

Davis P.a vs the Kerala State Financial Enterprises Limited

Davis P.a vs the Kerala State Financial Enterprises Limited

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Court : Kerala

Decided On : Apr-08-2022

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/1708/2021

Appellant : Davis P.a

Respondent : The Kerala State Financial Enterprises Limited

Judgement :

WP(C).23880/19 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 WP(C) NO. 1708 OF 2021 PETITIONER/S: DAVIS P.A AGED 59 YEARS S/O.LATE ANTONY, PALLIPADAN HOUSE, KORATTY P.O., CHALAKUDY, THRISSUR DISTRICT, PIN-680 308. BY ADV I.SHEELA DEVI RESPONDENT/S: 1 THE KERALA STATE FINANCIAL ENTERPRISES LIMITED REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA, MUSEUM ROAD, THRISSUR-680 020. 2 THE DEPUTY GENERAL MANAGER (P AND HR), KERALA STATE FINANCIAL

ENTERPRISES LIMITED, BHADRATHA, MUSEUM ROAD, THRISSUR-680 020. SRI.M.GOPIKRISHNAN NAMBIAR SRI.K.JOHN MATHAI SRI.JOSON MANAVALAN SRI.KURRYAN THOMAS SRI.PAULOSE C. ABRAHAM SRI.RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.3.2022, ALONG WITH WP(C).8688/2021 AND CONNECTED CASES, THE COURT ON 8.4.2022 DELIVERED THE FOLLOWING: WP(C).23880/19 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 WP(C) NO. 8688 OF 2021 PETITIONER/S: SELVARAJ P.K AGED 59 YEARS S/O. THE LATE M.S.KUMARAN, SAKETHAM HOUSE, KOTTARAM JUNCTION, KADAKKARAPPALLY P.O., CHERTHALA, ALAPPUZHA- 688529. S.M.PREM SRI.P.RAMACHANDRAN (PALAKKAD) SRI.H.NARAYANAN SRI.G INDUCHUDAN RESPONDENT/S: THE KERALA FINANCIAL ENTERPRISES LIMITED REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA, MUSEUM ROAD, THRISSUR-680020. SRI.M.GOPIKRISHNAN NAMBIAR SRI.K.JOHN MATHAI SRI.JOSON MANAVALAN SRI.KURRYAN THOMAS SRI.PAULOSE C. ABRAHAM SRI.RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.3.2022, ALONG WITH WP(C).23880/2019 AND CONNECTED CASES, THE COURT ON 8.4.2022 DELIVERED THE FOLLOWING: WP(C).23880/19 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 WP(C) NO. 17564 OF 2021 PETITIONER/S: SHANAVAS P.M. AGED 59 YEARS S/O. MUSTHAFA RAWTHER, WHITE COTTAGE, MADUKKUMMOODU, INDUSTRIAL NAGAR P.O., CHANGANASSERY, KOTTAYAM 686 106. S.M.PREM G INDUCHUDAN RESPONDENT/S: THE KERALA STATE

FINANCIAL ENTERPRISES LIMITED, REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA, MUSEUM ROAD, THRISSUR 680 020. M.GOPIKRISHNAN NAMBIAR K.JOHN MATHAI JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.3.2022, ALONG WITH WP(C).23880/2019 AND CONNECTED CASES, THE COURT ON 8.4.2022 DELIVERED THE FOLLOWING: WP(C).23880/19 4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 WP(C) NO. 20077 OF 2021 PETITIONER/S: CHANDRADASAN R AGED 59 YEARS DEPPUTY MANAGER (RTD) THE KERALA STATE FINANCIAL ENTERPRISES LTD, (PERMANENTLY RESIDING AT MAKAYIRAM, PANTHALAMMUKKU, KADAKKAL, KOLLAM 691 536) S.K.ADHITHYAN KEERTHI S. JYOTHI RESPONDENT/S: 1 KERALA STATE FINANCIAL ENTERPRISES LIMITED (KSFE) REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA, P.B NO. 510, MUSEUM ROAD, THRISSUR 680 020 2 THE MANAGING DIRECTOR THE KERALA STATE FINANCIAL ENTERPRISES LTD, BHADRATHE, P./B NO. 510, MUSEUM ROAD, THRISSUR 680 020 3 THE DEPUTY GENERAL MANAGER (P AND HR) THE KERALA STATE FINANCIAL ENTERPRISES LTD, BHADRATHA, P.B NO. 510, MUSEUM ROAD, THRISSUR 680 020 M.GOPIKRISHNAN NAMBIAR K.JOHN MATHAI JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM RAJA KANNAN WP(C).23880/19 5 JOSE KURIAN PARAYIL THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.3.2022, ALONG WITH WP(C).23880/2019 AND CONNECTED CASES, THE COURT ON 8.4.2022 DELIVERED THE FOLLOWING: WP(C).23880/19 6

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 WP(C) NO. 23880 OF 2019 PETITIONER/S: VEERAS N.K., AGED 58 YEARS S/O.N.N.KOCHAHAMMED,NANETHAN HOSE,ALLAPRA.P.O,P.ERUMBAVOOR, ERNAKULAM-683556. S.M.PREM SRI.P.RAMACHANDRAN (PALAKKAD) SRI.H.NARAYANAN SRI.G INDUCHUDAN RESPONDENT/S: THE KERALA STATE FINANCIAL ENTERPRISES LIMITED, REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA,MUSEUM ROAD,THRISSUR-680020. SRI.M.GOPIKRISHNAN NAMBIAR SRI.K.JOHN MATHAI SRI.JOSON MANAVALAN SRI.KURRYAN THOMAS SRI.PAULOSE C. ABRAHAM VINITHA.V THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.3.2022, ALONG WITH WP(C).1708 of 2021 AND CONNECTED CASES, THE COURT ON 8.4.2022 DELIVERED THE FOLLOWING: WP(C).23880/19 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944 WP(C) NO. 26191 OF 2021 PETITIONER/S: B.RAJENDRAN AGED 59 YEARS S/O BALAKRISHNAN UNNITHAN, THUNDIYIL PUTHENVEEDU, KEEZHCHERIMEL, CHENGANNUR, ALAPPUZHA-689121. S.M.PREM G INDUCHUDAN RESPONDENT/S: KERALA STATE FINANCIAL ENTERPRISES LIMITED (KSFE) REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA, MUSEUM ROAD, THRISSUR-680020. M.GOPIKRISHNAN NAMBIAR K.JOHN MATHAI JOSON MANAVALAN KURRYAN THOMAS PAULOSE C. ABRAHAM RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.3.2022, ALONG WITH WP(C).23880/2019 AND CONNECTED CASES, THE COURT ON 8.4.2022 DELIVERED THE FOLLOWING: WP(C).23880/19 8

----- W.P(C).Nos. 23880 of 2019 and
1708, 8688, 17564, 20077 & 26191 of 2021
----- Dated this the 8th day of April, 2022

JUDGMENT

The petitioners are retired employees of the Kerala State Financial Enterprises Ltd (the Company, for short). They are aggrieved by the non-disbursal of benefits like gratuity, earned leave surrender, arrears of dearness allowance, salary revision arrears, festival incentives, flood relief amount etc. The reason for non-disbursal put forth by the Company is the alleged grant of sticky loans/chits in violation of the Company's circulars and norms.

2. Learned Counsel for the petitioners contended in unison that the

allegations are baseless and notice of quantification of the alleged liability was not issued to the petitioners while they were in service. It is contended that, terminal benefits being reward for service rendered, ought to have been disbursed immediately after retirement. The Company having failed to do so, is bound to pay interest on the amount due.

3. Learned Standing Counsel for the Company explained that the

usual practice is to quantify the liability of each employee, prior to the WP(C).23880/19 9 settlement of his/her retirement benefits. For the purpose of quantification, liability/non liability reports are collected from the Head Office and Branches where the employee had worked. In the process, if any liability is reported, that will have to be deducted from the benefits due to the employee. In the case of the petitioners, sanctioning of loans and chitties without adequate security, from the Branches where they had worked, resulted in the Company being disabled from recovering the amounts due under those transactions. Even though the petitioners were called upon to settle the liability thus incurred, they superannuated without settling the liability. The fact that the petitioners are retired

does not exempt or immunise them from the contumacious conduct and the Company has every right to adjust the liability incurred by petitioners against the terminal benefits due to them.

4. Indisputably, no disciplinary proceedings was initiated against

the petitioners while they were in service. No rule or regulation enabling the Company to initiate proceedings for recovery or for withholding terminal benefits after retirement is brought to my notice. Being so, it can unhesitatingly be held that, non-disbursal of terminal and other benefits, based on an unsubstantiated allegation of having caused loss to the Company, is not only illegal but is also antithesis to the mutual trust on which an employer-employee relationship is founded. WP(C).23880/19 10

5. The precedents on the point are plenty. In *Khem Chand v.*

Union of India [AIR 1963 SC 687], the Apex Court held the right to arrears of pay and allowance to be property within the meaning of Article 19(1)(f) of the Constitution of India. In *Deoki Nandan Prasad v. State of Bihar* [AIR 1971 SC 179], the right to receive pension is held to be property under Articles 19(1)(f) and 31(1). Taking note of the repeal of Articles 19(1)(f) and 31(1) by the Constitution (Forty-fourth) Amendment Act, the Apex court in *State of W.B. v. Haresh C. Banerjee* [(2006) 7 SCC 651] declared the right to retirement benefits to be a constitutional right, as contemplated in Article 300-A. The legal position needs no further reiteration in the light of the categorical finding in *State of Jharkhand v. Jitendra Kumar Srivastava*, [(2013) 12 SCC 210], contextually relevant portion of which is reproduced here under;

The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in property. Article 300-A of the Constitution of India reads as under: 300-A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law. Once we proceed on that premise, the answer to the question posed by us in the beginning of

this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the WP(C).23880/19 11

appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

6. As observed in D.S.Nakara v.Union of India [(1983) 1 SCC

305], the antiquated notion of pensionary or retiral benefits being a bounty or a gratuitous payment, depending upon the sweet will or grace of the employer, and not a right enforceable through court, has to be under the carpet. It may also be apposite to note that as per the

judgment in W.P(C).No.33750 of 2017, filed by another set of disgruntled

pensioners, this court had directed the respondents to pay the entire benefits within three months. A conspectus of the above precedents leads to the indubitable conclusion that the Company is bound to disburse the terminal and other benefits due to the petitioners forthwith. In the result, the writ petitions are allowed and the following directions are issued; i. The Company shall disburse the DCRG and other benefits due to the petitioners within three months of receiving a copy of this judgment. ii. The unpaid gratuity will carry interest at the rate of 6%, computed from the first day of the next month of retirement of the petitioners. WP(C).23880/19 12 iii. In case of failure to pay the amounts within the three month period, the Company will be liable to pay 9% interest on the entire balance amount, reckoned from the respective dates of retirement of the petitioners. Sd/- V.G.ARUN, JUDGE vgs WP(C).23880/19 13 APPENDIX OF WP(C) 8688/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE PETITIONER'S APPLICATION DATED 9.2.2021 MADE UNDER THE RIGHT TO INFORMATION ACT, 2005. EXHIBIT P2 TRUE COPY OF LETTER BEARING

REF.NO.4155/RIA/20-21(355)180 DATED 10.3.2021 ISSUED BY THE DEPUTY GENERAL MANAGER (P&HR) AND STATE PUBLIC INFORMATION OFFICER OF THE RESPONDENT-EMPLOYER IN RESPONSE TO EXHIBIT P1 APPLICATION. EXHIBIT P3 TRUE COPY OF LETTER NO.46688 DATED 22.5.2019 ISSUED BY THE DEPUTY GENERAL MANAGER (P&HR) (I/C) OF THE RESPONDENT NOTIONALLY FIXING A LIABILITY ON THE PETITIONER IMMEDIATELY BEFORE HIS RETIREMENT FROM SERVICE. RESPONDENT EXHIBITS Exhibit R1(A) TRUE COPY OF NOTE NO.13023/RECOVERY DATED 03- 03-2020, CONTAINING OTHER ANNEXURES AND THE LETTER DATED 21-05-2019, ISSUED BY THE ASSISTANT GENERAL MANAGER (RECOVERY), TO THE DGM (P&HR), KSFE. Exhibit R1(B) TRUE COPY LETTER NO.30/19 DATED 21-12-2018 OF VILLAGE OFFICER THAIKKATTUSSERY, CERTIFYING THAT THE PROPERTY MEASURING 26.10 ARES IN SY.NO.137/3 A1 IS "NILAM". Exhibit R1(C) TRUE COPY OF THE RELEVANT NORM OF THE COMPANY. PETITIONER EXHIBITS Exhibit P4 TRUE COPY OF THE LEGAL SCRUTINY REPORT DATED 7.9.2009 SUBMITTED BY THE PANEL ADVOCATE OF KSFE IN RESPECT OF THE DEEDS OF THE MORTGAGED PROPERTY IN CHERTHALA II BRANH OF KSFE. WP(C).23880/19 14 APPENDIX OF WP(C) 17564/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITIONERS APPLICATION DATED 16.07.2021 MADE UNDER THE RIGHT TO INFORMATION ACT 2005. Exhibit P2 TRUE COPY OF LATTER BEARING REF. NO. 4155/RIA/21-22(19) DATED 11.08.2021 ISSUED BY THE DEPUTY GENERAL MANAGER (P & HR), AND STATE PUBLIC INFORMATION OFFICE OF THE RESPONDENT EMPLOYER IN RESPONDENT TO EXHIBIT P1 APPLICATION. Exhibit P3 TRUE COPY OF LETTER NO. 47018 DATED 17.02.2020 ISSUED BY THE DEPUTY GENERAL MANAGER (P & HR) (1/C) OF THE RESPONDENT NOTIONALLY FIXING A LIABILITY ON THE PETITIONER IMMEDIATELY BEFORE THIS RETIREMENT FROM SERVICE. Exhibit P4 TRUE COPY OF THE VALUATION REPORT DATED 12- 06-2013 FORWARDED TO THE ASSISTANT GENERAL MANAGER(REGION)KOLLAM FOR APPROVAL AND SANCTIONING OF LOAN BY ACCEPTING THE PROPERTY AS SECURITY. Exhibit P5 TRUE COPY OF LETTER REF: 2851/13916/13 DATED 02-08-2013 ISSUED BY THE ASSISTANT GENERAL MANAGER(REGION)

KOLLAM SANCTIONING THE LOAN AFTER VERIFYING AND APPROVING THE VALUATION REPORT. WP(C).23880/19 15

APPENDIX OF WP(C) 20077/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE LETTER WITH REF NO. 46872 SEND BY THE 3RD RESPONDENT DATED 11-05-2020 TO THE PETITIONER. Exhibit P2 TRUE COPY OF THE LETTER SEND BY THE PETITIONER TO THE 3RD RESPONDENT DATED 10-06- Exhibit P3 TRUE COPY OF THE ACKNOWLEDGMENT CARD ACKNOWLEDGING RECEIVING EXT P2 DATED 19-06- Exhibit P4 TRUE COPY OF THE REPRESENTATION FILED BEFORE THE 2ND RESPONDENT BY THE PETITIONER DATED 25-11-2020 Exhibit P5 TRUE COPY OF THE ACKNOWLEDGMENT CARD ACKNOLEDGING RECEIVING EXT P4 DATED 1-12-2020 Exhibit P6 TRUE COPY OF THE JUDGMENT IN WP(C) NO. KERALA DATED 09-10-2018 WP(C).23880/19 16 APPENDIX OF WP(C) 23880/2019 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE LETTER BEARING NO.2832/A DATED 26.07.2019 ISSUED BY THE MANAGER(CENTRAL ACCOUNTS)OF THE RESPONDENT- EMPLOYER. EXHIBIT P2 true copy of letter no. 46938 dated

08.05.2019 issued by the deputy general manager (P & hr)/ic of the respondent immediately before the retirement of the petitioner from service. WP(C).23880/19 17 APPENDIX OF WP(C) 26191/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITIONER'S APPLICATION DATED 04.10.2021 MADE UNDER THE RIGHT TO INFORMATION ACT, 2005. Exhibit P2 TRUE COPY OF LETTER BEARING REF NO. 4155/RIA/21-22(113)34 DATED 20.10.2021 ISSUD BY THE DEPUTY GENERAL MANABER (P & HR) AND STATE PUBLIC INFORMATION OFFICER OF THE RESPONDENT-EMPLOYER IN RESPONSE TO EXHIBIT P1 APPLICATION. Exhibit P3 TRUE COPY OF LETTER NO.48673 DATED 17.02.2020 ISSUED BY THE DEPUTY GENERAL MANAGER (P & HR) (I/C) OF THE RESPONDENT NOTIONALLY FIXING LIABILITY ON THE PETITIONER IMMEDIATELY BEFORE HIS RETIREMENT FROM SERVICE. Exhibit P4 TRUE COPY OF THE SCRUTINY NOTE RELATING TO THE CHITTIES IN THIRUVALLA BRANCH OF KSFE REFRRED TO IN EXHIBIT R1 (A) REPORT. Exhibit P5 TRUE COPY OF THE VALUATION REPORT ALONG

WITH THE SKETCH AND PLAN OF THE PROPERTY ACCEPTED BY KSEF AS SECURITY FOR DISBURSEMENT OF PRIZE MONEY IN CHITTY NO 5/2014-39 IN VELLARIKUNDU BRANCH OF KSFE Exhibit P6 TRUE COPY OF THE VALUATION REPORT ALONG WITH THE SKETCH AND PLAN OF THE MORTGAGED PROPERTY ACCEPTED AS SECURITY FOR DISBURSEMENT OF PRICE MONEY IN CHITTY NO-17/2015-21 IN VELLARIKUNDU BRANCH OF KSFE. Exhibit P7 TRUE COPY OF THE SCRUTINY NOTE RELATING TO RCL NO-350 DATED 20.9.2017 APPROVED AND FORWARDED BY THE PETITIONER AS MANAGER AT PATHANAMTHITTA II BRANCH OF KSFE FOR SANCTION FROM THE HEAD OFFICE. WP(C).23880/19 18 Exhibit P8 TRUE COPY OF THE UNDERTAKING GIVEN BY THE SURETY FOR THE LOAN IN RCL NO-350 AT PATHANAMTHITTA II BRANCH OF KSFE WP(C).23880/19 19 APPENDIX OF WP(C) 1708/2021 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE PROPERTY VALUATION REPORT DATED 16.03.2016 BY SRI.P.A.SAIDU, RETIRED TAHSILDAR AND APPROVED VALUATOR, KSFE SUBMITTED BEFORE THE 2ND RESPONDENT. EXHIBIT P2 TRUE COPY OF THE REVALUATION REPORT DATED NIL PREPARED BY SENIOR MANAGER, KSFE, CHALAKDY MAIN BRANCH. EXHIBIT P3 TRUE COPY OF THE REPRESENTATION DATED 17.10.2019 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

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