
(2022) 12 KL CK 0105

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1551, 1557, 1562, 1564, 1581, 1587, 1595 Of 2022

Shornur Co Operative Service Bank

APPELLANT

Vs

Nambiathan Namboothiri

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Citation : (2022) 12 KL CK 0105

Hon'ble Judges : A.K.Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench : Division Bench

Advocate : P.C.Sasidharan, N.Raghuraj, M.Sasindran

Final Decision : Allowed

Judgement

Mohammed Nias.C.P.J.,

1. These Writ Appeals are filed by the Shornur Co-operative Service Bank ("Society" for short) against the judgment of the learned Single Judge in a batch of petitions filed by the employees of the Society seeking for a direction to declare that they are entitled for pension in terms of the provisions of the Kerala Co-operative Societies Act and the Pension Scheme and also for a mandamus to direct the respondents to enroll the petitioners in the Scheme to grant pension.

2. All the writ petitioners retired from the service of the appellant society before 3-6-1993, on which date the Kerala Co-operative Societies Employees Self Financing Scheme, 1994 ("the Scheme" for short) came into force. The petitioner's request to the Society for getting enrolled in the said Scheme in terms of the stipulations of the Scheme therein evoked no response and so they approached the Co-operative Arbitration Court.

3. The Society in the written statement filed before the Arbitration Court inter alia contended that the writ petitioners were ineligible for pension as they did not apply for joining the Scheme and if they are willing, the Society will take such steps to enroll them.

4. The Co-operative Arbitration Court found that the Scheme was introduced in the year 1994 for the welfare of the employees and therefore, held that the writ petitioners were entitled to the benefits of the Scheme on them remitting portion of the employer's contribution in the Contributory Provident Fund together with interest thereon to the Pension Fund before applying for pension. The Society had challenged the order of the Arbitration Court before the Co-operative Tribunal which allowed the appeal and held that the writ petitioners were not eligible for pension from the second respondent Pension Board as they did not submit the formal application in terms of paragraph 27 of the Scheme and the application which they had filed cannot be treated as a substitute for the application to be filed in terms of the Scheme. The order of the Tribunal was challenged by the employees in the Writ Petition.

5. Before the learned Single Judge, the writ petitioners contended that they were willing to act as per the mandate of paragraph 18 and 27 of the Scheme and thus prayed for setting aside the order of the Tribunal.

6. On behalf of the Society, it was submitted that unless the writ petitioners comply with the requirements in paragraphs 18 and 27 of the Pension Scheme by first closing the existing pension accounts in which they are enrolled and then applying under the Pension Scheme by remitting the required portion of the employers contribution to the Scheme together with interest thereon, they cannot get the benefit of the Scheme.

7. The learned Standing Counsel appearing for the Pension Board submitted before the learned Single Judge that the Board does not want to join issue in the controversy between the petitioners and the society and in case the employees abide by the statutory mandates of the Pension Scheme and take necessary action as per paragraphs 18 and 27 of the said Scheme by transferring the necessary contributions to the Pension Board, they will consider payment of the eligible pension to them.

8. After a consideration of the above contentions of the parties, learned Single Judge found that since the writ petitioners were continuing under the Scheme as per the Employees Contributory Provident Fund, they cannot be admitted to Pension Scheme unless they take steps as required under paragraph 27 of the Scheme. Learned Single Judge, further clarified that the writ petitioners will be at liberty to take necessary action under paragraphs 18 and 27 of the Pension Scheme and directed the Society also to co-operate with the same by forwarding the pension papers and dockets to the Pension Board and further directed that any amount which is required to be remitted by the Society, in addition to the Corpus fund to be transferred from the Employees Provident Fund Scheme to the Pension Board, shall also be honoured by the Society as per the statutory mandate. The learned Single Judge further directed those petitioners who are not within the Employees Contributory Pension Scheme to be enrolled in the Pension Scheme on complying with the terms of the Scheme.

9. The Society impugns the said directions of the learned Single Judge, in particular, the one which directs the Society to remit any amounts in addition to the corpus fund to be transferred to the Pension Board, if needed to make up for a shortfall.

10. The learned counsel appearing for the appellant/Society argues that there is no such liability under the Scheme and therefore, such a direction to the society to pay any amounts is clearly against the Scheme. It is the liability of the writ petitioners to comply with the terms of the Scheme by remitting the portion of the employers contribution in the Contributory Provident Fund together with interest thereon to the Pension Fund before applying for pension and not that of the society whose obligation rests with forwarding of the papers to the Pension Board.

11. On going through the Scheme, we feel that the Society has no such obligation to make any payments and it is for the employees to satisfy the conditions in the Scheme, particularly, under paragraphs 18 and 27 of the Scheme. We clarify that the writ petitioners are to comply with paragraphs 18 and 27 of the Scheme or such other applicable provisions of the Scheme to obtain the benefit of the impugned judgment and the Society cannot be directed to make any contribution. The impugned judgment to that extent is set aside and the other directions in the judgment are maintained.

Writ Appeals are allowed to the extent noticed above.