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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 4TH DAY OF SEPTEMBER 2024 / 13TH BHADRA, 1946WP(C) NO. 1653 OF 2021PETITIONER/S:

ANNAMMA MATHEW, AGED 60 YEARS, THOMMAN PARAMBIL, THAZHAKKARA
P.O.MAVELIKKARA, ALAPPUZHA DISTRICT

BY ADVS.T.R.HARIKUMAR
SRI.ARJUN RAGHAVAN

RESPONDENT/S:

- 1 THE MANAGING COMMITTEE OF THE MAVELIKARA TALUK CO-OPERATIVE BANK LTD NO 707,
REPRESENTED BY ITS PRESIDENT, HEAD OFFICE PULIMOODU JUNCTION, MAVELIKKARA P.O.ALAPPUZHA DISRICT, PIN-690 101.
- 2 THE MAVELIKARA TALUK CO-OPERATIVE BANK LTD NO 707,
REPRESENTED BY ITS SECRETARY, HEAD OFFICE, PULIMOODU JUNCTION, MAVELIKKARA P.O.ALAPPUZHA DISTRICT, PIN-690 101.
- 3 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
ALAPPUZHA,PIN-688 001, PAZHAVANGAD, MULLAKKAL P.O.ALAPPUZHA-688 011.
- 4 THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001.

BY ADVS.SRI.B.ASHOK SHENOY
SRI.P.S.GIREESH, SRI.RIYAL DEVASSY

OTHER PRESENT:

SR GP SRI. BIMAL K NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.2.201,
THE COURT ON 04.09.2024 DELIVERED THE FOLLOWING:



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JUDGMENT

(Dated this the 4th day of September 2024)

The petitioner retired from the service of the 2nd respondent Bank on 31.5.2018 as Secretary. On getting information that the Branch Manager and employees of Thazhakkara branch of the Society were indulging in certain misleads, a surprise inspection was ordered at the instance of the petitioner. The preliminary enquiry revealed serious lapses and illegal acts committed by the Branch Manager. The Managing committee, which met on 22.12.2016, decided to suspend the Branch Manager, and he was suspended on 22.12.2016. The Cashier and Clerk were also placed under suspension. Based on the inspection conducted, with the help of the Computer expert, it was found that there was malpractice to the tune of Rs.14,82,88,905/- and a crime was registered as Crime No.134 of 2017 by Mavelikkara Police station for the offences punishable under Sections 406, 408, 409,



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417, 420, 465, 468, 120B, 34 and 471 (wrongly shown as 571) of the Indian Penal Code and Section 65 of the Information Technology (Amendment) Act, 2008. The three employees, who were responsible for the entire misappropriation, executed an agreement dated 27.10.2017 agreeing that if the loss is found to be of their deeds, the same can be recovered from their properties.

2. On 13.6.2017, the petitioner was suspended on the grounds of supervisory lapses, and she retired on 30.5.2018 without being reinstated in service. No disciplinary proceedings were initiated against the petitioner. The department conducted an inquiry under Section 65 of the Kerala Co-operative Societies Act, 1969 (for short 'the KCS Act'). Based on the enquiry report, proceedings under Section 68 of the KCS Act were also initiated. Since she retired from the service, she is entitled to gratuity, Provident Fund, welfare fund, terminal leave surrender



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and other reliefs, which were denied to the petitioner. Therefore, she approached this court by filing W.P.(C.) No.19820 of 2018 for a direction to disburse the retiral benefits. The said Writ Petition was heard along with a batch of cases, and by judgment dated 2.7.2019, it was observed that since proceedings under Section 68 of the KCS Act, in respect of imposition of surcharge under the Act, are pending, the reliefs sought in the Writ Petition cannot be granted at the stage. The petitioner was given the liberty to seek reliefs after conclusion of the proceedings.

3. An arbitration case was filed against the Branch Manager and other employees as ARC No.1 of 2017, and this Court directed disposal of the said case within 6 months. On 28.2.2020, the 3rd respondent issued Ext.P3 Surcharge proceedings under Section 68(2) of the KCS Act. There is no allegation in Ext.P3 against the petitioner for misappropriation of any amounts. Surcharge proceedings are initiated only on the



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grounds of supervisory lapses on the side of the petitioner as Secretary. The petitioner has filed a statutory appeal under Section 83 of the KCS Act before the Government against Ext.P3, which is still pending. In the said circumstances, the petitioner has approached this Court with the following reliefs:

- i) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to disburse gratuity, provident fund, terminal leave surrender and family welfare fund along with interest, within a time limit prescribed by this Hon'ble Court; and
- ii) to grant such other reliefs as this Honourable Court may deem fit in the circumstances of this case.

4. Respondent Nos.1 and 2 filed a counter affidavit contending that the Writ petition is not maintainable as respondent Nos.1 and 2 do not come within the definition of State under Article 12 of the Constitution of India. The petitioner also has an alternate remedy under Section 69 of the



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KCS Act. Res-judicata is another ground raised in the counter affidavit, as the petitioner has already approached this court by filing W.P.(C) No.19820 of 2018 seeking the same relief, and this court has declined the prayers therein.

5. The petitioner was suspended pending disciplinary proceedings while she was holding the post of Secretary. Large-scale manipulations, forgery, falsification of accounts, creation of bogus accounts, bogus deposits, fictitious loans, etc., were unearthed from the Thazhakkara branch of the 2nd respondent bank. The petitioner, being the Secretary of the 2nd respondent Bank, failed to carry out her duties and responsibilities as the Secretary, which is a statutory one fixed on her by Rule 47(a) of the Kerala Co-operative Societies Rules, 1969 (for short 'the KCS Rules') and under clause 24(a) of Byelaw of the Society. She did not take effective steps to mitigate the misappropriation and fraud committed by the 3 employees of the



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Thazhakkara branch. The same was found only through the concurrent Auditor, who has specifically stated in his report, which was submitted as early as 13.11.2015.

6. The petitioner was suspended as per Ext.R2(a) order dated 15.12.2017, pending disciplinary proceedings. Surcharge proceedings under Section 68 of the KCS Act were also initiated, which concluded under Ext.P3 report fixing the liability of the petitioner as Rs.3,25,53,652/-. Steps for the realisation of the amounts are pending before the Joint Registrar of Co-operative Societies, Alappuzha, and the requisition has already been sent to the District Collector, Alappuzha, for the realisation of the amounts found in misappropriation. The Arbitration proceedings under Section 69 of the KCS Act are also initiated for the realisation of the amounts lost by the Bank, as ARC No.1 of 2017 before the Assistant Registrar of Co-operative Societies (General), Alappuzha, against the employees. The petitioner is



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found to be liable to pay Rs. 3,25,53,652/- as per Ext.P3 and she has not cleared the same till date. A non-liability certificate, as contemplated under Rule 198(8) of the KCS Rules, has not been issued to the petitioner. In view of the matter, the petitioner is not entitled to claim the terminal benefits, including gratuity and other benefits claimed by the petitioner.

7. The plea raised by the petitioner, relying on Section 4(6) of the Payment of Gratuity Act, 1972 (for short 'the Gratuity Act'), is baseless. The liability is fixed under Section 68(2) of the KCS Act as per Ext.P3, and the petitioner cannot contend that she is not bound by the same. The appeal preferred by the petitioner is only to prolong the matter. Therefore, prayed for dismissal of the Writ Petition.

8. A counter affidavit is filed by the 3rd respondent also. It is contended that Rule 47(a) of the KCS Rules casts a duty on the Secretary to supervise the maintenance of accounts in proper



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form, all the accounts, Register other records and seal of the society under the safe custody of the Secretary and shall be personally responsible for the safety. In Section 65 Enquiry, it was found that the petitioner should have general control of all her subordinates and should supervise the employees under her control. She failed to do so and thereby, there are supervisory lapses on the part of the petitioner. A complaint was submitted by the 3rd respondent on 19.1.2017 against the employees of the Thazhakkara branch, Board of Directors and Secretary before the Police Chief, Alappuzha, and a crime was registered as Crime No.134/2017 by the Mavelikkara Police Station. Based on the enquiry report under Section 65 of the KCS Act, another statutory order was passed under Section 68(1) of the KCS Act to fix the liability of the concerned parties. Enquiry under Section 68(1) was completed by the Enquiry officer on 31.3.2018 and submitted a report. In the report, an amount of



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Rs.38,73,77,019/- has been misappropriated at the Thazhakkara branch by the Branch Manager, cashier and Clerk. The report also revealed supervisory lapses on the part of the petitioner and the Board of Directors. The petitioner's retiral benefits can be released only after clearing the petitioner's liabilities with the Bank.

9. Heard Sri.Arjun Raghavan for the petitioner, the counsel Sri.P S Girish for respondent Nos.1 and 2 and senior Government Pleader, Sri. Bimal K Nath for respondent Nos.3 and 4.

10. The question to be decided in this Writ petition is whether the petitioner is entitled to gratuity, PF, terminal leave surrender and Family Welfare Fund along with interest due to her as the Secretary of the Bank, while a report under Section 68 of the KCS Act and proceedings have already been initiated against her for the recovery of the same through the Revenue



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Recovery and also by filing an ARC before the Arbitration Court.

11. The counsel for the petitioner argued that in view of Section 13 of the Gratuity Act as well as Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the EPF Act'), the employer cannot withhold payment of gratuity as well as the Provident Fund as the same is protected against the attachment in execution of any decree or order of any civil, or revenue or criminal court. He also referred to Section 60(1)(g) of the Code of Civil Procedure, 1908 (for short 'the CPC') and contended that the gratuity cannot be attached. Ext.P3 Proceedings under Section 68(2) of the KCS Act are under challenge in Ext.P4 appeal, and the same has not become final. Therefore, it cannot be contended that the petitioner is liable for the amount quantified in Ext.P3 and



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prayed that the Writ Petition be allowed and that the payment of amounts be directed within a stipulated time.

12. The counsel for respondent Nos.1 and 2 argued that once it is found that the petitioner is liable for the amount due to the Bank under Section 68 of the KCS Act, the petitioner cannot be disbursed with the terminal benefits, more so, when a Non-liability certificate under Rule 198(8) of the KCS Rules is not issued to her. Furthermore, ARC proceedings are pending against the petitioner and other employees of the branch.

13. The Government pleader also supported the arguments of the counsel for respondents Nos.1 and 2 and submitted that Ext.P3 report is a conclusive proof that the Bank sustained loss, and the persons against whom the report is filed are primarily responsible for the loss and have to repay the amount. Unless the amounts are recovered, the retiral benefits cannot be



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disbursed to the petitioner and other employees. If the retiral amounts are paid, it will also be a bad precedent.

14. Rule 198 of the KCS Rules deals with **disciplinary action**. **Rule 198(1)** prescribes that any member of the establishment of a Co-operative Society may, for good and sufficient reasons, be punished by imposing any of the following penalties, namely:-

- a) Censure;
- (b) Fine (in the case of employees in the last grade);
- (c) Withholding of increments with or without cumulative effect.
- (d) Withholding of promotion;
- (e) Recovery from pay of the whole or part of any pecuniary loss caused to the society, by negligences or breach of orders or otherwise;
- Reduction to a lower rank;
- (g) Compulsory retirement;
- (h) Dismissal from service.



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Sub Rule 2 prescribes that no punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing to defend himself. Every order awarding punishment shall be communicated to the employee in writing, stating the grounds for the punishment being awarded. It is further prescribed that the committee of a society shall constitute a disciplinary sub-committee, and the said committee shall include not more than three of its members, of whom one shall be designated as Chairman, but the President of the committee of the society shall not be a member in the disciplinary sub-committee, and so constituted committee shall inquire into the charges against the employee either by themselves or by engaging an external agency.



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Sub Rule 6 gives the competent authority the authority to suspend any employee pending enquiry into serious charges against such employee. However, the suspension cannot exceed 6 months at a time and may not be extended beyond one year without the prior approval of the Registrar.

As per **Sub Rule 7**, in the event of pendency of any disciplinary proceeding against any employee of a cooperative society 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 together with the reason for such sanctioning shall be recorded by the sanctioning authority by himself and such authority shall be responsible for any loss to the society owing



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to such sanctioning of retirement benefits if found that such sanctioning was unwarranted.

Sub Rule 8 specifically prescribes that no retirement benefits shall be sanctioned and disbursed until after the issuance of a Non-liability Certificate by the Chief Executive Officer and in case of employees approval of the committee of the society within 30 days from the date of retirement of such employee. In the event of retirement of the Chief Executive Officer, the Non liability certificate should be issued by the committee of the society.

15. In this case, admittedly, no disciplinary proceedings were initiated against the petitioner other than the suspension order. The petitioner retired from the service while she was under suspension on 31.5.2018 after completing 21 years of service. Going by Rule 198(7) of the KCS Rules, no retirement benefits shall be sanctioned and paid in case of pendency of any



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disciplinary proceedings against an employee. Since no proceedings were initiated against the petitioner, the said Sub Rule cannot be used against the petitioner. As far as the Non-liability certificate is concerned, since the petitioner was the Secretary of the Bank, the committee ought to have issued Non-Liability certificate within 30 days, but the same was not issued. If no certificate is issued within 30 days, then the question would be, whether it can be deemed to have been issued. This court has already decided this question in **Mohanan Nair P.G. v. Omallur Service Co-operative Bank Ltd. No.Q 228 and others** (2022 KHC 433).

16. The counsel for the respondent Nos.1 and 2 argued that under Section 4(6) of the Gratuity Act, the gratuity of an employee whose services have been terminated for any act, wilful omission, or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be



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forfeited to the extent of the damage or loss so caused or may be wholly or partially forfeited.

Section 4 of the Gratuity Act deals with **Payment of Gratuity.**

XXX XXXXX XXXXX XXX

Sub section 6 reads as follows;

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.



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For invocation of this Rule, the primary point to be considered is whether the services of the employee has been terminated for any act, wilful omission or negligence causing damage or loss.

17. It is not disputed that the service of the petitioner was never terminated at any point of time though she was suspended from service pending disciplinary proceedings and she retired from service on 31.5.2018. So sub section 6 of section 4 of the Gratuity Act also cannot be used against the petitioner.

18. Section 13 of the Gratuity Act gives **Protection of gratuity** from attachment in execution of any decree or order or any civil, revenue or criminal court. A like provision is also added to the EPF Act as Section 10, which also forbids from attachment under any decree or order of any Court in respect of any debt or liability incurred by the member. So, both these provisions give protection to the Gratuity as well as the Provident Fund of the petitioner.



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19. The next question arises for consideration is unless and until a Non Liability Certificate is issued under Rule 198(8) of the KCS Rules, can Gratuity and PF be disbursed. The Co-operative Society Act is a State Legislature and the Payment of Gratuity Act and the Employees Provident Fund Act, 1952 are Central Legislations. This Court in **Chandrasekharan Nair G. and others v. Kerala State Co-operative Agricultural and Rural Development Bank Ltd. And others** [2017 (5) KHC 15] has held that the Central Act which is the law made by the Parliament shall prevail over the law made by the Legislature of the State.

20. The counsel for the petitioner relied on the judgment of the apex court in **Radhey Shyam Gupta v. Punjab National Bank and another** [(2009) 1 SCC 376] for the proposition that under Section 60 of the Code of Civil Procedure, retirement benefits such as pension and gratuity, even when received by the



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retiree, do not lose their character and continue to be covered by proviso (g) to Section 60(1) CPC and therefore, the petitioner is entitled to the release of retiral benefits. He also relied on the judgment reported in **State of Jharkhand and others v. Jitendra Kumar Srivastava and another** [(2013) 12 SCC 210, **Dev Prakash Tewari v. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and others** [(2014) 7 SCC 260], **S. Andiyannan v. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another** [2015 SCC OnLine Mad 8844] and **Satheesan M.P. v. Kannur District Co-operative Bank and others** [2020 (4) KHC 60]. He also relied on a judgment of this court in **Kodanad Service Co-operative Bank Ltd. v. K. K. Sushama** (2014 SCC Online Ker 23826) to contend for the proposition that this Writ Petition is maintainable because the claim is regarding non-disbursement of terminal benefits which cannot be attached or



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withheld in view of the specific bar under Sections 13 and 10 of the Gratuity Act and EPF Act.

21. The main reliance placed by the counsel for the petitioner is on a judgment of a Division Bench of this court in **Mohanan Nair** (supra), in which the issue was regarding withholding of terminal benefits due to the petitioner like gratuity, leave surrender, balance provident fund amount, welfare fund etc. in view of the issuance of liability certificate in pursuance of audit objections. This Court, after hearing both sides, dismissed the impugned judgment in Writ Petition on the ground that the petitioner has to approach the Kerala Cooperative Arbitration Court under Section 69 of the KCS Act. Reversing the said judgment, the Division bench has held that the petitioner, in that case, is entitled to disbursement of the gratuity and PF. Regarding the other amounts, the petitioner has to approach the Arbitration court. The Division Bench



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considered the question of the overriding effect of the Gratuity

Act. Paragraphs Nos.21, 22 and 23 read as follows:

“21. There is yet another aspect of the matter. It is common ground that the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) is applicable in the instant case. The overriding effect of the Payment of Gratuity Act, 1972, in view of S.14 thereof has been dealt with in detail by a Full Bench of this Court in the decision in Chandrasekharan Nair, G. & Ors. v. Kerala State Co operative Agrl. & Rural Development Bank Ltd., 2017 (4) KLT 276. S.4(1) of the said Act enacted by the Parliament stipulates that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on his superannuation, or on his retirement, etc. S.7(3) of the said Act further mandates that the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable. S.7(3A) thereof further mandates that if the amount of gratuity payable under S.7(3) is not paid by the employer within the period specified in S.7(3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which



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it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification prescribe. Proviso thereto stipulates that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

22. The Parliament has framed yet another provision as in S.4(6) thereof which reads as follows:

"S.4. Payment of gratuity.-- (1) XXXX XXXX XXXX
(6) Notwithstanding anything contained in sub-section (1),-

- (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;
- (b) the gratuity payable to an employee (may be wholly or partially forfeited)-
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or



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(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

In the instant case, respondents 1 and 2 have no case whatsoever that disciplinary action was ever initiated against the petitioner for the allegations contained in Ext.R-1(a), Ext.P-5, etc. So, there is no question of invoking the provisions contained in S.4(6). Further, S.13 of the Payment of Gratuity Act, 1972 clearly mandates that no gratuity payable under the said Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. So, the only exception to the immunity against attachment, etc. as per S.13 is by taking recourse to the statutory procedure permitted in terms of S.4(6) thereof.

23. After hearing both sides, this Court is of the view that as the Central Act would have overriding effect and as S.7(3) mandates that the gratuity amount has to be paid within 30 days from the date on which it become payable, i.e. 30 days from the date of retirement, etc., the State rule making authority has also consciously provided in R.198(8) that the non liability certificate has to be issued within an outer time limit of 30 days from the date of retirement of the employee/pensioner



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concerned. In the light of these aspects, this Court is of the considered view that the dictum laid down by this Court in decisions as in Kottayam District Co-operative Bank's case supra, 2018 (1) KLJ 636, C. M. Philip's case supra, 2018 (3) KHC 780 (DB) would apply to the facts of this case as well and the said dictum laid down by this Court in those aforecited decisions does not require any reconsideration. Hence we are of the view that the appellant is legally entitled to get the full amount of his gratuity.”

22. In paragraph 31 of the above judgment, it was specifically found that even if proceedings are initiated under the KCS Rules in future, it cannot be a bar by this court to direct the release of retiral benefits like gratuity and provident fund, etc. Paragraph No.31 is extracted below:

“31. In view of the abovesaid provisions contained in S.13 of the Payment of Gratuity Act, 1972, S.60(1) proviso (g) of the CPC, S.10 of the EPF Act, etc. such retiral benefits like gratuity, provident fund, etc., are not liable for attachment in the adjudicatory proceedings. The abovesaid



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position of law is elementary and is clarified and declared. So, even if respondents 1 and 2 propose to initiate any such proceedings under the Kerala Co-operative Societies Act, such proceedings that may be initiated in future cannot be a bar for this Court to direct the release of the pensionary benefits like gratuity provident fund, etc. in this case.”

23. The counsel for respondent Nos.1 and 2, relying on the judgment reported in **Union Bank of India and others v. C.G. Ajay Baby and another** [(2018) 9 SCC 529], contended that under Sections 4(6) of the Gratuity Act, the employer has a right to withhold or forfeit partially or fully the gratuity payable to the petitioner. In this case, since Ext.P3 surcharge order is issued against the petitioner for the recovery of more than Rs.3 crores, the Bank is entitled to forfeit the entire amount of gratuity. Therefore, they are justified in doing so. As mentioned earlier, Section 4(6) of the Gratuity Act can be invoked only in case of an employee whose service has been terminated. In this case,



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the petitioner superannuated on 31.5.2018 without even issuing a charge memo. Therefore, the reliance placed on the counsel for the respondents is not applicable to the facts of this case.

24. The counsel for respondents Nos.1 and 2 relied on a judgment of the apex court reported in **Gorie Gouri Naidu (minor) and another v. Thandrothu Bodemma and others [(1997) 2 SCC 552]** and contended that the petitioner had earlier approached this court regarding disbursement of terminal benefits. This Court did not grant the reliefs sought for the reason that proceedings under Section 68 of the KCS Act are pending, and liberty was given only to approach the court again after the culmination of the proceedings. Proceedings under Section 68 have not attained finality, and therefore, the petitioner is not eligible to approach this court at this stage, and the said decision acts as *res-judicata*. He relied on the judgment in **Gorie Gouri Naidu** (supra) to contend that inter partes judgment rendered by



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a court of competent jurisdiction, even if erroneous, would bind the parties. Unless and until the said judgment is reviewed, or appealed against or reversed, the petitioner is not entitled to any relief from this court in this Writ Petition.

25. It is to be noted that when the Writ Petition was disposed of as per Ext.P2, the proceedings under Section 68 was only initiated and the same has not attained finality. In such a case, liberty was given to the petitioner to seek appropriate reliefs after conclusion of the proceedings. As far as the petitioner is concerned, though it is not concluded as the Appeal is pending. With respect to the respondents, proceedings under Section 68 have attained finality and they have initiated proceedings under Section 79 for recovery of the amounts. Therefore, it cannot be said that the judgment in Ext.P2 will act as *res-judicata* to the present Writ Petition.



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26. The decision reported in **Chairman – cum – Managing Director Mahanadi Coalfields Limited v. Rabindranath Choubey** [(2020) 18 SCC 71], will come to the aid of the respondents in as much as there were disciplinary proceedings against the petitioner therein, whereas no proceedings other than the order of suspension is issued to the petitioner herein. In the judgment reported in **State of Kerala v. K. Chandran** [(2022) 12 SCC 104], the apex court held that pending disposal of the proceedings, the retiral benefits including the DCRG cannot be disbursed. As discussed earlier, since no disciplinary proceedings were initiated against the petitioner while in service or after retirement, Rule 198(7) of KCS Rules cannot be invoked in the case of the petitioner. As far as the Non liability certificate is concerned, since the Gratuity Act directs payment of gratuity within 30 days from the date of superannuation and penal consequence of interest if not paid, the



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non issuance of non liability certificate to the petitioner, is of no consequence and the petitioner is entitled to claim gratuity. The judgment in **Mohanan Nair P.G.** (supra) covers the entire issue in the case in hand and therefore, I am of the considered opinion that the petitioner is entitled for the reliefs from this Court.

In the result, this Writ Petition is allowed and respondent Nos.1 and 2 are directed to immediately disburse the full gratuity amount and PF due to her, within a period of one month from the date of receipt of a copy of this judgment, along with interest at the rate of 8% per annum from the date on which it became due till the disbursal of the same. If the amount is not paid within the time stipulated above, the said amount will carry interest at the rate of 10% per annum. As far as the other benefits are concerned, the petitioner is at liberty to raise it before the 3rd respondent and after affording an opportunity of hearing to the petitioner as well as respondent Nos.1 and 2, the 3rd respondent



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is directed to pass appropriate order in accordance with law,
within 3 months from the date of filing of such application.

Sd/-

**BASANT BALAJI,
JUDGE**

dl/



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APPENDIX OF WP(C) 1653/2021

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE AGREEMENT EXECUTED BY JYOTHI MADHU, BINDUMOL G NAIR AND KUTTISEEMS SIVA DATED 27.1.2017
- EXHIBIT P2 A TRUE COPY OF THE JUDGMENT DATED 2.7.2019 IN WPC NO 19820 OF 2018
- EXHIBIT P3 A TRUE COPY OF THE RELEVANT PAGES OF THE ORDER NO CRLP(20 6713/2016/S S.C DATED 28.2.2020, ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P4 A TRUE COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE GOVERNMENT