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v.

THE IDUKKI DISTRICT CO-OPERATIVE BANK LTD & ORS.

(Civil Appeal No.5430 of 2019)

JULY 12, 2019

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**[DR DHANANJAYA Y CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

Service Law – State Co-operative Bank and District Co-operative Bank Employees Self Financing Pension Scheme 2005 – First respondent-co-operative bank decided to implement the 2005 Pension Scheme, formulated by the Government of Kerala, for the employees retiring on or after 1st May, 2005 – Disciplinary proceedings initiated against the appellant, employee of the Bank – Appellant retired on 31 Jan. 2007 – His pension was held up – Bank called upon the appellant to indicate his willingness to join the Pension Scheme – Appellant indicated his willingness and was enrolled in the Pension Scheme – Grievance of the appellant that, despite him having conveyed his willingness to join the Pension Scheme, the pension records were not forwarded by the Bank to the second respondent-Board which administers the Pension Scheme – Committee constituted by the Bank to look into the allegations levelled against the appellant, opined that there was no merit in the allegations and he was entitled to his terminal dues including pension – However, disbursement of the retiral dues was being held up – High Court dismissed appellant’s writ petition inter alia seeking sanction of his pensionary dues w.e.f 1st February, 2007– On appeal, held: Eligibility of the appellant to pension under the Pension Scheme is not in dispute – Pension Scheme stipulates that superannuation pension shall commence from the beginning of the month succeeding the month in which the employee retires from service after attaining the age of superannuation – Appellant is entitled to pension w.e.f 1st February, 2007 – Bank did not forward the pension papers to the Board purportedly because of the disciplinary proceedings – It was only after the appellant was exonerated that he was finally intimated of the remittance which was required to be made, which the appellant did on the same day –

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A *No reason for the Bank to hold up the disbursal of the pensionary dues at the material time by not forwarding all the connected papers and information to the Board – Entitlement of the appellant cannot be denied – Ordered accordingly – Impugned judgment set aside.*

B **The first respondent-co-operative bank decided to implement the State Co-operative Bank and District Co-operative Bank Employees Self Financing Pension Scheme 2005, formulated by the Government of Kerala for the employees of the State Co-operative Bank and District Co-operative banks, for its employees retiring on or after 1st May 2005. The appellant was an employee of the bank in the State of Kerala, who entered service in 1978 and rendered nearly 29 years of service before attaining the age of superannuation on 31st January, 2007. Disciplinary proceedings were initiated against the appellant and payment of his pension was held up. The bank in March 2007 called upon the appellant to indicate his willingness to join the Pension Scheme. The appellant indicated his willingness. As per the appellant, the pension records of the appellant were not forwarded by the Bank to the Board which administers the Pension Scheme. The Bank constituted a Sub-Committee to look into the allegations levelled against the appellant. The Committee opined that there was no merit in the allegations against the appellant and he was entitled to his terminal dues including pension. However, the disbursement of the retiral dues was being held up. The appellant instituted writ petition before the High Court seeking sanction of his pensionary dues w.e.f 1st February, 2007 and the payment of arrears together with interest until 1st November, 2013, when eventually the pensionary dues were paid. The High Court dismissed the writ petition.**

Allowing the appeal, the Court

G **HELD: 1.1 The eligibility of the appellant to pension under the State Co-operative Bank and District Co-operative Bank Employees Self Financing Pension Scheme 2005 is not in dispute. The appellant is an employee who retired from service after 31 March 2005 and is eligible under para 5(1)(i) of the Pension Scheme. Para 19 of the Pension Scheme stipulates that superannuation pension shall commence from the beginning of**

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the month succeeding the month in which the employee retires from service after attaining the age of superannuation. In terms of the provisions contained in paragraph 19 of the Pension Scheme, the appellant is entitled to pension with effect from 1 February 2007. The entitlement of the appellant to receive pension with effect from 1 February 2007 was denied on the basis of para 5(2) of the Pension Scheme by the Single Judge and in appeal. The provisions contained in paragraph 5.2 have been held to be ultra vires in a judgment of a Single Judge of the Kerala High Court in T K Jayan vs State of Kerala & Ors .The Single Judge held that Banks which are governed by the Pension Scheme are under an obligation in terms of para 29 of the Pension Scheme to transfer the employer's contribution together with interest accrued thereon. Any delay on the part of a Bank cannot result in detrimental consequences for the retirees. [Paras 15, 16] [588-B-E]

1.2 The Bank did not forward the pension papers to the second respondent-Board purportedly because of the disciplinary proceedings. Evidently, it was only after the appellant was exonerated on 28 September 2013 that on 12 October 2013 that he was finally intimated of the remittance which was required to be made, which the appellant did on the same day. No reason or justification is found for the Bank to hold up the disbursal of the pensionary dues at the material time by not forwarding all the connected papers and information to the second respondent. Since the entitlement of the appellant cannot be denied, the following order will meet the ends of justice: (i) The second respondent shall within a period of four weeks from today, pay over to the appellant, the arrears of pension between 1 February 2007 and 1 November 2013; (ii) In the event that any interest is required to be paid on account of the delayed receipt of the contribution by the Bank, this shall be computed within a period of four weeks from the date of the receipt of a certified copy of this order and intimated to the first respondent; (iii) Within one week of the receipt of the communication referred to in clause (ii) above, the first respondent shall remit the amount to the second respondent; and (iv) The arrears that are due and payable to the appellant shall be paid over within a period of two months of the receipt of

A **a certified copy of this order. The impugned judgment of the High Court is set aside. [Paras 17-19] [558-G; 559-A-G]**

T K Jayan v. State of Kerala & Ors **Decision of Kerala High Court dated 11th April, 2017 in Writ Petition (Civil) No. 29901/2012 – referred to.**

B **CIVIL APPELLATE JURISDICTION: Civil Appeal No.5430 of 2019**

From the Judgment and Order dated 06.08.2018 of the High Court of Kerala at Ernakulam in W.A. No. 2681 of 2015

C **Abir Phukan, M/s. KMNP LAW AOR, Advs. for the Appellant.**

P. V. Surendranath, Sr. Adv., Ms. Resmitha R. Chandran, Lekha Sudhakran, P.V. Dinesh, Mukund P., T. P. Sindhu, Advs. for the Respondents.

D The Judgment of the Court was delivered by
DR DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

E 2. This appeal arises from a judgment dated 6 August 2018 of a Division Bench of the High Court of Kerala¹ by which the order of the learned Single Judge dismissing the Writ Petition filed under Article 226 of the Constitution of India has been affirmed.

F 3. The appellant was an employee of the first respondent, a co-operative bank in the State of Kerala. He entered service in 1978 and rendered nearly 29 years of service before attaining the age of superannuation on 31 January 2007. The Government of Kerala formulated a self-financing pension scheme called the State Co-operative Bank and District Co-operative Bank Employees Self Financing Pension Scheme 2005² for the employees of the State Co-operative Bank and District Co-operative banks.

G 4. Para 3 of the Pension Scheme constituted a pension fund. Para 5 provided for eligibility to receive pension in the following terms:-

¹Writ Appeal No. 2681 of 2015

²“Pension Scheme”

“5. Eligibility for Pension. (1) Subject to the provisions of the Scheme, the following persons shall be eligible for pension, namely :- A

(i) Every employee of a bank;

(ii) Employees who have retired from the service of a Bank in between 1st January, 1974 and 31st March, 2005: B

Provided that in respect of the employees who have retired in between 1st January, 1974 and 31st March, 1993, only those who are alive on the date of publication of the scheme in the official Gazette shall be eligible for pension: C

Provided also that an employee who has received the Contributory Provident Fund and is in receipt of pension from any other pension scheme shall be eligible for pension only on the remittance of entire portion for the employers contribution to him, to the corpus of the fund. D

(2) In respect of Persons mentioned in clause (i) and (ii) of subparagraph (1) pension shall be payable only from the succeeding month of the month on which the remittance of entire portion of the employers’ contribution to pension fund is made and no arrears of pension shall be payable to the month of such remittance. E

(3) Persons retired from the service of a Bank in between 1st January, 1974 and 31st March, 1993, and who are alive on the date of publication of the scheme in the official Gazette shall be eligible for monthly pension only and no family pension shall be payable on the death of such person.” F

Para 7 provided for qualifying service. Para 19 which provided for the payment of pension is extracted below:-

“19. Payment of Pension – Pension under the Scheme shall be payable per mensem which shall commence,

(i) In the case of superannuation pension, from the beginning of the month succeeding the month in which the employee retires from the service of the Bank after attaining the age of 58 years. G

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A (ii) In the case of retiring pension, from the date succeeding the date on which the employee retires voluntarily from the service of Bank; and

(iii) In the case of family pension, from the date succeeding the date of death of the employee or the pensioner, as the case may be.”
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6. By a communication dated 30 May 2006, the first respondent informed its employees of the decision which was taken by the Bank to implement the Pension Scheme for its employees retiring on or after 1 May 2005. A week before the appellant was to retire from service, the
C bank issued a show cause notice to him on 24 January 2007 in pursuance of which disciplinary proceedings were initiated. As a result of the disciplinary proceedings, a liability of Rs 6.76 lakhs was fastened upon the appellant on 5 October 2007 and he was intimated that his retiral dues will be released after deducting the amount.

D 7. As a result of the disciplinary proceedings, the payment of pension was held up in spite the appellant’s letter dated 19 October 2007 addressed to the Board, raising objections³. On 15 March 2007, the first respondent called upon the appellant to indicate his willingness to join the Pension Scheme and to remit an amount of Rs 8,30,651 inclusive of interest at the rate of 12 per cent per annum between February 2007
E and March 2010.

8. While indicating his willingness, the appellant by a letter dated 30 March 2010 objected to the payment of interest computed at the rate of 12 per cent on the employer’s share, stating that he would be willing to pay interest at the standard rate on which interest is computed on the
F provident fund.

9. On 16 April 2010, the appellant was enrolled in the Pension Scheme and was allotted a docket number. The grievance of the appellant is that, despite him having conveyed his willingness to join the Pension Scheme, the pension records were not forwarded by the Bank to the
G Board which administers the Pension Scheme, consequent upon which, he addressed a letter on 15 January 2011 to the Bank and the Board. On 31 January 2011, the first respondent informed the appellant that his application for pension would be decided only after the disposal of the cases pending before the High Court of Kerala.

H ³The Kerala State Employees Pension Board is the second respondent.

10. Despite repeated representations, the appellant's efforts failed to bear fruit. The appellant filed a writ petition before the High Court which was disposed of with a direction to the Bank to consider his representation. Following the order of the Kerala High Court dated 27 August 2013, the first respondent constituted a Sub Committee to look into the allegations which were levelled against the appellant. The Committee opined that there was no merit in the allegations against the appellant and that he was entitled to his terminal dues including pension. Upon the decision of the Committee which was rendered on 28 September 2013, the first respondent informed the appellant of the decision to disburse his retiral dues and to recommend the payment of pension. The appellant was called upon to deposit an amount of Rs 6,48,565 which he did on the same day.

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11. Since the disbursement of the retiral dues was being held up, the appellant moved the Registrar of Co-operative Societies. By his order dated 17 May 2014, the Secretary, Kerala State Co-operative Employee Pension Board directed the payment of interest with effect from 1 November 2013. Subsequently, by an order dated 18 March 2015, the Joint Registrar of Co-operative Societies directed the payment of interest on the retiral dues.

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12. The appellant instituted a writ petition before the Kerala High Court seeking sanction of his pensionary dues with effect from 1 February 2007 and the payment of arrears together with interest until 1 November 2013, when eventually the pensionary dues were paid. The Writ Petition was dismissed by the learned Single Judge of the High Court on the ground that para 5(2) of the Pension Scheme stipulated that pension shall be paid only from the month succeeding the month in which remittance of the employer's contribution is made. The learned Single Judge held that in view of the pendency of the disciplinary proceedings, the disbursal of the employer's contribution has been held up and in consequence, para 5 disabled the appellant from the benefit of pension with effect from the date of his retirement. This view of the learned Single Judge has been upheld by the judgment of the Division Bench in the Writ Appeal.

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13. Assailing the judgment of the Division Bench, a Special Leave Petition was filed under Article 136 of the Constitution of India.

14. We have heard Mr. Abir Phukan, learned counsel appearing on behalf of the appellant, Mr P V Surendranath, learned Senior Counsel

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- A appearing on behalf of the first respondent and Mr P V Dinesh, learned counsel appearing on behalf of the second respondent.

15. The eligibility of the appellant to pension under the Pension Scheme is not in dispute. The appellant is an employee who retired from service after 31 March 2005 and is eligible under para 5(1)(i) of the Pension Scheme. Para 19 of the Pension Scheme stipulates that superannuation pension shall commence from the beginning of the month succeeding the month in which the employee retires from service after attaining the age of superannuation. In terms of the provisions contained in paragraph 19 of the Pension Scheme, the appellant is entitled to pension with effect from 1 February 2007.

- C 16. The entitlement of the appellant to receive pension with effect from 1 February 2007 was denied on the basis of para 5(2) of the Pension Scheme by the learned Single Judge and in appeal. The provisions contained in paragraph 5.2 have been held to be ultra vires in a judgment of a Single Judge of the Kerala High Court in **T K Jayan vs State of Kerala & Ors**⁴. The learned Single Judge has held that Banks which are governed by the Pension Scheme are under an obligation in terms of para 29 of the Pension Scheme to transfer the employer's contribution together with interest accrued thereon. Any delay on the part of a Bank cannot result in detrimental consequences for the retirees. The substantive relief which has been granted in the judgment of the learned Single Judge is in the following terms:-

- F "I, therefore, strike down sub-paragraph (2) of paragraph 5 to such extent and declare that the employees of Banks, who were in service as on 01.04.2005 will be entitled to arrears of pension, provided the respective Banks had remitted the employer's contribution to the pension corpus with eligible interest and additional interest of 25%, if attracted, under paragraph 29 of the Scheme."

- G 17. During the course of the hearing, it has emerged before the Court that while the Bank, informed the appellant by its letter dated 15 March 2010 of the amount which was required to be deposited by him (Rs 8,30,651), this was inclusive of interest at the rate of 12 per cent for the period 2007-2008. Evidently, the appellant had objections to the demand of interest at the rate of 12 per cent per annum. The Bank did

H ⁴ Writ Petition (Civil) No. 29901/2012 decided on 11 April 2017

not forward the pension papers to the second respondent-Board purportedly because of the disciplinary proceedings. On 31 May 2011, the Bank informed the appellant that his application for pension would be considered only after the disposal of the cases which were initiated by the appellant against the Bank. Evidently, it was only after the appellant was exonerated on 28 September 2013 that on 12 October 2013 that he was finally intimated of the remittance which was required to be made, which the appellant did on the same day. We find no reason or justification for the Bank to hold up the disbursal of the pensionary dues at the material time by not forwarding all the connected papers and information to the second respondent.

18. Since the entitlement of the appellant cannot be denied, we are of the view that the following order will meet the ends of justice:

- (i) The second respondent shall within a period of four weeks from today, pay over to the appellant, the arrears of pension between 1 February 2007 and 1 November 2013;
- (ii) In the event that any interest is required to be paid on account of the delayed receipt of the contribution by the Bank, this shall be computed within a period of four weeks from the date of the receipt of a certified copy of this order and intimated to the first respondent;
- (iii) Within one week of the receipt of the communication referred to in clause (ii) above, the first respondent shall remit the amount to the second respondent; and
- (iv) The arrears that are due and payable to the appellant shall be paid over within a period of two months of the receipt of a certified copy of this order.

19. The appeal is allowed in the above terms. The impugned judgment of the High Court is set aside. There shall be no order as to costs.

20. Pending application(s), if any, shall stand disposed of.