third proviso to clause (1)(a) of paragraph 19 of the Pension Scheme, the period during which the petitioners were on

probation is also liable to be reckoned as qualifying service for pension, if the proportionate share of employer's contribution together with interest

is credited to the Pension Scheme. In the instant case, the second respondent bank contribution together with interest with the Pension Board and

therefore the Board was bound to reckon the period during which the petitioners were on probation as qualifying service for pension, it is

contended.

5. I have considered the submissions made at the Bar by the learned counsel appearing for the petitioners. The fact that the petitioners became

members of the Contributory Provident Fund only with effect from 1.5.1982 and 1.10.1983 respectively is not in dispute. The fact that their

probation in the entry post was declared satisfactorily completed only with effect from the said dates is also not in dispute. The short question that

arises for consideration in this writ petition is whether on the terms of paragraph 19 of the Pension Scheme, the petitioners are entitled to have their

service during the period of probation and prior to their enrolment in the Contributory Provident Fund reckoned for the purpose of computing the

length of qualifying service. Paragraph 19 of the Pension Scheme reads as follows:

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 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.

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 enrolment in the Pension Scheme.

(b) in the case of an employee who has entered into service of a society on or after the date of application of this Scheme to that society, the

service from the date of entry into service.

(2) The service of an employee of a society in another society shall be treated as

qualifying service, provided the other society has transferred to the Pension Fund the employer's contribution paid to the Provident Fund by the society in respect of that employee for the period the employee was in the service of that other society, or the employee has refunded to the Pension Fund the amount of employer's contribution in the Provident Fund, if any, received by him from that other society.

(3) The period spent on leave except leave without allowances shall be counted for qualifying service.

Provided that in the case of employees who were on leave without allowance and elected as President or Chairman of any Local Self Government

Institutions, such period shall be treated as qualifying service, if the pension contribution with interest thereof in respect of the 7

(4) The period spent on training by an employee shall be treated as qualifying service.

(5) The period under suspension of such extent of that period as declared by the competent authority to be counted shall be treated as qualifying service.

(6) Any period of break in service and service prior to 18 years and beyond 58 years shall not be counted for reckoning qualifying service.

(emphasis supplied)

6. Clause (1)(a) of paragraph 19 stipulates that in the case of an employee who was in the service of a society on the date of application of the

Scheme to that society, the length of service commencing from the date of joining the Contributory Provident Fund shall be the qualifying service

for the purpose of grant of pension. The first proviso however stipulates 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. The Pension Scheme came into

force with effect from 3.6.1993. The petitioners entered service in the second respondent bank long before that date. Therefore, in accordance

with the stipulations contained in clause (1)(a) of paragraph 19 of the Pension Scheme, the length of service which the petitioners had commencing

from the date of joining the Contributory Provident Fund alone can be treated as service qualifying for pension. Even in Ext.P3 letter, the second

respondent bank had no case that it had remitted the for any period prior to the

date on which the probation of the petitioners was declared as satisfactorily completed, before the Pension Scheme was introduced.

7. Then the only question is whether the third proviso to clause (1)(a) of paragraph 19 of the Pension Scheme applies to the petitioners. The third

proviso to clause (1)(a) of paragraph 19 of the Pension Scheme stipulates that in the case of 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 the proportionate employers' contribution together with interest thereon has been credited to the Pension Fund.

Clause 1A of paragraph 39 of the Pension Scheme discloses that date of implementation of the Pension Scheme was 14.3.1995. From the words

"at the time of implementation of the scheme" occurring in the third proviso to clause (1)(a) of paragraph 19 of the Pension Scheme, it is evident

that the third proviso applies only to those employees who were on probation at the time of implementation of the scheme, viz., 14.3.1995 and on

whose behalf the Contributory Provident Fund contribution had not been remitted at the time of implementation of the scheme. In other

words, the third proviso when the Pension Scheme was implemented, viz., on 14.3.1995. The petitioners entered service on 6.5.1981 and

27.7.1981 respectively and their probation was declared satisfactorily completed with effect from 1.5.1982 and 1.10.1983 respectively. They

became members of the Contributory Provident Fund established by the second respondent bank only on the said dates. The employer's share of

contribution to the Contributory Provident Fund in respect of the petitioners with the interest accrued thereon was transferred to the Pension Board

in December, 1995 i.e., after 14.3.1995. Therefore, it cannot be said that the petitioners were on probation on 14.3.1995 when the Pension

Scheme was implemented or that the Contributory Provident Fund contribution in respect of the petitioners had not been transferred to the Pension

Fund upon its implementation. If that be so, the mere fact that the second respondent bank voluntarily paid the proportionate share of employer's

contribution to the Contributory Provident Fund in relation to the period during which the petitioners were on probation together with interest will

not in my opinion entitle the petitioners or the second respondent bank to

contend that as the stipulation in the third proviso to clause (1)(a) of paragraph 19 of the Pension Scheme regarding payment has been complied with, the petitioners are entitled to reckon the period during which they

were petitioners were admittedly not on probation on 14.3.1995, the third proviso to clause (1)(a) of Paragraph 19 has no application to them.

The stipulation in the third proviso can apply only if the three conditions stipulated therein, viz., (1) the employee was on probation on the date of

implementation of the Pension Scheme (2) the Contributory Provident Fund contribution had not been remitted at the time of implementation of the

Pension Scheme, and (3) the proportionate employer's contribution together with interest is credited to the Pension Fund; are satisfied.

8. The petitioners were admittedly not on probation on the date of implementation of the Pension Scheme. The employer's share of contribution

standing to the credit of the petitioners in the Contributory Provident Fund established by the second respondent society with the interest accrued

thereon was transferred to the Pension Board in December, 1995 upon implementation of the Pension Scheme. Therefore, the petitioners do not

satisfy two out of the three conditions for the applicability of the third proviso. As the first two conditions for the applicability of the third proviso

have not been satisfied, the mere fact that the third stipulation was satisfied will not entitle the petitioners to contend that the third proviso to clause

(1)(a) of Paragraph 19 applies to them. A learned single Judge of this Court has in *Sukumaran.N. v. Kerala State Co-operative Employees*

Pension Board, Tvm. and another (2010 (4) KHC 859) held, after an elaborate analysis of the relevant provisions of the Pension Scheme, that

going by clause 19 read with clause 39 of the Pension Scheme, the relevant date for computing the length of qualifying service is the date on which

the employee joined the Contributory Provident Fund. It was held that in cases where an employee had joined the Contributory Provident Fund

before the Pension Scheme was introduced, the employee cannot contend that because of the remittance of the employer's share of contribution to

the Contributory Provident Fund, for a period prior to the date of joining the Contributory Provident Fund, on a date after the coming into force of

the Pension Scheme, he will be entitled to compute the length of qualifying service from a date anterior in point of time to his joining the

Contributory Provident Fund. In the instant case, the petitioners became members of the Contributory Provident Fund on 1.5.1982 and

1.10.1983, long before the Pension Scheme was even thought of. The Contributory Provident Fund scheme was introduced in the second

respondent Bank with effect from 1.6.1967. In the light of the principles laid down by this Court in *Sukumaran. N. v. Kerala State Co-operative*

Employees Pension Board, Tvm. and another (*supra*) the case set out by the petitioners that with the Provident Fund for the period prior to

1.5.1982 and 1.10.1983 with the Pension Board, on a subsequent date after the commencement of the Pension Scheme, they became entitled to

compute the length of qualifying service for the purpose of pension from a date anterior in point of time to the dates on which they joined the

Contributory Provident Fund, cannot be sustained. The petitioners are not in my opinion, entitled to reckon the period during which they were on

probation for the purpose of computing the length of qualifying service. I am therefore of the considered opinion that the stand taken by the

Pension Board in Ext.P9 letter cannot be assailed. In the view that I have taken, the Pension Board cannot retain with it the excess amount, if any,

remitted by the second respondent bank in respect of the petitioners. The Pension Board will necessarily have to refund the said amount to the

second respondent bank.

For the reasons stated above, I hold that there is no merit in the writ petition. The writ petition fails and is dismissed.