

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 16TH DAY OF SEPTEMBER 2022 / 25TH BHADRA, 1944

WA NO. 727 OF 2021

AGAINST THE JUDGMENT IN WP(C) 23480/2020 OF HIGH COURT OF
KERALA

APPELLANT :

S. YADAVA, AGED 58 YEARS
S/O. LATE KANNA BELCHAPADA, RESIDING OPPOSITE TO
BANDIYOD JUMMA MASJID, NH-66, MANGALPADY (PO),
KASARAGOD DISTRICT PIN - 671 324.

BY ADVS.
JAWAHAR JOSE
SRI.JAISON ANTONY

RESPONDENTS :

- 1 THE KERALA STATE CO-OPERATIVE BANK
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, P.B.
NO. 6515, CO-BANK TOWERS, PALAYAM,
THIRUVANANTHAPURAM, PIN - 695 033.
- 2 THE GENERAL MANAGER
KERALA STATE CO-OPERATIVE BANK, REGIONAL OFFICE,
TALAP, KANNUR, PIN - 670 002.
- *ADDL.R3 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF CO-OPERATION, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- *ADDL.R4 THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
JAWAHAR SAHAKARANA BHAVAN, D.P.I. JUNCTION,
THYCAUD (P.O.), THIRUVANANTHAPURAM-695014.

(ADDITIONAL R3 AND R4 ARE IMPLEADED AS PER ORDER
DATED 03/06/2021 IN IA 1/21)
BY SRI.GILBERT GEORGE CORREYA, SC, KERALA STATE
CO-OPERATIVE BANK LTD.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2022, THE COURT ON 16.09.2022 DELIVERED THE FOLLOWING:

“C.R”

A.K.JAYASANKARAN NAMBIAR & MOHAMMED NIAS C.P., JJ

WA No.727 of 2021

Dated this the 16th day of September 2022

JUDGMENT

Mohammed Nias.C.P.J

Does the disciplinary proceedings initiated under the Kerala Co-operative Societies Act and Rules, come to an end on the retirement of the employee is the issue to be resolved in this writ appeal.

2. This writ appeal is filed challenging the dismissal of the writ petition filed by the appellant challenging the continuance of the disciplinary proceedings initiated before retirement and also for a direction to disburse the retiral benefits. The petitioner who joined the service of the Kerala State Co-operative Bank in the year 1989 was posted as Manager on 20.02.2014. He was served with Ext.P3 memo of charges on 26.02.2020 on the ground that while officiating as a Manager of the Hosangadi Branch of the first respondent Bank, there were serious irregularities in granting loans to several customers by showing higher value to the secured assets. The petitioner was suspended by Ext.P4 order dated 30.04.2020. By

Ext.P6 order certain charges were deleted on 13.05.2020. Thereafter, the appellant retired from service on 31.05.2020. The appellant contended that in the absence of any enabling provision in the Kerala Co-operative Societies Act or Rules for continuing the disciplinary enquiry after retirement, the continuance of the disciplinary proceedings is without jurisdiction and that Rule 198 (7) of the Kerala Co-operative Societies Rules (for brevity the 'KCS Rules') do not grant any permission to go ahead with the disciplinary proceedings, and consequently the appellant is entitled to get all the terminal benefits.

3. The learned single Judge, who considered the matter found that the enquiry can continue against a retired employee in cases where memo of charges was served while the employee was working and that the power of the Society to recover the amounts is not denuded even after the retirement. In the instant case since the memo was issued while the petitioner was in service, which denotes the start of the departmental proceedings, the same can be continued by withholding the retiral benefits. In is only in cases where there are no rules that the employer will be prevented from initiating or continuing departmental proceedings against the retired employee. In that view of the matter the judgments cited before the learned single Judge were distinguished and the writ

petition dismissed.

4. In the appeal before us, it is the contention of Adv.Jawahar Jose, the learned counsel for the appellant that there is no provision in the Kerala Co-operative Societies Rules (for brevity 'KCS Rules') for conducting or continuing a disciplinary enquiry after the retirement. He also argues that there is no provision authorising the employer to deduct the retiral benefits. As the enquiry initiated must be treated to be lapsed as it cannot be continued, the appellant is entitled to all the retiral benefits is the submission. He also argues that Rule 198 (7) of the KCS Rules may give the right to the respondent to withhold the retiral benefits, but it does not clothe the respondent with the power to carry on with the disciplinary proceedings initiated. The retiral benefits according to the learned counsel are withheld on the basis of a procedure which has no legs to stand. The pension and gratuity, which are no more considered to be a bounty to be handed over by the employer, cannot be withheld by the respondent in the absence of any valid provision. He also argues that the employer has no authority to withhold the provident fund, welfare fund dues and the leave encashment as they cannot be treated as retiral benefits. He also cites the following judgments to buttress his contentions:

State Bank of India v. A.N.Gupta and others [(1997) 8 SCC 60]

Ramesh Chandra Sharma v. Punjab National Bank and another [(2007) 9 SCC 15]

Dev Praksh Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others [2014] 7 SCC 260]

State of Jharkhand and others v. Jitendra Kumar Stivatsava and another [(2013) 12 SCC 210]

Girijan Coperative Corporation Limited, Andhra Pradesh v. K. Satyanarayan Rao [(2010) 15 SCC 322]

P.P.Pappachan v. State of Kerala and Ors. [MANU/KE/0573/1997]

Philip C.M. V Registrar of Co-operative Societies, TVM. and others [2018(3) KHC 780]

Chairman cum Managing Director, Mahanadi Coalfields Limited v. Rabindranath Choubey [(2020) 18 SCC 71]

Bhagirathi Jena v. Board of Directors, OS.F.C. and others [(1999) 3 SCC 666]

5. Per contra, it is the submission of Sri. Gilbert George Correya, the learned standing counsel for the respondent-Bank that Rule 198(7) of the KCS Rules provides for continuance of disciplinary proceedings even after retirement and also gives the employer the power to withhold the retiral benefits till finalisation

of the same. It is therefore the contention of the learned counsel that the entire basis on which the writ petition filed, namely, that there is no provision to continue with the disciplinary proceedings and consequently, without jurisdiction and thus seeking to release the retiral benefits cannot be accepted at all. The charges levelled against the appellant are serious and till the culmination of the proceedings, the retiral benefits cannot be granted to the appellant. He also cites the judgments of the Supreme Court in **Disciplinary Authority cum Regional Manager and others v. Nikunja Bihari Patnaik** [(1996) 9 SCC 69], **U.P. State Sugar Corporation Ltd. and ors. v. Kamal Swaroop Tondon** [(2008)2 SCC 41] and the judgment in **P.P.Pappachan v. State of Kerala and Ors.** [MANU/KE/0573/1997].

6. We have heard the learned counsel on either side.

7. The relevant rule, Rule 198 (7) of the KCS Rules reads as follow:-

(7) In the event of any pendency of disciplinary proceedings against any employee of a co-operative society or any co-operative institution pursuant to any charge of grave misconduct, irregularity, corruption or other charge involving moral turpitude, no retirement benefits shall be **sanctioned** to such employee or retired employee and in case of **sanctioning** of any retirement benefits to any such employee or retired employee, the name and designation of the sanctioning authority together with the reason for such sanctioning shall be recorded by the sanctioning authority

by himself and such authority shall be held responsible for any loss to the society owing to such sanctioning of retirement benefits if found that such sanctioning was unwarranted.

8. A reading of the above Rule 198(7) presupposes two situations namely the pendency of the disciplinary proceedings already initiated while the employee was in service and also about the power to withhold the retiral benefit in such cases till completion of the proceedings initiated. The initiation of the disciplinary proceedings which is taken care of in the said Rules, has to come to an end one way or the other as the same is a definite eventuality. The rule therefore must be understood as one which gives the power to the bank to retain the retiral benefits only till the culmination of the disciplinary proceedings. This rule definitely contemplates the continuance of the disciplinary proceedings initiated while the employee was in service and the contention on the part of the learned counsel for the appellant that this rule does not enable the employer to carry on with the disciplinary proceedings after his retirement has to be straight away rejected. In our view this rule protects the employee more than the employer as he gets the right to the retiral benefits only once the proceedings are culminated. True, the Rules may not allow a society to initiate disciplinary proceedings after the retirement of an employee, but it certainly enables the society to continue with the disciplinary proceedings already initiated before the retirement and also speaks about the

consequence of withholding the retiral benefits as long as the disciplinary proceedings continue. It is also relevant to note that the said rule prohibits even sanctioning of any retirement benefits leave alone the actual payment.

9. The decisions cited on behalf of the appellant are all clearly distinguishable. In the decisions in **State Bank of India v. A.N.Gupta and others** [(1997) 8 SCC 60] the rules considered therein particularly Rule 10 of the Pension Rules provided for forfeiture of all claims for pension if an employee is dismissed from the service of the Bank for a wilful neglect or fraud. Rule 11 therein stipulated that pension of an employee could be withheld only on these or similar grounds. A reading of both the rules clearly show that while Rule 10 speaks about the forfeiture of all claims if dismissed from service which certainly has to be before the superannuation. Rule 11 applies to a situation where an officer/employee leaves the service of the bank before attaining superannuation. We do not find anything in the said judgment to assist the petitioner herein as it was a case where the denial of pension was on account of guilt already established while the delinquent was in service and in those cases in the absence of a finding of guilt leading to punishment, the pension could not have been withheld. The rules also presupposed the completion of the

proceedings while in service for the disbursement of the retiral benefits. With respect to the decision cited in **Bhagirathi Jena v. Board of Directors, OS.F.C. and others** 1997 (3) SCC 666, the Supreme Court clearly found that there is no specific provision for deducting any amount from the provident fund consequent to the finding of any misconduct determined in the departmental enquiry, nor was there any provision for continuance of the departmental enquiry after superannuation and it is only in the absence of such provision that it was held that the proceedings cannot continue. As regards the judgment in **Ramesh Chandra Sharma v. Punjab National Bank and another** [(2007) 9 SCC 15] the issue involved therein was whether it was permissible to dismiss an employee who already stood on superannuation, the Apex Court found that the said question would depend on the applicability of the extant rules. It was further held that the question of imposition of dismissal of the delinquent officer from the service when it has already reached the age of superannuation would not ordinarily arise, however, if the consequence of such an order are provided for in the service rules, then it will not be correct to contend that the imposition of such a punishment would be wholly impermissible in law. In this context it has to be noted that rules in the instant case namely 198 (7) thus provides for continuance of the proceedings initiated. As regards the judgment in **Girijan Coperative Corporation Limited, Andhra Pradesh v. K. Satyanarayan Rao** [(2010) 15

SCC 322], the Supreme Court again held that the departmental proceedings can be initiated or continued only in terms of the rules framed by the employer and in the absence of any such rules, proceedings against the retired employees cannot be continued. There cannot be any dispute with this proposition. The same is the ratio in the decision in **Dev Praksh Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others** [2014) 7 SCC 260]. The learned counsel for the appellant also submitted that his case is covered by the judgment in **Chairman cum Managing Director, Mahanadi Coalfields Limited v. Rabindranath Choubey** [(2020) 18 SCC 71], which also accepts the position that in the absence of the rule enabling continuance of the disciplinary proceedings, it comes to an end on retirement. The learned counsel cited the judgment in **Philip C.M. V Registrar of Co-operative Societies, TVM. and others** [2018(3) KHC 780], which again was a case where the punishment was imposed before the retirement and the court considered the second memo of charges issued after the retirement as a fresh disciplinary proceedings could have been initiated only if the employee was still a member of the establishment. The learned counsel argued on the basis of the judgment in **State of Jharkhand and others v. Jitendra Kumar Stivatsava and another** [(2013) 12 SCC 210] to argue that pension and the gratuity are no longer to be treated as bounty but property and therefore such as on the benefit cannot be

taken away without complying with the due process of law. In the instant case as we have already noted the action of the Bank was authorised by Rule 198(7), the act of withholding the retiral benefits cannot be faulted. The petitioner argued on the basis of the judgment of this Court in WA No.220 of 2022, which according to the petitioner was a case where the dismissal order was rendered much after the retirement of the employee therein. It was in that context that the Bench held that there was nothing in the KCS Rules which envisages the post retiral disciplinary action. The learned counsel lastly relied on an unreported judgment of this Court in WP(C)No.38387 of 2010 to contend that the State cannot withhold the pensionary benefits which is a propriety right of the petitioner/pensioner, and therefore the same could not be withheld on the basis of an executive order. This judgment according to us will have no application in the instant case in the face of Rule 198(7) of the KCS Rules.

10. The learned counsel for the respondent relied on the judgment in **Disciplinary Authority cum Regional Manager and others v. Nikunja Bihari Patnaik** [(1996) 9 SCC 69] as well as the judgment of the Supreme Court in **U.P. State Sugar Corporation Ltd. and ors. v. Kamal Swaroop Tondon** [(2008)2 SCC 41]. The learned counsel argues that there is a

difference between the two concepts, resignation and retirement which are different and employed for different purposes in different context. A resignation speaks about the complete cessation of the master and servant relationship but retirement does not do so. In cases of retirement, the master and servant relationship continues for the grant of retiral benefits. The learned counsel also argues relying on the judgment in **P.P.Pappachan v. State of Kerala and Ors.** [MANU/KE/0573/1997] that the disciplinary proceedings already initiated before retirement has to be allowed to be continued. If the argument that the proceedings cannot continue after the retirement is accepted, any delinquent employee can commit any fraud, misappropriation, grave dereliction of duty etc., on the eve of his retirement and can plead that he is beyond the reach of the employer, which would result in such delinquent employee escaping without punishment. Law cannot allow such a course and in all those cases larger public interest must be the guiding factor to decide the case. It is also to be noticed that the exercise of the power under Article 226 of the Constitution of India must be in public interest and must advance public justice. When Court finds that exercise of the above jurisdiction would result in gross injustice and would tantamount to helping a delinquent employee to ward off grave and serious allegations, then this Court will refuse to exercise the discretion in favour of such a person.

11. On a consideration of the contentions of the learned counsel and also the judgments cited above, we hold that Rule 198 (7) covers the issue on hand and in as much as the power is conferred on the employer to initiate and also to continue the proceedings and withhold the retiral benefits till the culmination of the proceedings, the action of the Bank in following the rigor of Rule 198(7) by not releasing the retiral benefits to the petitioner pending the disciplinary proceedings cannot be found to be bad or illegal in any manner. We, however note that, since the employee had retired as early as on 31.05.2020, it would be in the best interest of the appellant to direct the employer to complete the disciplinary proceedings, as expeditiously as possible, at any rate, within an outer time limit of six months from the date of receipt of a copy of this judgment. We do so. Needless to say, the appellant will co-operate with the respondents in the continuance of the disciplinary proceedings so as to complete the same at the earliest.

The writ appeal is dismissed as above.

Sd/-

**A.K.JAYASANKARAN NAMBIAR,
JUDGE**

Sd/-

**MOHAMMED NIAS C.P.,
JUDGE**