

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS &

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

OP (CAT).No.5 OF 2021

AGAINST THE ORDER IN O.A.NO.180/455/2018 DATED 27-11-2019 OF
CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

PETITIONERS/RESPONDENT NOS.3 & 4:

1 THE BRANCH MANAGER
STATE BANK OF INDIA, ERNAKULAM SOUTH,
MANORAMA JUNCTION, KOCHI-682 016.

2 THE MANAGER
STATE BANK OF INDIA, MAIN BRANCH,
4TH FLOOR, PARLIAMENT STREET
NEW DELHI 110 016.

BY ADVS.
SMT.BINDUMOL JOSEPH
SRI.B.S.SYAMANTHAK
SHRI.SRIVIDYA K

RESPONDENTS/APPLICANT & RESPONDENTS 1 & 2:

1 P.R.RAMAKRISHNAN NAIR
AGED 81 YEARS
S/O.K.RAMAN NAIR, (RETD. PRINCIPAL, KENDRIYA
VIDYALAYA NO.2, NAVAL BASE, KOCHI-682 004),
RESIDING AT PLOT NO.101, NORTH GIRI NAGAR EXTENSION,
KADAVANTHRA P.O., KOCHI-682 020.

2 THE KENDRIYA VIDYALAYA SANGATHAN,
NO.18, INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG,
NEW DELHI-110 016, REPRESENTED BY ITS COMMISSIONER.

3 THE ASSISTANT COMMISSIOENR (FIN)
KENDRIYA VIDYALAYA SANGATHAN, NO.18,
INSTITUTIONAL AREA, SHAHEED JEET SING MARG,
NEW DELHI-110 016.

R1 BY ADV. SRI.T.C.GOVINDASWAMY
R2-3 BY SRI.K.I.MAYANKUTTY MATHER, SC,
KENDRIYA VIDYALAYA SANGATHAN

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 26.02.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS & K.BABU (JJ)

O.P.(CAT)No.5 of 2021

(Arising out of the impugned final order dated 27.11.2019 in Original Application O.A.No.180/455/ 2018 on the file of the Central Administrative Tribunal, Ernakulam.)

Dated: 26th February, 2021

JUDGMENT

Alexander Thomas, J.

The prayers in the afore captioned Original Petition filed under Article 226 and 227 of the Constitution of India are as follows :

- “(i) To issue appropriate order or direction setting aside Exhibit P3 order of the Central Administrative Tribunal, Ernakulam dated 27.11.2019 in O.A.No.180/00455/2018 to the extent it holds the recovery of excess payment made to the 1st respondent/applicant as illegal.
- (ii) To issue such other reliefs as this Hon'ble Court may deem fit in the circumstances of this case.”

2. Heard Smt.Bindumol Joseph, learned counsel appearing for the petitioners in the O.P./R3 and R4 in the O.A., Sri.T.C.Govindaswamy, learned counsel appearing for R1 herein/sole applicant in the O.A. before the Tribunal and Sri.K.I.Mayankutty Mather, learned counsel appearing for R2 and R3/respondents 1 and

2 in the O.A.

3. The prayers in Ext.P1 O.A.No.455 of 2018 filed by R1 herein before the Central Administrative Tribunal, Ernakulam are as follows :

- “(i) Call for the records leading to the issue of Annexure A1 and quash the same.
- (ii) Direct the respondents to continue to grant the applicant monthly pension, as if A1 had not been issued at all;
- (iii) Award costs of and incidental to this application ;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

4. The Tribunal, after hearing both sides, held that the impugned Annexure A1 order of recovery dated 7.5.2018, issued by R2 in the O.A. [The Assistant Commissioner (Finance), Kendriya Vidyalaya Sangathan], is quashed and henceforth, the Original Applicant will be entitled only for a correctly fixed amount of pension.

5. It is seen that the impugned Annexure A1 recovery proceedings dated 7.5.2018 issued by R2 in the O.A. viz. The Assistant Commissioner (Finance), Kendriya Vidyalaya Sangathan is arrayed as R3 herein. As of now respondents 2 and 3 in the O.P. Kendriya Vidyalaya Sangathan have not challenged the verdict of

the Tribunal in Exhibit P3.

6. The case of the respondents in the O.A. is to the effect that earlier an undertaking was given by the third respondent in the O.A., as per Annexure R3(a), wherein the name of the applicant was also incorporated. But it has no date. The Tribunal found that the case of the respondents in the O.A. is to the effect that mistakes had occurred in fixing the revised pensionary benefits of the Original Applicant. In the result, huge amounts were erroneously paid to him than what ought to have been paid. Further the case is that though the impugned order of recovery at Annexure A1 has been issued for the first time only as on 7.5.2018, they are legally entitled to recover the entire excess amount paid in the course of more than 25 long years. The Tribunal has found that the Original Applicant is a pensioner, aged more than 81 years, and who is in the twilight of his life. The Tribunal has categorically held that effecting recovery of such a large amount from his pension at this advanced age could be nothing, but catastrophic.

7. It is in the light of these aspects, the Tribunal has held that they constrained to allow the O.A. by quashing the impugned Annexure A1 recovery proceedings. But, the Tribunal has already declared that the recovery could be effected prospectively and that

the applicant henceforth would be entitled only for a correctly fixed amount of pension. Presumably it means that the mistake could be rectified ; but actual recovery could be made only from the date of final order of the Tribunal at Ext.P3 viz. 27.11.2019.

8. In the light of these aspects, *prima facie*, we are of the view that respondents 1 and 2 in the O.A. (Kendriya Vidyalaya Sangathan), who have issued the impugned Annexure A3 recovery proceedings, have not chosen to challenge the verdict of the Tribunal. Hence we find that without prejudice to the rights of respondents 1 and 2 (Kendriya Vidyalayalaya Sangathan) to challenge Exhibit P3 verdict of the Tribunal, we are, *prima facie*, of the strong view that the well considered verdict of the Tribunal does not deserve any interdiction.

9. The Original Applicant is a pensioner who retired long back and who is in his eighties. Any further continuation of this litigative proceedings may not be in the interest of justice. Moreover, no credible explanation has been given as to why timely action was not taken to remedy the alleged mistake. In the light of these aspects, we order that no interdiction is called for in the present Original Petition filed at the behest of the petitioners herein.

With these observations and directions, the above Original

Petition will stand dismissed. We make it clear that we are not interfering in the matter only because of the abovesaid aspects pointed out herein above and also taking note of the advanced age of the pensioner and the other circumstances mentioned above.

Sd/-

ALEXANDER THOMAS
Judge

Sd/-

K.BABU
Judge

csl

APPENDIX

PETITIONER'S EXHIBITS:

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| EXHIBIT P1 | A TRUE COPY OF THE O.A.NO.180/00455/2018 DATED 27.5.2018 FILED BY THE RESPONDENT NO.1/APPLICANT. |
| EXHIBIT P1 (A1) | A TRUE COPY OF LETTER NO.FS 18(2297) 2197/96-KVS (HQ)/P&B 1712 DATED 3/07.5.2018 ISSUED BY THE 2ND RESPONDENT. |
| EXHIBIT P1 (A2) | COPY OF THE PAY ORDER DATED 23.4.1999 ISSUED BY THE 2ND RESPONDENT. |
| EXHIBIT P1 (A3) | A TRUE COPY OF THE STATEMENT OBTAINED FROM THE BANK FOR THE PERIOD FROM 30.5.2012 TO 5.12.2017. |
| EXHIBIT P2 | A TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENT NO.3 & 4 BEFORE THE TRIBUNAL DATED 13.5.2019. |
| EXHIBIT P2 (A1) | A TRUE COPY OF THE UNDERTAKING EXECUTED BY THE APPLICANT. |
| EXHIBIT P2 (A2) | A TRUE COPY OF THE CIRCULAR NO.RBI/2015-16/340 DATED 17.3.2016. |
| EXHIBIT P3 | A TRUE COPY OF THE ORDER OF THE HONOURABLE ADMINISTRATIVE TRIBUNAL IN ORIGINAL APPLICATION NO.180/00455/2018. |