



WP(C) No.40330 of 2017  
and 25184 of 2019

2024:KER:76324

'C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 16<sup>TH</sup> DAY OF OCTOBER 2024 / 24TH ASWINA, 1946

WP(C) NO. 40300 OF 2017

PETITIONER:

PALAKKAD DISTRICT CO-OPERATIVE BANK MANAGING  
COMMITTEE, P.B.NO.21, PALAKKAD, REPRESENTED BY  
ITS GENERAL MANAGER (IN-CHARGE).

BY ADVS.  
SRI.P.RAVINDRAN (SR.)  
SMT.APARNA RAJAN  
SMT.LIZA MEGHAN CYRIAC  
SRI.SREEDHAR RAVINDRAN

RESPONDENTS:

- 1 RAGHAVAN, S/O.VELUCHAMY, KUPPYANCHALLA KALATHIL HOUSE,  
K.K.PATHY,CHITTUR, PALAKKAD-678101.
- 2 KERALA CO-OPERATIVE ARBITRATION COURT  
(NORTHERN), KOZHIKODE-673001.
- 3 KERALA CO-OPERATIVE ARBITRATION TRIBUNAL,  
THIRUVANANTHAPURAM-695001.

BY ADVS.  
SRI.K.MOHANAKANNAN



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**SRI.H.PRAVEEN (KOTTARAKARA)**  
**BY SMT.SONY K.B., GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.10.2024,  
ALONG WITH WP(C)NO.25184/2019, THE COURT ON 16.10.2024 DELIVERED THE  
FOLLOWING:**



WP(C) No.40330 of 2017  
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 16<sup>TH</sup> DAY OF OCTOBER 2024 / 24<sup>TH</sup> ASWINA, 1946

WP(C) NO. 25184 OF 2019

PETITIONER:

K.V.RAGHAVAN, AGED 60 YEARS,  
S/O.K.VELUCHAMI, AYYAPPAN CHALLA,  
KK PATHY, P.O. CHITTUR, PALAKKAD DISTRICT.

BY ADVS.  
K.MOHANAKANNAN  
SMT.A.R.PRAVITHA

RESPONDENTS:

- 1 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,  
KENATHUPARAMBU, KUNATHURMEDU CIVIL STATION COMPLEX,  
PALAKKAD, KERALA-678 013.
- 2 PALAKKAD DISTRICT CO-OPERATIVE BANK,  
REPRESENTED BY ITS SECRETARY, P.B. NO. 21,  
PALAKKAD, KERALA - 678 013.
- 3 THE MANAGING COMMITTEE,  
PALAKKAD DISTRICT CO-OPERATIVE BANK, P.B.NO. 21,  
PALAKKAD, REPRESENTED BY ITS PRESIDENT.

BY ADVS.  
SRI.M.SASINDRAN, SC, PALAKKAD DIST.CO.OP.BANK  
SRI.P.RAVINDRAN (SR.)  
SRI.SREEDHAR RAVINDRAN  
SMT.APARNA RAJAN  
SMT.SONY K.B., GOVERNMENT PLEADER



WP(C) No.40330 of 2017  
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**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.10.2024,  
ALONG WITH WP(C) NO.40300/2017, THE COURT ON 16.10.2024 DELIVERED THE  
FOLLOWING:**



## **JUDGMENT**

### **(WP(C) Nos. 40300 of 2017 and 25184 of 2019)**

These writ petitions are filed by a Co-operative Society registered under the provisions of the Kerala Co-operative Societies Act, 1969 (for short, the Act) against one of its employees and the other by the said employee against the Co-operative Society.

2. The short facts necessary for the disposal of these writ petitions, as culled out from WP(C) No.40300 of 2017 are as under:

The 1<sup>st</sup> respondent entered the service of the petitioner on 26.06.1989 under a quota reserved for employees of the Member Societies, by producing a certificate from the Moongilmada Service Co-operative Bank, which had a membership with the petitioner. Later, some enquiries were carried out by the petitioner which revealed that the 1<sup>st</sup> respondent never worked with the said Moongilmada Service Co-operative Bank. The Joint Registrar of Co-operative Societies, Palakkad, also made enquiries wherein the same conclusion was arrived at. On the



basis of the said enquiry, the petitioner issued Ext.P1 charge memo dated 29.08.1988, directing the 1<sup>st</sup> respondent to show cause as to why proceedings may not be initiated against him on the basis of the forged certificate produced by him for obtaining employment as above. The 1<sup>st</sup> respondent submitted Ext.P2 reply dated 13.09.1988, pointing out that the allegations were baseless, that he had worked with the Moongilmada Service Co-operative Bank from 17.08.1983 as a peon.

3. On the basis of the stand taken by the 1<sup>st</sup> respondent as above, a domestic enquiry was constituted by the petitioner by appointing an Enquiry Officer. Ext.P3 is the report submitted by the said Enquiry Officer, wherein it is found as under:

- i. On a perusal of the Acquittance Roll of Moongilmada Service Co-operative Bank from July 1983 to February, 1986, the name of the 1<sup>st</sup> respondent does not appear anywhere.
- ii. The Attendance Register maintained by the said Co-operative Bank also does not show that the 1<sup>st</sup> respondent had signed the said register.



- iii. 1<sup>st</sup> respondent's name does not even appear in the Attendance Register.
- iv. Though the 1<sup>st</sup> respondent contended that there was another register for "daily wage employees", the existence of such register is not proved.
- v. Since the appointment order of the 1<sup>st</sup> respondent issued by the Moongilmada Service Co-operative Bank is as a "temporary peon" and not as a "daily wage employee", the 1<sup>st</sup> respondent's name would not be there in the so called register, even if it is assumed that there is one such register maintained.
- vi. The Minutes Book of Moongilmada Service Co-operative Bank for the period from 14.06.1982 to 22.05.1984 does not contain any resolution with reference to the appointment of the 1<sup>st</sup> respondent, as claimed by him.
- vii. Though the witness from the side of the 1<sup>st</sup> respondent – DW1 – took the stand that there was such a resolution, she admitted that the said resolution might



be a "circulated resolution", however not finding a place in the circulated resolution book.

viii. In the list of employees working with Moongilmada Service Co-operative Bank, furnished before the Enquiry Officer, the details of only seven employees were given, wherein, the petitioner is not seen included.

ix. MW2, an employee with the Moongilmada Service Co-operative Bank from 1972 onwards have stated in evidence that the 1<sup>st</sup> respondent never worked in the Society.

In the light of the above, the Enquiry Officer found that the 1<sup>st</sup> respondent created a false document to secure employment in the vacancies reserved against Member Societies quota and therefore he is guilty of the charges levelled by the Management.

4. On the basis of Ext.P3, the petitioner terminated the services of the 1<sup>st</sup> respondent as evidenced by Ext.P4 dated 28.06.1989. Though an appeal was filed against the termination as above, the same stood rejected as evidenced by Ext.P5.





5. The petitioner also points out that though the 1<sup>st</sup> respondent instituted ID No.88 of 1992 under the provisions of the Industrial Disputes Act, before the trial commenced, the 1<sup>st</sup> respondent voluntarily withdrew the same.

6. Along with the termination of the 1<sup>st</sup> respondent, a criminal case was also registered against him, which resulted in his conviction. The order of conviction was challenged before this Court and by Ext.P6 judgment dated 06.11.2006, this Court noticed that the accused, including the 1<sup>st</sup> respondent herein (4<sup>th</sup> accused in the criminal case), was chargesheeted against the offences punishable under Sections 120B, 420, 468, 471, 477A of the Indian Penal Code. Thereafter, this Court found as under:

- i. As regards the criminal conspiracy, this Court found that in the absence of a charge disclosing the day and place where the parties agreed to do an illegal act, the offence under Section 120B of IPC and the conviction there under is bad.
- ii. With reference to the offence under Section 477A of IPC, this Court found that Ext.P10(b) resolution cannot



be acted upon, since the said document is not examined and proved by a handwriting expert.

iii. Finding thus, the 1<sup>st</sup> respondent herein was acquitted.

On the basis of the judgment at Ext.P6, the 1<sup>st</sup> respondent submitted Ext.P7 application before the petitioner on 25.07.2011, seeking reinstatement in service. The said request stood rejected by the petitioner.

7. In such circumstances, the 1<sup>st</sup> respondent instituted ARC No.39 of 2012 dated 18.08.2015 before the 2<sup>nd</sup> respondent herein challenging the enquiry report at Ext.P3 as also seeking reinstatement in the service with continuity in service and back wages.

8. The 2<sup>nd</sup> respondent issued Ext.P11 award, relying on Ext.P6 judgment of this Court and holding that the 1<sup>st</sup> petitioner is entitled to get reinstatement in the service with all benefits including back wages. The enquiry report referred to above is also *set aside*.

9. The petitioner challenged Ext.P11 award by filing Ext.P12 appeal along with Ext.P13 application for condonation of delay of



322 days in filing the appeal as above. Along with the affidavit accompanying the delay condonation application, the petitioner pointed out that the matter was entrusted with a lawyer at Ottapalam and the petitioner was under the impression that the appeal was filed and on coming to know that the same was not filed, the files were collected back and entrusted to another counsel to file the appeal with delay. The 3<sup>rd</sup> respondent by Ext.P14 order, dated 30.10.2017, dismissed the application for condonation of delay, finding that no proper explanations were provided like the date of entrustment to the Advocate or his name, etc. It is in the above circumstances, that the captioned writ petition is filed by the petitioner.

10. The 1<sup>st</sup> respondent in WP(C) No.40300 of 2017 has filed WP(C) No.25184 of 2019, contending that the award issued by the Arbitration Court produced as Ext.P2 (Ext.P11 in WP(C) No.40300 of 2017) is only to be implemented. It is also pointed out that the 1<sup>st</sup> respondent in WP(C) No.40300 of 2017, the petitioner in WP(C) No.25184 of 2019 attained retirement age on 12.04.2019. Therefore, in the said writ petition, the petitioner



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seeks for a direction to respondents 2 and 3, to extend back wages/monetary benefits from 28.06.1989 to 12.04.2019.

11. A counter affidavit dated 24.10.2019 has been filed by the 2<sup>nd</sup> respondent in WP(C) No.25184 of 2019, pointing out to the pendency of WP(C) No.40300 of 2017.

12. I have heard Sri. Sreedhar Ravindran, the learned counsel for the petitioner in WP(C) No.40300 of 2017 and Sri. Mohanakannan, the learned counsel for the petitioner in WP(C) No.25184 of 2019.

13. Sri. Sreedhar Ravindran, the learned counsel for the petitioner in WP(C) No.40300 of 2017, would submit that:

- i. The 1<sup>st</sup> respondent was terminated from the service not in pursuance of the criminal case and conviction; but in pursuance of the disciplinary steps initiated.
- ii. That the disciplinary steps initiated and the report of the domestic enquiry, have considered the charges levelled against the 1<sup>st</sup> respondent in detail. The 1<sup>st</sup> respondent was permitted to adduce both documentary and oral



evidence. It is thereafter, Ext.P3 report was furnished by the Domestic Enquiry Officer.

iii. He points out that Ext.P6 judgment rendered by this Court acquitting the 1<sup>st</sup> respondent is merely on account of technicalities.

iv. He relies on the judgment of the Apex Court in **Pravin Kumar v. Union of India and others[(2020) 9 SCC 471]** in support of the contention that the findings in Ext.P6 judgment of this Court would not have any bearing on the domestic enquiry and the punishment awarded in pursuance thereto.

v. He points out that since Ext.P14 has not decided the issue on merits, the petitioner is primarily challenging Ext.P11 award issued by the 2<sup>nd</sup> respondent, since it is issued solely on the basis of Ext.P6 judgment of this Court.

14. Per contra, Sri.Mohanakannan the learned counsel for the 1<sup>st</sup> respondent in W.P.(C) No.40300 of 2017, who is the petitioner in WP(C) No.25184 of 2019 would contend that:



- i. The petitioner therein has attained the age of superannuation on 12.04.2018.
- ii. The directions in the orders issued by the Arbitration Court are to be implemented.
- iii. The findings in Ext.P6 judgment produced in WP(C) No.40300 of 2017 are exhaustive, having considered the guilt/allegation against his client in detail and therefore, the findings therein have to be applied while considering the penalty imposed pursuant to the domestic enquiry.
- iv. Without prejudice to the above contentions, the learned counsel points out that his client had admittedly worked with the Co-operative Society from 20.06.1984 to 28.06.1989 and therefore, his case is to be considered sympathetically.

15. I have considered the rival submissions and the connected records.

16. The primary issue arising for consideration in this writ petition would be as to the legality or otherwise of Ext.P11 award



issued by the 2<sup>nd</sup> respondent.

17. The admitted facts are that the 1<sup>st</sup> respondent had joined the service of the petitioner in the quota available to the Member Societies. Under the above quota, the applicants who were working in the Member Societies are entitled for appointment. The 1<sup>st</sup> respondent sought this benefit by producing an order of appointment/resolution purportedly issued by the Moongilmada Service Co-operative Bank, certifying that the 1<sup>st</sup> respondent was working in the said Society as a Peon from 17.08.1983 to 29.06.1984. It turned out that the said employment obtained by the 1<sup>st</sup> respondent was on the basis of a forged document. On the basis of the preliminary findings, the petitioner served a memo of charges as evidenced by Ext.P1 on the 1<sup>st</sup> respondent herein. A domestic enquiry is also constituted. The findings in Ext.P3 enquiry report have been summarized earlier. A reading of Ext.P3 would show that the 1<sup>st</sup> respondent was provided with all the documents relied on in the enquiry, he was permitted to cross-examine the witnesses adduced from the side of the Management and also to adduce evidence on his behalf. It is



thereafter that Ext.P3 has been finalized. In Ext.P3, it is categorically found that the 1<sup>st</sup> respondent's name was not figuring in any of the records of the Moongilmada Service Co-operative Bank like Acquittance Roll, Attendance Register etc. With reference to the resolution produced/relied on by the 1<sup>st</sup> respondent for obtaining employment also, the domestic enquiry report found that such a resolution was not seen in the Minutes Book or even in the "Circulated Resolution Book", as claimed. Similarly, the list of employees working with the said Moongilmada Service Co-operative Bank furnished before the Enquiry Officer also did not contain the name of the 1<sup>st</sup> respondent. Thus, it is after considering the charges against the 1<sup>st</sup> respondent and his defence elaborately, that Ext.P3 is finalized by the Domestic Enquiry Officer.

18. It is also to be noted that though the 1<sup>st</sup> respondent had challenged the said domestic enquiry and his subsequent termination pursuant to Ext.P4 by raising an industrial dispute during 1992, the same was withdrawn without any liberty.





19. The 1<sup>st</sup> respondent did not move a finger thereafter till the judgment of this Court at Ext.P6. It is true that in the meantime the 1<sup>st</sup> respondent was convicted on various charges. Ext.P6 is the judgment of this Court in the appeals filed against such conviction by all the accused including the 1<sup>st</sup> respondent herein, the other accused being the President, Secretary and Director of the Moongilmada Service Co-operative Bank. It is true that by Ext.P6, all the accused including the 1<sup>st</sup> respondent herein (4<sup>th</sup> accused in the criminal case) stood acquitted. But, a reading of the judgment at Ext.P6 would reveal that such acquittal was entirely on account of technical reasons in the framing of charges with reference to various provisions of the Indian Penal Code, under which the accused were chargesheeted.

20. However, the findings rendered by the Domestic Enquiry Officer in Ext.P3 were after considering the entire documentary and oral evidence on record, not with reference to the provisions of the IPC. Such being the position, the 1<sup>st</sup> respondent may not take refuge under Ext.P6 for reopening his stale claim by presenting Ext.P7 application before the petitioner on



25.07.2011, solely on the basis of Ext.P6 judgment rendered by this Court. It is also to be noticed that even Ext.P6 was rendered as early as on 06.11.2006. The 1<sup>st</sup> respondent had filed Ext.P7 seeking reinstatement before the petitioner only on 25.07.2011.

In other words, delay and laches are also writ large on the face of Ext.P7 application, even assuming for a moment that Ext.P6 judgment of this Court can be pressed into service by the 1<sup>st</sup> respondent herein.

21. The Apex Court in **Ajit Kumar Nag v. Indian Oil Corporation Ltd. [(2005) 7 SCC 764]** with reference to the degree of proof required for a conviction under the Indian Penal Code and the degree of proof required in the departmental enquiry has laid down the following principles:

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They



operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."



Again in **A.P.SRTC v. Mohd. Yousuf Miya [(1997) 2 SCC 699]**,

the Apex Court has laid down as under:

'17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. *In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment*, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.'

To the same effect is the judgment in **Pravin Kumar's** case (*supra*) relied on by the learned counsel for the petitioner.

22. In such circumstances, this Court finds that Ext.P11 issued by the 2<sup>nd</sup> respondent, declaring that the 1<sup>st</sup> respondent is



entitled to reinstatement in the service with benefits including back wages is without any justification and arbitrary. The prayers made by the petitioner in WP(C) No.25184 of 2019 do not require any consideration, in view of the above finding.

23. However, the submissions made by the learned counsel Sri.Mohanakannan that his client had admittedly worked from 1984 to 1989 with the petitioner, that he is an aged person having various ailments and therefore, requires sympathetic treatment is to be considered.

In the result, I order these writ petitions as under:

- i. WP(C) No.40300 of 2017 would stand allowed, setting aside Ext.P11 issued by the 2<sup>nd</sup> respondent and Ext.P14 issued by the 3<sup>rd</sup> respondent.
- ii. WP(C) No.25184 of 2019 would stand dismissed.
- iii. The petitioner in WP(C) No.25184 of 2019 is permitted to make an appropriate representation before the 2<sup>nd</sup> respondent therein, pointing out the facts and figures and seeking extension of appropriate benefits, taking into account the period during which he had served in



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the services of the 2<sup>nd</sup> respondent therein, within a period of one month from today.

- iv. If such a representation is filed, the 2<sup>nd</sup> respondent in WP(C) No.25184 of 2019 to consider the same and pass appropriate orders, purely as a case of compassionate claim and not based on any legal right available to the petitioner.

Sd/-

**HARISANKAR V. MENON, JUDGE**

In



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APPENDIX OF WP(C) 25184/2019

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1**                      **TRUE COPY OF THE JUDGMENT DATED 23.3.2012 IN WRIT PETITION 25875/2011.**
- EXHIBIT P2**                      **TRUE COPY OF THE JUDGMENT ARC 39/2012 DATED 18.8.2015.**
- EXHIBIT P3**                      **TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 17.9.2015.**
- EXHIBIT P4**                      **TRUE COPY OF THE COMMUNICATION SENT BY THE 2ND RESPONDENT TO THE PETITIONER DATED 15.5.2018.**



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APPENDIX OF WP(C) 40300/2017

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1** TRUE COPY OF THE MEMO OF CHARGES DATED  
29.08.1988
- EXHIBIT P2** TRUE COPY OF THE REPLY DATED 13.09.88
- EXHIBIT P3** TRUE COPY OF THE ENQUIRY REPORT DATED  
24.04.1989
- EXHIBIT P4** TRUE COPY OF THE ORDER OF THE SUB COMMITTEE  
DATED 28.06.1989
- EXHIBIT P5** TRUE COPY OF THE ORDER OF THE BOARD OF  
DIRECTORS DATED 08.08.1989
- EXHIBIT P6** TRUE COPY OF THE JUDGMENT IN  
CRL.A.NO.152/2010 DATED 06.11.2016
- EXHIBIT P7** TRUE COPY OF THE REPRESENTATION DATED  
25.07.2011
- EXHIBIT P8** TRUE COPY OF THE PROCEEDINGS OF THE JOINT  
REGISTRAR DATED 14.05.2012
- EXHIBIT P9** TRUE COPY OF THE PLAINT IN ARC NO:39/12 DATED  
06.07.2012
- EXHIBIT P10** TRUE COPY OF THE WRITTEN STATEMENT DATED  
.10.2012
- EXHIBIT P11** TRUE COPY OF THE ORDER IN ARC NO:39/12 DATED  
18.08.2015
- EXHIBIT P12** TRUE COPY OF THE APPEAL MEMORANDUM DATED  
05.09.2016
- EXHIBIT P13** TRUE COPY OF THE DELAY PETITION DATED  
05.09.2016





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**EXHIBIT P13(A) TRUE COPY OF THE AFFIDAVIT DATED 05.09.2016**

**EXHIBIT P14 TRUE COPY OF THE ORDER OF THE TRIBUNAL  
REJECTING THE APPLICATION FOR CONDONATION OF  
DELAY DATED 30.10.2017.**