

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN**

**TUESDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2022 / 1ST AGRAHAYANA, 1944**

**WP(C) NO. 13244 OF 2021**

**PETITIONERS:**

- 1 SADANANDAN K.S., AGED 78 YEARS, S/O. SUBRAMANIAN,  
KALAPURAKKAL HOUSE, THIRUVALLUR, KODUNGALLUR P.O,  
TRICHUR (DT.) 680 664. (DIED)
- 2 ADDL.P2: SANTHA SADANANDAN (67 YEARS)  
W/O.LATE SADANANDAN, KALAPURAKKAL HOUSE, THIRUVALLUR,  
KODUNGALLUR P.O., THIRICHUR DISTRICT PIN - 680 664.
- 3 ADDL.P3: SATHEESH BABU, AGED 46 YEARS  
S/O.LATE SADANANDAN, KALAPURAKKAL HOUSE, THIRUVALLUR,  
KODUNGALLUR P.O., THIRICHUR DISTRICT PIN - 680664.
- 4 ADDL.P4: SALITHA AJITHKUMAR, AGED 44 YEARS  
D/O.LATE SADANANDAN, KALAPURAKKAL HOUSE, THIRUVALLUR,  
KODUNGALLUR P.O., THIRICHUR DISTRICT PIN - 680664.

ADDL.P2 TO P4 ARE IMPEADED AS PER ORDER DATED 01.08.2022  
IN IA 1/2022 IN WPC NO. 13244/2021.

BY ADV T.M.CHANDRAN

**RESPONDENTS:**

- 1 KERALA TODDY WORKERS WELFARE FUND BOARD ,  
REPRESENTED BY CHAIRMAN, OFFICE OF THE KERALA TODDY  
WORKERS WELFARE FUND BOARD ULLUR, MEDICAL COLLEGE P.O,  
THIRUVANANTHAPURAM-695 011
- 2 CHIEF WELFARE FUND INSPECTOR,  
OFFICE OF THE KERALA TODDY WORKERS WELFARE FUND BOARD,  
ULLUR, MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM,  
PIN-695 011
- 3 WELFARE FUND INSPECTOR,  
KERALA TODDY WORKERS WELFARE FUND BOARD, ASOK NAGAR,  
KANJANI ROAD, AYYANTHOLE P.O, TRICHUR 680 003.
- 4 STATE OF KERALA  
REPRESENTED BY SECRETARY, LABOUR AND EXCISE DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001

BY ADVS.  
SHRI.G.SANTHOSH KUMAR, SC, KTWFB  
K.M.FAISAL-SR. G.P

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
22.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT**

This writ petition is filed by Sadanandan K.S., now deceased, challenging Ext.P2 order of the 2<sup>nd</sup> respondent, the Chief Welfare Fund Inspector of the 1<sup>st</sup> respondent, the Kerala Toddy Workers Welfare Fund Board (hereinafter referred to as 'KTWWF Board' for short), whereby it is ordered that a person cannot receive pension from two Welfare Fund Boards and withholding the pension of those persons who have received pension from two Welfare Fund Boards and directing such persons to refund the pension received from the KTWWF Board during the period they received pension from both Boards and calling upon them to get certificate of cancellation of pension from other Welfare Fund Boards for further receipt of pension from the KTWWF Board. Ext.P3 is the consequential notice issued to the petitioner by the 3<sup>rd</sup>

respondent, the Welfare Fund Inspector of the KTWWF Board, Thrissur.

2. Sadanandan, who had 72% permanent speech and hearing disability, worked as a registered toddy tapper in T.S. No.30, Padinjarenada in Kodungalloor range and was a member of the Kerala Toddy Workers Welfare Fund (hereinafter called the 'KTWW Fund') with account number RTSR 3622. After working for 29 years and 3 months, he superannuated from service on 30.09.2004 on attaining the age of 60 years. During his service, being a member of the Kerala Toddy Workers Welfare Fund Scheme, 1969 (hereinafter called the 'Scheme'), he had paid contributions to the KTWW Fund as provided under Section 4 of the Kerala Toddy Workers Welfare Fund Act, 1969 (hereinafter called the 'KTWWF Act'). On superannuation, he was sanctioned Kerala Toddy Workers Welfare Fund monthly pension from 01.10.2004. However,

as per Ext. P2 order, payment of pension was withheld with effect from 01.10.2020. Ext.P3 is the communication in this regard calling upon the petitioner to produce certificate of cancellation of pension from the other welfare fund board in order to receive further pension.

3. Sadanandan was also a dairy farmer and member of the Dairy Farmers Welfare Fund Scheme framed under the Kerala Dairy Farmers' Welfare Fund Act, 2007. Based on the contribution paid to the Dairy Farmers' Welfare Fund, Sadanandan was receiving pension from the said Fund. However, the pension from the Dairy Farmers' Welfare Fund now stands withheld, without notice, obviously on the basis of Ext. P2. It is contended that the decision to stop the pension and to recover the pension paid was taken without notice to the petitioner and there is clear violation of the principles of natural justice and statutory provisions. It is further contended that the

petitioner is legally entitled to receive pension from both Welfare Fund Boards in view of the payment of contributions already made by him and the respective employers, to the respective Boards. Accordingly, the petitioner seeks to quash Exts. P2 and P3 and for direction to continue payment of pension under the KTWW Fund Act.

4. A Statement dated 26.10.2021 is filed on behalf of the 3<sup>rd</sup> respondent wherein the employment details of the petitioner, his registration as member of the KTWW Fund, length of service, date of retirement from service, payment of pension under the Scheme are admitted. It is stated therein that the Government, by G.O (MS) No.483/2017/Fin dated 06.11.2017 (Annexure-R3(a)), have stipulated that a person cannot receive pension from various Welfare Fund Boards and instructed to recover the amounts paid as pension from such persons.

It is further stated that the KTWWF Board, in its meeting held on 28.01.2021, had resolved not to recover pension already paid and the same is pending before the Government for ratification and that an official website "SEVANA" has been developed by the State Government to identify those who receive pension from other Welfare Boards, and found that the petitioner is receiving pension from the Kerala Dairy Farmer's Welfare Fund Board. Hence, the pension was blocked with effect from 01.10.2020, as per Ext. P2 and that in order to resume pension, the petitioner has to submit a certificate of cancellation of pension from the Kerala Dairy Farmers' Welfare Fund Board.

5. An additional statement dated 13.12.2021 is filed by the 3<sup>rd</sup> respondent stating that the Government, as per G.O.(MS) No.97/2020/Fin dated 23.09.2020 (Annexure-R3(b)), have clarified the position stating that a person

who receives welfare fund pension which is disbursed by using own funds is entitled to obtain social security pension to a tune of Rs.600/-.

6. On behalf of the 4<sup>th</sup> respondent-State, the learned Government Pleader has filed a Statement dated 30.06.2022 wherein it is stated that, as per para 2 (v) of Annexure-R3(a) Government Order, a person is eligible for only one welfare fund board pension at a time. It is stated that the pension scheme provides that the Chief Welfare Fund Inspector, KTWWF Board is competent to cancel the pension once sanctioned.

7. By order dated 13.07.2022, this Court directed the learned Government Pleader to get instructions and to file a Statement pointing out the provision of law whereby there is prohibition for receiving pension under two or more Welfare Fund Schemes and to state why the pension shall be limited under one Scheme after collecting



contributions from the petitioner/pensioner under both the Schemes.

8. Accordingly, the learned Government Pleader has filed a Statement dated 08.08.2022 wherein it is stated that the KTWWF Act and Schemes 1969 do not explicitly prohibit a person in subscribing to any other Welfare Fund or to accept pension from any other Welfare Fund Board, but, the Government have taken a policy decision vide G.O(MS) No. 324/2016/FIN dated 15.08.2016 (Annexure-R4 (a)) that a person is eligible to get only one Welfare Fund Board Pension, since the State Government provides from Public revenues the fund required for distributing pension to most of the Welfare Fund Boards. It is further stated that a person is expected to become a member of only one Welfare Fund Board, because he engages in a particular job like toddy tapping/ dairy farming/ agriculture activities etc. and shall not receive dual

benefits of any Welfare schemes, particularly those financed from public revenues, on technical grounds alone.

9. In the reply statement filed by the petitioner, it is stated that Guidelines in Annexure-R3(a) cannot override the statutory provisions of the KTWWF Act and the Schemes 1969 framed thereunder and also the Kerala Dairy Farmers' Welfare Fund Act, 2007. It is stated that under both the Welfare Funds, the petitioner and the concerned employer have remitted contributions to the respective Funds, established and managed separately, without any default and from that Fund alone, the petitioner is getting pension after retirement. The statutory pension that is to be paid to the petitioner on the basis of contribution already remitted cannot be denied and the Guidelines in Annexure-R3 (a) can be made applicable only to those persons receiving pension

without remittance of contribution. It is pointed out that a separate Fund is established and being managed and maintained by the KTWWF Board and the Kerala Dairy Farmers' Welfare Fund Board, two independent Boards established under two State Acts. According to the petitioner, even going by Annexure-R3(a), the petitioner is entitled to get pension from both Boards as the guidelines are applicable only with effect from 06.02.2017 and the petitioner had retired from service as early as on 30.09.2004.

10. During the pendency of this writ petition, Sadanandan died and his legal heirs are impleaded as additional petitioners 2 to 4 in the writ petition.

11. Heard Sri. T.M. Chandran, the learned counsel for the petitioners, Sri.G.Santhosh Kumar, the learned standing counsel for respondents 1 to 3 and Sri.K.M. Faisal, the learned Government Pleader for the 4<sup>th</sup>

respondent.

12.The KTWWF Act is a welfare legislation made under Entry 24 of the Concurrent List given in the Seventh Schedule to the Constitution of India. The object of the KTWWF Act is to constitute a fund to promote the welfare of, and for payment of pension to toddy workers in the State of Kerala. The KTWWF Act is enacted for providing welfare measures to toddy workers, where the scheme is for collection of welfare fund contribution from both employees and employers during service. Benefits given to them are in bulk on death or retirement and after retirement, as pension. Section 3 of the KTWWF Act provides for framing a scheme to be called the Kerala Toddy Workers' Welfare Fund Scheme for the establishment of a fund for employees and Section 6 provides for constitution of a Board for administration of the Fund. Section 4 provides that, the contribution which

shall be paid by the employer to the fund shall be eight per cent of the wages for the time being payable to each of the employees, and the employee's contribution shall be equal to the contribution payable by the employer in respect of him. Sub-section 3 of Section 4 provides that, the Government shall contribute to the fund every year an amount not less than 7.5 percent of the employees' contribution to the fund by way of grant. Section 10 of the KTWWF Act provides that the amount standing to the credit of any member in the fund shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member and Section 11 provides for priority of payment of contributions over other debts of the employer. Section 15A provides for powers of Government to give general instructions to be followed by the Board and Section 19 deals with the Rule making powers of the Government.

Paragraph 28 of the Kerala Toddy Workers' Welfare Fund Scheme, 1969 provides that every employee shall be entitled and required to be a member of the fund from the beginning of each calendar year if he has completed three months continuous service and paragraph 33 deals with registration of employee as beneficiary to the fund. The pension scheme of KTWWF Board which came into force *w.e.f* 01.01.1997 provides that every member having minimum 10 years of continued membership in the fund and retired on superannuation before or after commencement of scheme or permanently disabled or totally incapacitated for work due to prolonged illness before attaining the age of superannuation and having less than 10 year of membership in the fund shall be eligible for monthly pension on or after commencement of the Scheme.

13.The Kerala Dairy Farmers' Welfare Fund Act, 2007

is an Act enacted with the object to provide for the establishment of a Dairy Farmers' Welfare Fund to grant relief to, to ensure the welfare of and to pay pension to the farmers engaged in cattle rearing in the State of Kerala. Section 2 (d) defines "dairy farmer" to mean a person who owns or rear one or more cows or she buffaloes and markets at least 500 liters of milk per year in the State in a milk co-operative society functioning in his dwelling place or in a milk society nearby the area of his dwelling place, due to the reason that no milk Co-operative society is functioning in such place. Section 3 of the Kerala Dairy Farmers' Welfare Fund Act, 2007 deals with framing of a Welfare Fund scheme for the establishment of a fund for the welfare of the dairy farmers and Section 8 provides for constitution of a Board called Kerala Dairy Farmers' Welfare Fund Board for carrying out the activities financed from the fund. Section

3 (4) provides that the fund may be utilized *inter alia* for giving pension to the dairy farmer who is a member of the Fund who has measured milk for five years and who is a member of a Primary milk co-operative society. The contribution to the Fund is as per Section 7 of the Kerala Dairy Farmers' Welfare Fund Act which provides that each dairy farmer shall contribute twenty rupees per month and each society shall, contribute twelve paise for each liter of milk to be collected and sold by the society locally.

14. Neither the KTWWF Act nor the Kerala Dairy Farmers' Welfare Fund Act provides for any prohibition of membership in two welfare funds or in receiving benefits under two welfare fund schemes under two different Acts. Separate Fund is maintained and managed by the KTWWF Board and the Kerala Dairy Farmers Welfare Fund Board, two independent Boards established under two State Acts. Every member (employee/farmer) and the



employer shall contribute to the fund which is statutorily fixed. Having received the contributions from the member, the Board cannot refuse payment of pension to the member on the ground that he is receiving pension from other Welfare Fund Board. If a person is a member of one or more Welfare Fund Boards and there is no prohibition for being member of one or more Welfare Fund Boards, and such person has paid his contributions to the respective Boards, the respective Boards having received the member's as well as the employer's contributions cannot deny the benefits including pension to the members of the Funds.

15. Unlike in social security pension, pension under KTWW Fund and Dairy Farmers' Welfare Fund are paid under the condition of having paid the required contributions. Sadanandan was a registered toddy tapper and a member of the KTWW Fund. He had worked for 29

years and 3 months. During his service, he had paid contributions to the KTWW Fund. On superannuation, he was sanctioned KTWW Fund pension from 01.10.2004. Sadanandan being a dairy farmer and member of the Dairy Farmers' Welfare Fund Scheme also paid contributions to the Dairy Farmers' Welfare Fund. He was receiving pension from the Dairy Farmers Welfare Fund Board by virtue of the contributions he had remitted. The KTWW Fund Board as well as the Kerala Dairy Farmers' Welfare Fund Board, after having received the member's as well as the employer's contributions, cannot deny pension to the member stating that he is getting pension from other Welfare Fund Board. Paragraph 2 (v) of Annexure-R3(a) Government Order which provides that 'a person is eligible for only one welfare fund board pension' at a time, cannot apply where the respective Boards have received contributions from the member. Paragraph 2 (v)

of Annexure-R3(a) takes away the benefits already conferred to the members of the Funds and is an executive fiat and not a legislation and cannot operate retrospectively. Having examined the case of the deceased 1<sup>st</sup> petitioner in the light of the KTWW Fund Act as well as the Kerala Dairy Farmers' Welfare Fund Act, 2007, Ext. P2 order issued by the 2<sup>nd</sup> respondent cannot be sustained as against him. It is so declared. Consequently, Ext. P3 is quashed. Respondents 1 to 3 shall pay all the benefits due to the deceased 1<sup>st</sup> petitioner including the pension withheld, to petitioners 2 to 4, within a period of two months from the date of receipt of a copy of the judgment.

The writ petition is allowed as above. There will be no order as to costs.

**Sd/-**  
**MURALI PURUSHOTHAMAN**  
**JUDGE**

**APPENDIX OF WP(C) 13244/2021**

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF CERTIFICATE DATED 24.02.2010 ISSUED BY GOVT. OF KERALA TO PETITIONER.
- Exhibit P2 TRUE COPY OF ORDER DATED 26.12.2020 PASSED BY THE RESPONDENT NO.2, WITH ENGLISH TRANSLATION.
- Exhibit P3 TRUE COPY OF NOTICE DATED 14.01.2021 ISSUED BY THE RESPONDENT NO.3, WITH ENGLISH TRANSLATION.
- Exhibit P4 TRUE COPY RECEIPT DATED 05.03.2021 FOR RS. 20/ISSUED TO THE PETITIONER BY THE MILK SOCIETY KODUNGALLUR, WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:

- R3(A) A TRUE COPY OF THE G.O(MS)NO.483/2017/FIN DATED 06/11/2017
- R3(B) TRUE COPY OF THE RELEVANT PAGES G.O(MS)NO.97/2020/FIN. DATED 23/09/2020 ISSUED BY THE FINANCE DEPARTMENT.
- R3© TRUE COPY OF THE LETTER DATED 20/11/2021 ISSUED BY THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF FINANCE TO THE 2ND RESPONDENT.

**spc/**