

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 28034 of 2006(K)

PETITIONER:

ABRAHAM VARGHESE,
(RETD.SECRETARY, THE CHENGALAM SERVICE
CO-OPERATIVE BANK LTD., CHENGALAM),
PUTHENPURACKAL HOUSE, CHENGALAM P.O.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KOTTAYAM.
2. THE CHENGALAM SERVICE CO-OPERATIVE
BANK LTD., NO.K.253, CHENGALAM,
REPRESENTED BY ITS SECRETARY,
CHENGALAM P.O.
3. THE SECRETARY,
CHENGALAM SERVICE CO-OPERATIVE BANK LTD. NO.K253,
CHENGALAM P.O.

BY ADV. SRI.LIJL.J.VADAKEDOM
SENIOR GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE RULES OF GROUP GRATUITY CM LIFE ASSURANCE .
- EXT.P2: TRUE COPY OF THE CIRCULAR NO.25/99 DATED 22.6.99.
- EXT.P3: TRUE COPY OF THE POLICY PARTICULARS IN RESPECT OF THE PETITIONER
ISSUED BY THE MANAGER OF LIC.
- EXT.P4: TRUE COPY OF THE NOTICE DATED 29.7.06 ISSUED BY THE 3RD
RESPONDENT.
- EXT.P5: TRUE COPY OF THE RECEIPT ISSUED BY THE BANK SHOWING THE
REMITTANCE OF RS.62,048/- BY THE PETITIONER ON 3.8.06.
- EXT.P6: TRUE COPY OF THE APPLICATION DATED 23.8.06 SUBMITTED BY THE
PETITIONER TO THE PRESIDENT OF THE BANK.
- EXT.P7: TRUE COPY OF THE PETITION DATED 16.10.06 SUBMITTED BEFORE THE
1ST RESPONDENT.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 28034 OF 2006

DATED THIS THE 28th DAY OF FEBRUARY, 2007

JUDGMENT

The petitioner retired from service of the second respondent Co-operative Bank on 31.5.06 on superannuation after thirty years of qualifying service. For payment of gratuity to its employees, the second respondent bank had joined the Group Gratuity Scheme of the Life Insurance Corporation of India. The amount of gratuity due to the employees for every year of their service are being paid by the Society as premium to the Life Insurance Corporation and the LIC has under the policy, taken upon itself the liability to pay gratuity to the employees of the 2nd respondent Bank as and when they retire from service. Accordingly, in accordance with the Group Gratuity Scheme, the Life Insurance Corporation sanctioned and paid an amount of Rs.3,23,065/- as gratuity due to the petitioner. Originally the bank paid the entire amount received from the LIC to the petitioner. But later under threat of recovery proceedings, the petitioner was made to refund an amount of Rs.62,048/- from the amount received by him on the ground that the amount paid is in excess of the amounts due to

him as gratuity under Rule 59 of the Kerala Co-operative Societies Rules.

2. The petitioner submits that the issue involved in this writ petition is squarely covered by my decision in **Retnavalli Vs. Ampalapadu Service Co-operative Bank Ltd. (2005(3) KLT 320)**. In the above circumstances, the petitioner has sought the following reliefs in this writ petition.

" (i) a writ of mandamus or any other writ, order or direction commanding the 2nd and 3rd respondents to pay to the petitioner Rs.62,048/- unauthorizedly withheld from the petitioner's gratuity with 6% interest from the date of receipt of money by the 2nd respondent Bank from LIC;

ii) a writ of mandamus or any other writ, order or direction commanding the 1st respondent to see that respondents 2 and 3 pay the amount unauthorizedly withheld from the petitioner's Gratuity to the petitioner within a time limit failing which to take appropriate action against respondents 2 and 3 including supersession of the managing committee.

iii) Any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to allow this petition."

3. The contention of the second respondent bank is that the bank is liable to pay only the maximum gratuity payable by the bank as provided under Rule 59 of the Kerala Co-operative Societies Rules. On calculation as per Rule 59, the petitioner would not be entitled to Rs.3,23,065/- as gratuity and it is under such

circumstances Rs.62,048/- has been recovered from the amount already paid to him, which is the amount paid in excess.

4. I have heard both sides in detail. I am of opinion that the facts of this case are exactly identical to the relevant facts in the **Retnavalli's** case. In that case in paragraph 16, I have held as follows:

"16. The long and short of the above discussion is that payment of amounts by the L.I.C. out of the Trust Fund as per Ext.P1 policy to the employees of the Society or their legal heirs does not in any way violate either R.59 of the Kerala Co-operative Societies Rules, 1969 or the bye-laws of the Society, if any. The amount payable as per Ext.P1 policy is the amount belonging to the employee and the Society has no legal or moral right to withhold any part of it, citing R.59, bye-laws of the Society or the limit prescribed by the payment of Gratuity Act, 1972. The result of these findings is that the 1st respondent-Society is bound to pass on the entire amount paid by the L.I.C. pursuant to Ext.P1, in respect of the gratuity liability of the Society towards each employee, taken over by the L.I.C. in full, without withholding any amount therefrom, even if it is in excess of the amount prescribed as per R.59 or the bye-laws of the Society."

5. The above finding would mean that irrespective of the limitations prescribed under Rule 59, the bank would be liable to pay the entire amount received by them from the L.I.C. as payment to the petitioner under the Group Gratuity Scheme. That being so, the second respondent bank had no right to recover the

amount of Rs.62,048/- from the amount paid by the L.I.C. as gratuity to the petitioner. Therefore there would be a direction to the second respondent- bank to pay the amount of Rs.62,048/- also to the petitioner with 6% interest from the date of recovery from the petitioner till the date of payment.

Writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

Acd

