

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944

WP(C) NO. 23311 OF 2010

PETITIONER:

M.K.SURENDRABABU
MAKKATTUKATIL HOUSE, P.O.KARUMATHRA, KONATHUKUNNU,
THRISSUR.
BY ADV SRI.P.RAMAKRISHNAN

RESPONDENTS:

- 1 KODUNGALLUR TOWN CO-OP.BANK LTD.
NO.102, KODUNGALLUR,, THRISSUR, REPRESENTED BY ITS
GENERAL MANAGER, PIN-680 664.
- 2 S.RADHAKRISHNAN, S/O.SASTHAVINGAL
SANKU ACHARI, LOKAMALESWARAM, KODUNGALLOOR-680 664.
- 3 P.S.RAMAKRISHNAN, S/O.PULLARKKATTU
SANKARAN, PO METHALA, KODUNGALLUR-680 664.
- 4 K.GOPALAKRISHNA MENON
S/O.KALLAYIL LAKSHMIKUTTY AMMA, WEST TO BOY'S HIGH
SCHOOL, KODUNGALLUR-680 664.
- 5 V.V.VANAJA NAIR
VILAKKATHALA HOUSE, THIRUVANCHIKULAM, METHALA,
KODUNGALLOOR-680 664. (R4 AND R5 ARE DELETED FROM THE
PARTY ARRAY AS PER ORDER DATED 26/03/2012 IN IA
4478/2012)
- 6 V.S.KAMALADHARAN
VILAKKATHALA HOUSE, THIRUVANCHIKULAM, METHALA,
KODUNGALLOOR-680 664.
- 7 KERALA CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM-695 001.
BY ADVS.
SRI.M.P.ASHOK KUMAR
SRI.M.S.NARAYANAN
SRI.N.SUBRAMANIAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10.11.2022, ALONG WITH OP(LC).1188/2011, 4797/2014 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944

OP(LC) NO. 1188 OF 2011

AGAINST THE ORDER/JUDGMENT INCP 5/2007 OF LABOUR COURT,
ERNAKULAM

PETITIONER:

THE KODUNGALLOOR TOWN CO-OPERATIVE
BANK LTD. NO.102, KODUNGALLOOR, THRISSUR DISTRICT,
REPRESENTED BY ITS GENERAL MANAGER.
BY ADV SRI.M.P.ASHOK KUMAR

RESPONDENTS:

- 1 M.K.SURENDRA BABU,
MAKKATTU KATTIL HOUSE, P.O.KARUMATHRA, KONATHUKUNNU,
THRISSUR DISTRICT, PIN-680123.
 - 2 THE LABOUR COURT, ERNAKULAM DISTRICT, PIN-682 011
 - 3 THE DEPUTY TAHSILDAR REVENUE RECOVERY
KODUNGALLOOR, THRISSUR DISTRICT, PIN- 680 664
- BY ADV SRI.P.RAMAKRISHNAN

THIS OP (LABOUR COURT) HAVING COME UP FOR ADMISSION ON
10.11.2022, ALONG WITH WP(C).23311/2010 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944

WP(C) NO. 4797 OF 2014

AGAINST THE ORDER/JUDGMENT IN CP 25/2012 OF LABOUR COURT,

ERNAKULAM

PETITIONER:

THE KODUNGALLOOR TOWN CO-OPERATIVE BANK LTD.NO. 102
KODUNGALLOOR, THRISSUR DISTRICT, REPRESENTED BY ITS
GENERAL MANAGER.

BY ADVS.

SRI.M.P.ASHOK KUMAR

SRI.P.C.GOPINATH

RESPONDENT:

M.K.SURENDRA BABU

MAKKATTU KATTIL HOUSE, P.O.KARUMATHRA, KONATHUKUNNU,
THRISSUR-680664.

BY ADV SRI.P.RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10.11.2022, ALONG WITH WP(C).23311/2010 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944

WP(C) NO. 14186 OF 2013

PETITIONER/S:

THE KODUNGALLOOR TOWN CO-OPERATIVE BANK LTD NO.102
KODUNGALLOOR, THRISSUR DISTRICT, REPRESENTED BY ITS
GENERAL MANAGER.

BY ADVS.

SRI.M.P.ASHOK KUMAR

SRI.S.NANDAGOPAL

RESPONDENTS:

- 1 M.K.SURENDRA BABU
MAKKATTU KATTIL HOUSE, P.O. KARUMATHRA, KONATHUKUNNU,
THRISSUR-680589.
- 2 THE DEPUTY TAHSILDAR
KODUNGALLUR, PIN-680664.
- 3 DISTRICT LABOUR OFFICER
THRISSUR-680001.
BY ADVS.
SRI.P.RAMAKRISHNAN
BY GOVERNMENT PLEADER SMT.K.G.SAROJINI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10.11.2022, ALONG WITH WP(C).23311/2010 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”

P.V.KUNHIKRISHNAN, J.

**W.P.(C).Nos.23311 of 2010, 14186 of 2013, 4797/2014
& OP(LC) No.1188 of 2011**

Dated this the 10th day of November, 2022

JUDGMENT

These four writ petitions are connected therefore, I am disposing these writ petitions by a common judgment.

2. This is a sad story of an employee of a co-operative bank who is fighting against the Bank for the past 25 years to show his innocence and to get his eligible claims. I will first narrate the facts in W.P.(C). No.23311/2010. The Petitioner, Mr. Surendrababu (hereinafter referred to as the 'workman') was the Chief Accountant in the service of the Kodungallur Town Co-operative Bank Limited No.102 (hereinafter referred to as the 'Bank'), the 1st respondent herein. The 2nd respondent, Mr. S. Radhakrishnan was a Gold Appraiser in the service of the Bank. Respondents 3 and 4, Mr. P.S. Ramakrishnan and K. Gopalkrishna Menon were sureties of the 2nd respondent under the indemnity bond executed in

relation to his appointment in the Bank. Respondents 5 and 6, V.V. Vanaja Nair and V.S Kamaladharan were members of the Bank. Respondents 4 and 5, were deleted from party array as per the request of the workman.

3. During the period from 16.02.1993 to 16.02.1994, the workman was the Branch Manager of Thiruvanchikulam Branch of the Bank. The 2nd respondent was the gold appraiser of the same Branch of the bank during the said period. The 5th respondent had availed 17 loans for a total amount of Rs.3,95,000/- from the Thiruvanchikulam Branch of the Bank by pledging gold ornaments during the period 16.02.1993 to 16.02.1994 (The 5th respondent is deleted from the party array). The 6th respondent had also availed two loans for an aggregate amount of Rs.31,000/- by pledging gold ornaments during the above mentioned period. The 2nd respondent had appraised and certified the gold ornaments before sanctioning the loan. Based on the certificate issued by the 2nd respondent, the workman had sanctioned all but one of the above said 19 loans. One of the sanctioning orders in respect of the above said loans is

produced as Ext.P1 in this writ petition. It is submitted that the Bank had framed sub-rules in relation to the grant of loans on pledging of the ornaments. Ext.P2 is the sub-rules which shows that the Branch Manager has to sanction the loans in accordance with the recommendation of the Gold Appraiser. It is the case of the workman that the 19 loans availed by respondents 5 and 6 had been sanctioned by him in accordance with Ext.P2 sub-rules. Subsequently the workman was served with a notice dated 19.02.1996 from a lawyer alleging that the Bank had found that the 19 items of gold pledged by respondents 5 and 6 are spurious upon routine inspection and that the workman had not bestowed the usual care and caution and has failed to detect the fraud perpetuated by the Appraiser in conspiracy with the borrowers. Consequently, domestic enquiry and disciplinary proceedings were initiated against the workman. Based on the disciplinary proceedings, a punishment of reversion to the rank of Junior Clerk/ Cashier was imposed on the workman. The workman challenged the same by filing an appeal before the Board of Directors of the Bank, which modified the

punishment of reversion by that of debarring the workman from holding the post of Manager for a period of two years. Thereafter it was clarified that the punishment imposed was reduction from cadre Manager/Chief Accountant to the post of Head Clerk / Accountant and debarring to hold the post of Manager for two years. Criminal cases were also pending against the workman alleging criminal offences for the same set of facts which lead to domestic enquiry which culminated in the above punishment. In the criminal case, the Judicial Magistrate of First Class, Kodungallur convicted the workman under Sections 409 and 420 of IPC as per judgment dated 28.07.2000 in C.C.No.367/1997. Consequent to this conviction, the management initiated a separate proceeding which resulted in dismissing the workman from service. The appeal filed by the workman was also dismissed thus confirming the dismissal. The workman raised an industrial dispute which was referred by the Government as per G.O. (Rt) No.1749/2003/LBR dated 26.06.2003. The Industrial Tribunal, Palakkad, as per the award dated 21.12.2005, ordered reinstatement of the workman with continuity of

service and back wages from 01.08.2005. The award of the Industrial Tribunal in I.D.No.57/2003 was challenged by the workman and the Bank before this Court. The writ petition filed by the workman was allowed modifying the award granting back wages from 24.11.2000. The writ petition filed by the Bank challenging the award was dismissed. Even though the Bank filed Writ Appeal No.496/2012, the Division Bench of this Court was pleased to dismiss the writ appeal confirming the judgment of the learned Single bench.

4. In the meanwhile, the Bank filed A.R.C.No.1502/1996 under Section 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the 'Societies Act') seeking payment of Rs.4,52,439/- jointly from the workman and respondents 2 to 6 in that case. Ext.P3 is the petition filed by the Bank. Ext.P4 is the written objection submitted by the workman in Ext.P3 proceedings. Exts.P5 and P6 are the depositions made by the former Secretary and the General Manager of the Bank in the ARC proceedings. The Arbitrator issued Ext.P7 order dated 14.02.2007 holding that the Bank had suffered a loss of Rs.3,95,100/-and that

the workman and respondents 2 and 5 in that case were jointly and severally liable to pay Rs.3,64,100/- with 10% interest from 16.02.1994. Ext.P7 was challenged by the workman by filing Ext.P8 appeal. The Kerala Co-operative Tribunal confirmed Ext.P7 order as per Ext.P9. Aggrieved by Exts.P7 and P9, W.P.(C). No.23311/2010 is filed.

5. O.P.(LC) No.1188/2011 is filed by the bank with following prayers:

- i. Declare that the petitioner Bank is entitled to forfeiture the arrears due to a Bank employee for adjusting towards the pecuniary loss caused by him to the Bank.
- ii. Declare that the Ext.P1 petition preferred by the 1st respondent is not maintainable as the claim was not a pre-determined amount and the bonus claim was stale and barred by limitation.
- iii. Set aside the Ext.P5 award passed by the Labour Court.
- iv. Issue a writ of certiorari or other appropriate writ or order quashing Ext.P6 recovery proceedings issued by the 3rd respondent.
- v. Pass such other orders as this Hon'ble Court deems, fit, proper and necessary in the circumstances of the case.

(SIC)

6. The workman is the 1st respondent in the above case. The workman filed Ext.P2 petition produced in the above case under Section 33-C(2) of the Industrial Disputes Act,1947 claiming bonus for the periods 1997 to 2001 and arrears of pay revision. The Bank took a contention in the claim petition that in the light of the award passed by the Arbitrator in A.R.C.No.1502/1996, which is confirmed by the Co-operative Tribunal in A.P.No.19/2007, the Bank has every right to adjust the loss caused to the bank from any amount due to the workman. The claim petition was considered by the Labour Court, Ernakulam, and the Court passed an award allowing the workman to recover Rs.1,16,407/- from the opposite party. Ext.P5 in OP(LC) No.1188/2011 is the order of the Labour Court. Ext.P6 in that original petition is the revenue recovery proceedings to recover the award amount. Challenging Exts.P5 and P6, O.P.(LC) No.1188/2011 is filed by the bank.

7. W.P.(C). No.14186/2013 is also filed by the bank with following prayers:

- i. Issue a writ of certiorari or other appropriate writ or

order quashing Ext.P7 RR proceedings

- ii. Declare that the petitioner bank is entitled to adjust or recover the loss caused by the 1st respondent to the bank from any amount due to him.
- iii. Declare that the 1st respondent is not entitled or eligible to claim any amount from the bank till the adjudication of the liability caused by the due to the bank.
- iv. To grant such other reliefs, as this Hon'ble Court shall deem just and proper in the interest of justice, including costs.

(SIC)

8. The Bank filed this writ petition aggrieved by the revenue recovery notice issued. The 1st respondent in this writ petition is the workman. In this case, the challenge is against Ext.P7 revenue recovery proceedings. The workman filed a petition under Section 33-C(2) of the Industrial Disputes Act,1947 claiming bonus from the Bank as per C.P.No.18/1998 which resulted in an award. The same was challenged by the bank before this Court by filing W.P.(C). No.30553/2006 and the same was dismissed. The judgment of the learned Single Judge in the above case was confirmed in Writ Appeal No.1353/2012. Thereafter when the revenue recovery proceedings were initiated, W.P.(C). No.14186/2013

was filed stating that since there is an order allowing recovery from the workman in A.R.C. No.1502/1996, which was confirmed by the Co-operative Tribunal, and since the matter is pending before this Court as W.P.(C). No.23311/2010, the revenue recovery proceedings is unsustainable. Hence the above writ petition is filed challenging the revenue recovery proceedings.

9. W.P.(C).No.4797/2014 is another writ petition filed by the bank with the following prayers:

i. Issue a writ of certiorari or other appropriate writ or order setting aside Ext P-1 order to the extent of granting Bonus, Medical allowance, and leave surrender.

ii. Declare that the Labour Court has no jurisdiction under Section 33C(2) of the Industrial Disputes Act to adjudicate any dispute which comes under the payment of Bonus Act 1965.

iii. Declare that the petitioner Bank is entitled to recover the loss caused by the respondent to the bank from any amount due to him.

iv. To grant such other reliefs, as this Hon'ble Court shall deem just and proper in the interest of justice, including costs.[SIC]"

10. Ext.P1 in this writ petition is an order passed by the Labour Court, Ernakulam in C.P No.25/2012. The above

Claim Petition was filed claiming the arrears of wages, medical allowance, bonus and leave surrender and to pay revision arrears during the periods 24.11.2000 to 30.04.2005. The Labour Court after considering the facts passed an award directing the Bank to pay an amount of Rs.16,16,025/- with interest. The above writ petition is filed challenging Ext.P1 order to the extend of granting bonus, medical allowance and leave surrender.

11. Heard the counsel appearing for the workman, Adv. P. Ramakrishnan and the counsel appearing for the Bank. I also heard the learned Government Pleader.

12. As I mentioned earlier, the workman in this case was behind the Bank for more than 25 years to get his eligible benefits. When the workman filed W.P. (C)No.23311/2010, he was 61 years of age. Probably he is in his 70's by now. This is the fate of a workman who is forced to contest cases for a major part of his life for his livelihood. An introspection by the judiciary is also necessary because the first writ petition filed by the workman was pending before this court for the last 13 years. I had the opportunity

to sit in the old writ petition hearing jurisdiction in which I disposed several old cases and one of the writ petition disposed this month was filed in the year 2003. That means some of the writ petitions are pending before this court for about 20 years. I am forced to say that there are some laches on the part of the registry also for this sorry state of affairs. It is the duty of the registry to report before the jurisdictional roster judge about the old cases, after getting permission from the Honourable Chief Justice. The jurisdictional judge may not be knowing about the old cases because in High court, the usual practice is that, once the cases are admitted, unless there is an urgent memo or a petition for an early hearing or other petitions for any directions, it will not be listed except for final hearing. There is a general grievance to the lawyers that the cases are not listed by the registry even after filing 'urgent memo'. They even say sarcastically that the "urgent memos" filed are "committing suicide and disappearing". Some of the old writ petitions are misplaced and not located. It is the duty of the registry to locate the same forthwith or get orders to

recreate the file. Registrar General and the Registrar (Judicial) will bring to the notice of the Hon'ble Chief Justice about the old writ petitions pending in different jurisdiction and will take appropriate steps in this regard as per the directions of the Hon'ble Chief Justice. Otherwise, people will loose faith in the judiciary.

13. The main allegation against the workman is that he was the Chief Accountant of the Kodungalloor Town Co-operative Bank, Thiruvanchikulam Branch. While working as the Chief Accountant, 15 gold loans were sanctioned by the workman based on the recommendation of the gold appraiser of the said Bank. Ext.P2 produced in W.P.(C)No.23311/2010 are the sub-rules framed by the Bank. Clause (b) and (c) of Ext.P2 the sub-rules is relevant in this case, which is extracted hereunder:

- a) സ്വർണ്ണ പണ്ടത്തിന്മേൽ വായ്പയുടെ അപേക്ഷ നിശ്ചിതപാഠത്തിൽ അപേക്ഷകനൊപ്പിട്ടു സെക്രട്ടറിക്കു സമർപ്പിക്കേണ്ടതാകുന്നു. അപ്രൈസറുടെ ശുപാർശക്ക് വിധേയമായും എന്നാൽ ഉരുപ്പടിയിലുള്ള സ്വർണത്തിന്റെ മാർക്കറ്റ് വിലയുടെ 75% ത്തിൽ കവിയാതെയും സെക്രട്ടറിക്ക് വായ്പ നൽകാവുന്നതാണ് .
- b) അപേക്ഷകൻ ഹാജരാക്കുന്ന സ്വർണ്ണ ഉരുപ്പടി പരിശോധിച്ച്

ആയതിന്റെ ഗുണദോഷങ്ങളും, മതിപ്പു വിലയും തിട്ടപ്പെടുത്തേണ്ടത് അപ്രൈസറുടെ ചുമതലയാകുന്നു. അപ്രൈസർ ശുപാർശ ചെയ്യുന്ന തുകയേക്കാൾ കൂടുതലായി സെക്രട്ടറി വായ്പ അനുവദിക്കാവുന്നതല്ല.”

14. A perusal of the above sub-rules will show that, it is the duty of the appraiser to examine the genuineness of the gold and the officer concerned can sanction the loan only if the appraiser reports that the gold is genuine and that the value of the gold is ascertained. Ext.P1 produced in W.P.(C) No.23311/2010 is one of the sanctioning order in respect of the gold loans. The certificate of the appraiser is in the last portion of Ext.P1. The same is extracted hereunder:

പണയസാധനത്തെപ്പറ്റി അപ്രൈസറുടെ സർട്ടിഫിക്കറ്റ്

സുമാർ 85 ഗ്രാം തൂക്കമുള്ള മറുഭാഗത്ത് വിവരിച്ചിട്ടുള്ള സ്വർണ്ണ ഉരുപ്പടിക്ക് 30800/- ക വില കണക്കാക്കിയിരിക്കുന്നു. അവയുടെ വില തിട്ടപ്പെടുത്തിയതിലും അവയിൽ കൃത്രിമമുണ്ടെങ്കിലും തന്മൂലം ബാങ്കിന് വരാവുന്ന സകല നഷ്ടത്തിനും ഞാൻ ഉത്തരവാദിയാണ്. വില തീർച്ചപ്പെടുത്തിയതിൽ കല്ലുകളുടെ വില കൂട്ടിയിട്ടില്ലെന്നും സ്വർണ്ണത്തിന് ഗ്രാം തൂക്കത്തിന് 350/- ക പ്രകാരമാണ് വില കണക്കാക്കിയിരിക്കുന്നതെന്നും ഞാൻ സത്യബോധ്യപ്പെടുത്തുന്നു

അപ്രൈസറുടെ ഒപ്പ്
തീയതി : 16-4-93

[underline supplied]

15. From the above certificate, it is clear that the appraiser is responsible, if any questions are subsequently raised with respect to the quality or the value of gold. Admittedly, similar certificates were issued by the appraiser of the Bank in all the disputed gold loans in this case. Therefore a combined reading of Ext.P1 in which the certificate of gold appraiser is extracted and Ext.P2 in which sub-rules regarding the sanctioning of gold loans is extracted, it is clear that, if any doubt about the quality of the gold arises, the appraiser is responsible for the same.

16. It is true that a criminal case was registered against the workman and the workman was convicted by the Judicial First Class Magistrate Court, Kodungallur as per judgment dated 28.07.2000 in C.C.No.367/1997. The above conviction and sentence imposed by the learned Magistrate was challenged by the workman and the Appellate court was pleased to set aside the conviction and sentence imposed on the workman. Even though the Bank challenged the acquittal order before this Court by filing Crl.R.P.No.2158/2003, this Court confirmed the acquittal order and dismissed the appeal

as per the judgment dated 11.07.2005. It will be beneficial to extract the relevant portions of the judgment dated 11.07.2005 in Crl.R.P. No.2158/2003.

“ As rightly stated by the Court below, so far as the charge under Section 420 I.P.C. is concerned there is no clear allegation against the first respondent. In Exhibits D1 to D3 the Bank has no case that the first respondent has cheated the Bank. The main allegation against the first respondent is that he conspired with the other accused, which was found against by the trial Court. The finding of the Court below that the charges under Sections 409, 420 and 120(B) read with Section 34 of Indian Penal Code are not proved against the first respondent is correct.”

17. Based on the acquittal order, the workman was reinstated with back wages by the Labour court in I.D.No.57/2003. The award dated 21.12.2005 in I.D.No.57/2003 was challenged before this Court by filing a writ petition by the workman and the Bank. The writ petition filed by the workman was allowed ordering full back wages and the writ petition filed by the Bank was dismissed confirming the award passed by the Labour Court. It will be better to extract the relevant portions of the common judgment dated 11.01.2012 in W.P.(C)Nos.10448 and 16658

of 2006.

"5. Counsel for the management would rely on the evidence of the witnesses of the management to show that the workman was discharging supervisory functions as well. Their contention is that there were other employees working under the workman and the workman was supervising their working. But the names of those employees are not mentioned. If supervisory functions were being discharged by the workman, then, certainly, he would have responsibilities like sanctioning of leave to persons working under him and the like, which can be only be written orders, copies of which are not forthcoming. In the above circumstances, I do not find anything wrong with the finding of the Tribunal that the management has not proved by adducing evidence that the workman was discharging the duties and functions of a supervisory person.

6. The management feebly contended that the workman was guilty of the misconduct involving misappropriation and therefore the dismissal from service was justifiable. But, it is not disputed before me that the workman was actually imposed with the punishment of reduction from the cadre of Manager/Chief accountant to that of Head Clerk/Accountant as a punishment for the same misconduct and at the time of dismissal, he was actually working only as a Head Clerk/Accountant. The management had started fresh disciplinary proceedings based on the conviction by the criminal court. Even if the conviction by a criminal court can be the basis for any further punishment, it is not necessary to look into that question now since the Session's court and this Court found the workman not guilty in the criminal

proceedings. In fact, as stated in the award itself, the witness of the management himself has admitted that between the earlier punishment and the dismissal in 2000, the service of the workman was very satisfactory and no fresh misconducts have been alleged against him. He further stated that had the workman not been punished by the criminal court, he would have continued in service without any objection whatsoever. That being so, I do not find any merit in the contention of the management. I fully agree with the Tribunal that the second punishment of dismissal from service for the misconduct is patently arbitrary and unsustainable.

7. The claim of the workman is for full back wages from 24.11.2000 when he was dismissed from service. By now, he has already crossed the age of superannuation. The management has obtained a stay of the award in their writ petition and they had been paying him wages under Section 17B of the Industrial Disputes Act till he attained the age of superannuation. The Tribunal has granted back wages only from 1.8.2005. The management has not stated as to what is the magic of the date 1.8.2005. Admittedly, the workman was dismissed from service on 24.11.2000. As such, the workman is entitled to back wages from that date.

8. Accordingly, Ext.P1 is modified holding that he will be entitled to the entire back wages and not from 1.8.2005.

9. In the above circumstances, W.P(C) No. 16658/2006 is dismissed and W.P(C) No. 10448/2006 is allowed modifying the award to the above extent. The back wages after deducting the wages paid under Section 17B shall be paid within two months from today, failing which the same shall carry interest from 21.12.2005 at the rate of 6% per annum."

18. The judgment of the learned Single judge was confirmed by the Division Bench of this Court in Writ Appeal No.496/2012.

19. From the above facts, it is clear that the workman was exonerated by the Criminal court, Labour court and this Court. Based on the same allegation, ARC No.1502/1996 was filed by the Bank. Ext.P3 in W.P.(C)No.23311/2010 is the copy of the petition in ARC No.1502/1996. Exts.P5 and P6 produced in that writ petition are the depositions made by the former Secretary, Sreenivasan and the General Manager Nandakumar in the ARC proceedings. Some of the questions and answers given by the former Secretary of the Bank in the deposition as evident by Ext.P5 is extracted hereunder:

- “Q. ബാങ്കിന് എന്തെങ്കിലും നഷ്ടം സംഭവിച്ചിട്ടുണ്ടോ - ഇല്ല.
- Q. 4-)0 പ്രതി മാനേജരുടെ അധികാരം ഉപയോഗിച്ച് മാത്രമെ വായ്പ നൽകിയിട്ടുള്ളൂ ശരിയാണോ ? - അതെ.
- Q. അതിന്റെ ഭാഗമായി ഗോൾഡ് ലോൺ അപ്രെസറുടെ സർട്ടിഫിക്കറ്റിനെ ആശ്രയിച്ചു മാത്രം നൽകുന്നത് - അതെ.
- Q. 4-)0 പ്രതി ചെയ്ത ജോലിയിലുള്ള വീഴ്ച എന്തായിരുന്നു - ഒരേ രൂപത്തിലുള്ള സാധനങ്ങൾ ആണ് പണയം വെച്ചത് . എല്ലാം മോതിരത്തിന്റെ രൂപത്തിലുള്ള പണ്ടങ്ങൾ ആയിരുന്നു. പരിശോധിച്ചിരുന്നു എങ്കിൽ സംശയം ഉണ്ടാകേണ്ടതായിരുന്നു.

Q. ഈ പറഞ്ഞ മോതിരങ്ങളെല്ലാം അപ്രൈസർ സർട്ടിഫൈ ചെയ്താണ് മാനേജരുടെ മുമ്പിൽ എത്തുന്നത്. പിന്നെ മാനേജർ എന്തു ചെയ്യാം - മാനേജർ വീണ്ടും പരിശോധിക്കാം

Q. എങ്ങനെ വീണ്ടും പരിശോധിക്കാം മാനേജർക്ക് - മനസ്സിലായില്ലാ എങ്കിൽ പുറത്ത് ആരെങ്കിലും വിളിച്ചു കാണിക്കാം.

Q അതിനുള്ള വകുപ്പ് Sub rule ൽ ഉണ്ടോ

ഇല്ല

Q ഇപ്രകാരം സംശയം തോന്നി എത്ര തവണ അങ്ങ് ആരെയെങ്കിലും കാണിച്ചിട്ടുണ്ടോ സംശയം തോന്നിയിട്ടില്ല”

20. Similarly, Ext.P6 is the deposition of the General Manager of the Bank. The relevant portions of the deposition of the General Manager from Ext.P6 deposition is extracted hereunder:

“Gold Loan Sub Rule ഹാജരാക്കിയത് സംബന്ധിച്ച് 99 മുതൽ Exhibit A11 ബാധകം. അതിനു മുമ്പ് വേറെ Sub Rule ഉണ്ടായിരുന്നു. 1 Lakh ആയി ഉയർത്തിയത് 99-ലെ സബ് റൂൾ പ്രകാരമാണ്. അതിന് മുമ്പുള്ളത് limit 50,000/- at a time കൊടുക്കാം എന്നാണ് ആ സബ് റൂൾ പ്രകാരം സെക്രട്ടറി, അപ്രൈസർ കൂടുത്തരവാദം അല്ല. ലോൺ കൊടുത്ത പിരീഡിൽ 50,000/- Extent കവിഞ്ഞ് കൊടുത്തില്ല.

xxxxxxxxxxxx

Domestic Enquiry Report 11-)0 പേജിൽ 2-)0 പാരയിൽ domestic enquiry യിൽ സുരേന്ദ്ര ബാബുവിന്റെ പ്രവൃത്തി unreasonable ആണ് എന്നു പറയുവാൻ സാധിക്കില്ല എന്ന് പറഞ്ഞിട്ടുണ്ട്. Gold Loan sub Rule Code of conduct ആണ്. മാസത്തിലൊരിക്കലോ, മൂന്നുമാസം കൂടുമ്പോഴോ ബോർഡ്

മെമ്പർമാർ പണയത്തിൽ സ്വീകരിച്ച പണ്ടം പരിശോധിക്കണം എന്നു വ്യവസ്ഥ സബ് റൂളിൽ പറയുന്നത് പരിപാലിച്ചിട്ടില്ല എന്ന് ഉറപ്പായി പറയാൻ സാധിക്കില്ല. ഡയറക്ടേഴ്സ് പണ്ടം പരിശോധിക്കണം എന്നില്ല. മുൻ കാലങ്ങളിൽ ഉണ്ടായിരുന്നു. സബ് റൂൾ കാലം കൂടുമ്പോൾ Amend ചെയ്യാം. ചിലവ amend ചെയ്യാതെ നിലവിൽ ഉണ്ടാകാം. xxxxxxxxxxxx

കേസിനാസ്പദമായ ലോൺ എല്ലാം ഭരണസമിതി ratify ചെയ്തിട്ടുണ്ട്. വനജ നായർ പണയം വെച്ചതിൽ 6 lot-കൾ auction ചെയ്തിട്ടുണ്ട്. 28.03.94 ലേലത്തിൽ അവയിൽ ബാങ്കിന് കിട്ടേണ്ടതിനേക്കാൾ കൂടുതൽ തുക കിട്ടിയിട്ടുണ്ട്. (റെക്കോഡ് പ്രകാരം) . xxxxxxxxxxxx

4-)0 പ്രതി അപ്രൈസറുടെ സർട്ടിഫിക്കറ്റിന്മേൽ ബാങ്കിന്റെ നന്മയെക്കരുതിയാണ് വായ്പ നൽകിയിരിക്കുന്നത് എന്നു പറഞ്ഞാൽ ശരിയാണ്.”

21. From the above evidence and also in the light of Ext.P2 sub-rules which is already extracted in this judgment, it is clear that there is no fault on the part of the workman in this case and the fault, if any, is on the appraiser. The certificate was issued by the appraiser in all the loan sanctioning papers as evident by Ext.P1 loan sanctioning order. There is also certificate from the appraiser that he is responsible, if there is any dispute about the quality or the value of the gold. Under such circumstances, I am not in a position to accept the finding of the Arbitrator to fix the

liability on the workman.

22. The only finding in Ext.P7 in WP (c) No 23311 of 2010 against the workmen is that since the workmen was the Manager, there lies a liability on the part of the workmen. It is also stated that different types of gold rings of extraordinary size was produced and under such circumstances, the workman ought to have been more vigilant. I failed to understand such a finding of the arbitrator. When Ext.P2 sub- rules clearly states that the quality and value of the gold is to be decided by the appraiser and when he is the ultimate authority, how is the workmen liable if any fraud committed by the appraiser. There is absolutely no evidence in this case to show that there was any meeting of minds between the workman and the appraiser of the bank. Under such circumstances, in my opinion, the finding by the arbitrator in ARC No.1502 of 1996 cannot be accepted at all. The Co-operative Tribunal also endorsed the award of the Arbitrator without going in detail to the actual liability as per sub-rules in gold loan cases. Therefore, in my opinion, Exts.P7 and P9 in WP(C) No.23311 of 2010 is to be set aside.

23. OP(LC) No.118/2011 is filed challenging Exts.P5 and P6. Ext.P5 is the order passed by the Labour Court in C. P. No.5 of 2007. The workman claimed bonus from 1997 to 2001. The workman also claimed the benefit of pay revision granted to other employees. WP(C) No.4797 of 2014 is filed challenging Ext.P1 order to the extent of granting bonus, medical allowance and leave surrender by the labour court. Ext.P1 in that writ petition is the order dated 11.11.2013 in C.P. No.25 of 2011. The main contention of the Bank is that as per the second schedule of the Industrial Tribunal Act, 1947 bonus cannot be adjudicated by the Labour Court. The counsel relied on judgment of the Apex Court in **H.P.State Electricity Board and Another v. Ranjeet Singh and Others (2008) 4 SCC 241**. The relevant paragraph of the above judgment reads thus:

17. Further, the High Court seems to have lost sight of the fact that the Labour Court under the Act can decide only the matters specified in the Second Schedule. "Bonus" is not covered by the Second Schedule. Item 6 of Second Schedule says that it deals with all matters except those

covered by the Third Schedule. "Bonus" appears as Item 5 in the Third Schedule. Therefore, the question of entitlement to bonus could not have been decided by the Labour Court. In case of pre existing rights there must be agreements by both sides about existence of such rights. If there is disagreement this has to be decided by the competent authority. The stand that the expression 'bonus payable' relates to the quantum and not payability is also not correct.

18. Since the High Court has not considered the above aspects, we remit the matter to it for considering (i) the applicability of S. 33-C(2) of the Act and (ii) the jurisdiction of the Labour Court to decide the matter; and (iii) the applicability of the Bonus Act to daily wagers.

24. The counsel for the Bank also relied on **Karunakaran v. Grassim Industries Ltd.(1997 KHC 256), Radhakrishnan Nair v. Vadayar Service Co-operative Bank Ltd. (2004 (3) KLT SN 58), State of U.P v. Brijpal Singh (2005 (4) KLT SN 73), Joseph v. Pierce Leslie India Ltd.(1992 (1) KLT SN 6) and Kuldeep Singh S. and Another v. S.Prithpal Singh (AIR 2022 SC**

3967) to contend that the Labour Court has no jurisdiction to adjudicate the issues relating to bonus. Similarly, the counsel also relied the judgment of the Apex Court in **Union of India v. Jaipal Singh (2004 (1) KLT SN 66)** to contend the effect of the employee who gets involved in a criminal case. In the case, it was observed that, if after the initial conviction the employee gets acquitted on appeal, the Bank cannot be found fault with. The counsel also relied the on judgment in **Disciplinary Authority cum Regional Manager and Others v. Nikunja Bihari Patnaik (1996 (9) SCC 69)** and **Kanhaiyalal Agrawal v. Gwalior Sugar Co. Ltd.(2001 (9) SCC 609)** to contend that the workmen is holding a position of trust and confidence. The counsel relied on the judgment of the Apex Court in **U.P. State Sugar Corporation Ltd and Others v. Kamal Swaroop Tondon [(2008) 2 SCC 41]** to contend that the Bank could recover loss caused from the employee.

25. But it is to be noted that, there is no much dispute about the eligibility for the bonus to the workman in this

case. The bonus claimed is the customary bonus and not as per the Payment of Bonus Act,1965. A Division Bench of this Court in **Pappu v. Raja Tile and Match Works [1988 (1) KLT 476]** observed that, when all the facts for fixing the exact amount of bonus are thus already available a mere computation alone is required for determining the amount due to the employees, this naturally lies within the statutory corners of Section 33-C(1) and (2) of the Industrial Disputes Act,1947. In this case, as I observed earlier, the customary bonus is claimed and the contention raised by the Bank will not stand. Moreover, this contention was not raised before the Labour Court. The counsel for the bank submitted that the question of jurisdiction of the court can be raised at any stage of the case. The counsel relied on several judgments to support this point. It is true that it is a settled position that the jurisdictional question can be raised at any stage of the case. But it is to be noted that, in C.P.No.18/98 filed by the workman for unpaid bonus for the periods 1993-94, 1994-95, 1995-96 and 1996-97 was allowed by the Labour Court earlier and was confirmed by this court in WP(c) No.30553 of

2006. The judgment of the learned Single Judge in the above case was confirmed by the division bench in W.A No.1353 of 2012. The question of jurisdiction was never raised in the above proceedings also. In the light of the above discussions and in the light of the dictum in **Pappu's case(supra)**, I am of the considered opinion that the Labour Court has the jurisdiction to decide the issue of bonus in the peculiar facts and circumstances of this case.

26. The counsel for the Bank also submitted that as per Exts.P8 to P11, there are audit objections regarding the payment of bonus and therefore, the petitioner is not entitled to the amount claimed in the claim petition. It is true that certain objections were raised by the audit department regarding the payment of bonus. If that is the case, Bank needs to pay only the eligible bonus in the light of the audit objections mentioned in Exts.P8 to P11. That modification can be made as far as the payment of bonus ordered in Ext.P1 in WP(C) No.4797 of 2014 and OP(LC) 1188 of 2011 are concerned. As far as the other payments are concerned, I am

of the considered opinion that this Court need not interfere with the same by invoking the powers under Article 226 of the Constitution of India.

27. As far as WP(C) No.14186 of 2013 is concerned, the prayers in that writ petition are infructuous in the light of the decision in WP(C) No.23311 of 2010 in which I have already decided to set aside the award passed in A.R.C.No.1502 of 1996 and the order passed by the Co-operative Tribunal in A.P.No.190 of 2007. Therefore, WP(C) No.14186 of 2013 is to be dismissed.

28. Before concluding, I am forced to say that this is a case in which some costs is to be imposed on the Bank for dragging the workman for 25 years. The major part of the life of the workman was lost by contesting these writ petitions. But, since the interest is ordered in all the monetary claims allowed, I am avoiding cost.

Therefore, these writ petitions are disposed of in the following manner:

1. Exts.P7 and P9 in WP(C) No.23311 of 2010 to the extent it fix liability to the petitioner/workman is quashed.

2. OP(LC) No.1188 of 2011 is disposed of confirming Ext.P5 award of the Labour Court clarifying that the 1st respondent workman in that case is entitled only to the eligible bonus in the light of the audit objections in Exts.P8 to P11.

3. WP(C) No.4797 of 2014 are disposed of confirming Ext.P1 award of the Labour Court in C.P.No.25 of 2012 clarifying that the respondent workman is entitled only to the eligible bonus in the light of the audit objections, which is produced in Exts.P8 to P11 in OP(LC) No.1188 of 2011.

4. WP(C) No.14186 of 2013 is dismissed.

5. Registry will forward a copy of this judgment to the Registrar General and Registrar (Judicial) to take follow up action based on the discussions in paragraph 12 of this writ petition.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

JV/DM/das

APPENDIX OF WP(C) 23311/2010

PETITIONER EXHIBITS

EXHIBIT P1- PHOTOCOPY OF THE LOAN SANCTIONING ORDER.

EXT P2: COPY OF SUB RULE ISSUED BY R1

EXT P3: COPY OF ARC NO.1502/96 FILED BY R1 BEFORE THE
ASST.REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL) ,KODUNGALLOOR.

EXT P4: COPY OF WRITTEN OBJECTIONS FILED BY THE PETITIONER IN
ARC NO.1502/96

EXT P5: COPY OF DEPOSITION MADE BY THE FORMER SECRETARY
SREENIVASAN

EXT P6: COPY OF DEPOSITION MADE BY THE FORMER GENERAL MANAGER
NANDAKUMAR

EXT P7: COPY OF ORDER DTD 14.2.2007 ISSUED BY THE ASSISTANT
REGISTRAR

EXT P8: COPY OF APPEAL MEMORANDUM DTD 9.5.2007 FILED BY THE
PETITIONER BEFORE R7

EXT P9: COPY OF ORDER DTD 28.4.2010 IN AP NO.19/07 OF R7

RESPONDENTS EXTS

EXT R1(A) : COPY OF BOND DTD 18.5.1973

EXT R1(B) : COPY OF LAWYER NOTICE DTD 19.2.1996

EXT R1©: COPY OF REPLY DTD 29.2.1996

EXT R1(D) SERIES: COPY OF ACKNOWLEDGMENT CARDS

TRUE COPY

P.A.TO JUDGE

APPENDIX OF WP (C) 4797/2014

PETITIONER EXHIBITS

EXHIBIT P1- PHOTOCOPY OF THE AWARD PASSED BY
LABOUR COURT IN CP 25/2012 DATED 11-11-2013.

RESPONDENTS EXTS: NIL

TRUE COPY

P.A.TO JUDGE

APPENDIX OF WP(C) 14186/2013

PETITIONER EXHIBITS

EXT.P1 THE PHOTOCOPY OF THE BOND DATED 18-5-1973 EXECUTED BY THE 1ST RESPONDENT.

EXT.P2 THE PHOTOCOPY OF THE AWARD IN ARBITRATION CASE NO. 1502/96

EXT.P3 PHOTOCOPY OF THE ORDER IN AP 19 OF 2007 OF THE KERALA CO-OPERATIVE TRIBUNAL DATED 28-4-2010.

EXT.P4 PHOTOCOPY OF THE JUDGMENT IN W.A. NO. 1353/12 DATED 11-9-12.

EXT.P5 PHOTOCOPY OF THE SHOW CAUSE NOTICE DATED 16-4-13.

EXT.P6 A COPY OF THE REPLY DATED 30-4-13 SUBMITTED BY THE PETITIONER TO THE DLO

EXT.P7 A COPY OF THE REVENUE RECOVERY NOTICE DATED 25-5-13.

RESPONDENTS EXTS: NIL

TRUE COPY

P.A.TO JUDGE

APPENDIX OF OP(LC) 1188/2011

PETITIONER'S EXTS:

EXT P1: COPY OF AWARD IN AP 19/07 DTD 28.4.2010

EXT P2: COPY OF CLAIM PETITION 5/07 FILED BY R1 BEFORE R2

EXT P3: COPY OF WRITTEN STATEMENT FILED BY THE BANK IN CP
5/07

EXT P4: COPY OF BOND DTD 18.5.1973 EXECUTED BY R1

EXT P5: COPY OF ORDER PASSED BY R2 IN CP 5/07

EXT P6: COPY OF DEMAND NOTICE DTD 10.3.2011 ISSUED BY R3.

EXT P7: COPY OF CIRCULAR DTD 9.8.1999

EXT P8: COPY OF RELEVANT PAGE OF AUDIT REPORT OF 1998-1999

EXT P9: COPY OF RELEVANT PAGE OF THE AUDIT REPORT OF 1999-
2000

EXT P10: COPY OF THE RELEVANT PAGE OF THE AUDIT REPORT OF
2000-2001

EXT P11: COPY OF THE RELEVANT PAGE OF THE AUDIT REPORT OF
2001-2002

RESPONDENTS EXTS: NIL

TRUE COPY

P.A.TO JUDGE