IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

WP(C) NO. 24620 OF 2018

PETITIONERS:

1 KOTHAMANGALAM SERVICE CO-OPERATIVE BANK LTD NO.354 KUTHUKUZHY P.O, KOTHAMANGALAM, ERNAKULAM DISTRICT, REPRESENTED BY ITS SECRETARY.

2 THE BOARD OF DIRECTORS OF THE KOTHAMANGALAM SERVICE CO-OPERATIVE BANK LTD NO.354, KUTHUKUZHY P.O, KOTHAMANGALAM, ERNAKULAM DISTRICT, REPRESENTED BY ITS PRESIDENT.

ADVS. SRI.M.SASINDRAN & SRI.JOMY K. JOSE

RESPONDENTS:

1 N.G.BENJAMIN, NJARAKKATTU HOUSE, ASOKAPURAM P.O, EDAYAPURAM ROAD, ALUVA 683 101, ERNAKULAM DISTRICT.

2 THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM 695 001.

ADV. SRI.N.K.SUBRAMANIAN
SRI.DHEERAJ A.S., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.3.2025, ALONG WITH WP(C) NO.26004/2018, THE COURT ON 2.4.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

WP(C) NO. 26004 OF 2018

PETITIONER:

N.G.BENJAMIN,
NARAKKATTU HOUSE, EDATHALA NORTH POST, NEAR ST.JUDE CHURCH, ALUVA, ERNAKULAM-683 564.

ADVS. SRI.N.K.SUBRAMANIAN & SRI.S.ANANTHAKRISHNAN

RESPONDENTS:

1 **THE KOTHAMANGALAM SERVICE CO OPERATIVE BANK LTD. NO.354, KUTHUKUZHY POST, KOTHAMANGALAM, ERNAKULAM 686 691, REPRESENTED BY ITS SECRETARY.**

2 **THE BOARD OF DIRECTORS,**
THE KOTHAMANGALAM SERVICE CO-OPERATIVE BANK LTD.NO.354, KUTHUKUZHY POST, KOTHAMANGALAM, ERNAKULAM 686691, REPRESENTED BY ITS PRESIDENT.

3 **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETEIS (GENERAL), ERNAKULAM, CIVIL STATION, KAKKANAD-682 030.**

4 **THE ASST. REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KOTHAMANGALAM-686 691.**

ADV SRI.M.SASINDRAN
SRI.DHEERAJ A.S., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24.3.2025, ALONG WITH WP(C).24620/2018, THE COURT ON 2.4.2025 DELIVERED THE FOLLOWING:

MOHAMMED NIAS C. P. , J.

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W. P. (C) Nos. 24620 & 26004 of 2018

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Dated this the 2nd day of April, 2025

JUDGMENT

WP(C) No.24620/2018 challenges the judgment passed by the Kerala Co-operative Tribunal, Thiruvananthapuram in Appeal No. 84/2017, while WP(C) No.26004/2018 seeks implementation of the directions in the said judgment.

2. Brief facts necessary for the disposal of the writ petitions are as follows: WP(C) No.24620/2018 is filed by the Bank, a co-operative society registered under the provisions of the Kerala Co-operative Societies Act, 1969, and the second petitioner is its Board of Directors. The first respondent entered the service of the society on 23.4.1983 and during 1994, while working as an Accountant, went abroad on Leave Without Allowance from 1.4.1994 initially for 5 years and thereafter, from 1.4.1999 to 31.3.2004. After the expiry of the leave on 31.3.2004 as aforesaid, he was supposed to join back service on 1.4.2004 and since he did not join after the expiry of leave, a notice was issued, which was returned with the endorsement

"Addressee left". To a further notice issued to the petitioner on 2.4.2005, the first respondent replied that he was not able to appear on medical grounds.

3. The first respondent, contending that he had worked from 1.4.2004 to 27.4.2004 and from 28.4.2004 onwards he was not permitted to sign the attendance register, moved the Assistant Registrar, Kothamangalam on 3.5.2004, in which an order was passed on 17.7.2004, permitting the first respondent to join service and to treat the period of absence as loss of pay. Writ petitions were filed challenging the said order of the Assistant Registrar, and WP(C) No.22571/2004 was filed by the first respondent seeking implementation of the order of the Assistant Registrar. This Court through judgment dated 10.10.2006 in WP(C). No.22571/2004 *(produced as Ext.P2 in WP(C). No. 26004/2018)* set aside the order of the Assistant Registrar and relegated the parties to approach the Kerala State Co-operative Arbitration Court *('The Arbitration Court' for short)*. Accordingly, the employee/first respondent filed an arbitration case A.R.C.No.71/2006 on 23.12.2006, which was dismissed as per Ext.P2 award on 5.7.2012.

4. The employee filed Ext.P3 appeal, which resulted in Ext.P4 judgment of the Kerala Co-operative Tribunal allowing the appeal and remanding the matter back to the Arbitration Court with the following directions:

"*In the result, this Appeal is disposed of as follows:*

1. *The impugned award is set aside.*
2. *The Arbitration Case is remanded back to the Co-operative Arbitration Court, Thiruvananthapuram for fresh disposal in accordance with law.*
3. *The Arbitration Court shall consider Ext.A23 Audio CD after satisfying its genuineness.*
4. *The parties are allowed to adduce further evidence to substantiate their case.*
5. *Parties shall appear before the Co-operative Arbitration Court, Thiruvananthapuram on 15-02-2014.*
6. *As the Arbitration Case is of the year 2006 the Arbitration Court is directed to dispose of the same as expeditiously as possible."*

It is contended that the employee did not take any steps for two years, and it was only on 12.1.2016 that Ext.P5 affidavit producing Ext.A23 Audio CD was filed before the Arbitration Court. Through Ext.P6 order dated 16.6.2016, the Arbitration Court again dismissed the employee's case.

5. The same was again challenged by the employee before the Tribunal, which, through Ext.P8 order impugned in WP(C) No.24620/2018 allowed the appeal, directing reinstatement with back wages. It is seeking implementation of the same that the connected writ petition, WP(C) No. 26004/2018, is filed by the employee.

6. The learned counsel appearing for the Bank submitted that the first respondent/employee ought to have joined after the expiry of the period of leave and the act of not joining constituted misconduct and appropriate action was taken by the Bank. Thereafter, the employee never joined and therefore, this was a case where he voluntarily abandoned the

employment. It was also stated that there was nothing to prove Ext.A23 Audio CD relied on by the employee and that there was no dispute on the attendance register produced by the Bank, which showed the absence of the employee. Twice, the Arbitration Court had found lack of evidence to substantiate the contentions of the employee. It is also stated that the first registered notice issued was returned as the addressee was not in station and there was nothing to show that the employee had worked between 1.4.2004 and 27.4.2004. None were examined to prove the said case of the employee. There was no proof of the medical certificate relied on by the employee in his reply to the second show cause notice. The learned counsel appearing for the Bank also relied on the following judgments: ***Vinod v. Kerala State Electricity Board Ltd.*** *[2020 (6) KLT 628],* ***Metropolitan Transport Corporation v. V.Venkatesan*** *[2009 KHC 5068],* ***Board of Directors of the Venjaramood Co-operative Rubber Marketing Society Ltd. and Anr. v. M.Nazimuddin and Ors.*** *[2007 (3) KHC 827], etc.*

7. The learned counsel appearing for the employee/first respondent, on the other hand, contended that the employee had in fact worked from 1.4.2004 to 27.4.2004 and was not permitted to sign or mark his attendance from 28.4.2004, which made him file a complaint before the Assistant Registrar on 3.5.2004. The Assistant Registrar also passed an order

permitting him to join. On 28.11.2014, following the order of remand by the Tribunal, he filed an application before the Arbitration Court for issuing summons to a person in the Bank and another employee who was there during the relevant period. Again, on 17.3.2015, the employee filed an application to send Ext.A23 Audio CD, in which the conversation between the then President and the employee was recorded, to the Forensic Science Laboratory to record the voice of the person who conversed with him. Pending the matter before the Arbitration Court, the President of the Bank died which made it impossible for the employee to adduce any oral evidence in that regard. The request of the employee to consider Ext.A23 under Sections 32(2)and 32(3) of the Indian Evidence Act was also declined by the Arbitration Court. It was under such circumstances that he moved the Tribunal, which passed the order impugned in WP(C) No.24620/2018 directing reinstatement with full back wages.

8. The learned counsel appearing for the employee/first respondent relied on the following judgments: ***Abdul Salam v. Kerala State Electricity Board Ltd.*** *[2017 (3) KLT 736],* ***Krushnakant B. Parmar v. Union of India & Anr.*** *[(2012) 3 SCC 178],* ***Lakshmi Precision Screws Ltd. v. Ram Bahagat*** *[(2002) 6 SCC 552],* etc.

9. After hearing the learned counsel appearing on both sides, a few

facts deserved to be noticed. It was the specific case of the employee that he worked from 1.4.2004 to 27.4.2004 but was not permitted to work from 28.4.2004. It is to be noted that it was the employee who moved the Assistant Registrar on 3.5.2004, complaining that he was not permitted to attend his duties and on his complaint, notice was issued by the Assistant Registrar for a hearing on 7.6.2004. The Assistant Registrar had, in fact, accepted his contention and directed the Bank to permit the employee to join duty, though his case of having worked from 1.4.2004 to 27.4.2004 was not fully accepted. The Bank could have taken an appropriate disciplinary action against him for the said absence.

10. The order of the Assistant Registrar was challenged before this Court, and this Court had set aside the order of the Assistant Registrar and relegated the parties to the Arbitration Court *(as seen from Ext.P2 in WP(C) No.26004/2018)*. Therefore, it is clear that from then on, the employee was litigating for allowing him to join duty, and it was the Bank that prevented him from joining. Under such circumstances, it could never be said that the employee had voluntarily left/abandoned the employment as he could not have worked, or rather he was prevented from work as the Bank had challenged the order passed by the Assistant Registrar permitting him to join. The Bank could have allowed him to join without prejudice to their

right to take appropriate action for the period of absence from 1.4.2004 to 27.4.2004. That not having been done, the case of the Bank that the employee had voluntarily abandoned the service cannot be accepted and the Tribunal is fully justified in rejecting the said claim of the bank/employer.

11. Earlier, after the judgment of the Tribunal remanding the matter, the petitioner had filed an application for summoning the President and also for sending the audio CD for forensic examination, as seen from Ext.R1(c) dated 28.11.2014. It cannot, therefore be said that the employee did not take any steps to prove the case as directed in the order of remand. The Arbitration Court, after the remand, took two years to decide the case, by which time the person with whom the employee had the conversation had died. The employee has also produced evidence before this Court as seen from I.A.No.1/2024 in WP(C) No. 24620/2018.

12. The determination of whether "unauthorized absence from duty" constitutes a failure of devotion to duty or unbecoming behaviour by a government servant requires considering whether the absence was wilful or due to compelling circumstances. If the absence arises from unavoidable situations, it cannot be considered wilful. Unauthorized absence may occur

without prior permission, but it does not always imply wilfulness, as employees may face various compelling circumstances. Long absences should not automatically be interpreted as abandonment of service; abandonment implies an intentional and permanent relinquishment of duty. Each case should be assessed based on its specific facts to determine if the unauthorised absence has turned into abandonment. Clear and intentional abandonment based on willful failure to return from leave does not necessitate a departmental inquiry, as the absence may reflect a deliberate decision to cease service.

13. Legally, temporary absence and abandonment differ. Short absences with the intention to return do not constitute abandonment, which requires a complete and intentional cessation of duties. While absence for valid reasons may indicate misconduct, prolonged absence could suggest voluntary abandonment of service, which ends the employment relationship unilaterally without employer intervention.

14. It is undisputed that no notice was issued to the employee/first respondent, and no enquiry was conducted before the Bank found that the employee had voluntarily abandoned the service. The lack of notice in this case, which vitally affects the right of the first respondent, clearly shows that the procedure adopted by the Bank was not fair.

15. As regards the interference with the orders of the tribunals, in ***Syed Yakoob v. K.S. Radhakrishnan and Ors.*** *[1963 SCC Online SC 24],* it was noted that a finding of fact based on no evidence constitutes an error of law correctable by a writ of certiorari. However, the adequacy of evidence and inference drawn from it falls within the tribunal's exclusive jurisdiction and cannot be challenged in writ courts. In ***Ajay Singh v. Khacheru and Ors.*** *(MANU/SC/0008/2025)*, it was held that findings can be set aside if unsupported by evidence or legally perverse. ***Mukand Ltd. v. Mukand Staff and Officers' Association*** *[(2004) 10 SCC 460]* reinforced that findings through evidence appreciation by inferior tribunals cannot be questioned in writ proceedings. ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra*** *[AIR 1957 SC 264]* clarified that a tribunal's factual decisions are challengeable under Article 226 only if completely unsupported by evidence. In ***State of Andhra Pradesh v. S.Sree Rama Rao*** *[AIR 1963 SC 1723]* it is stated that if some evidence supports a conclusion, the High Court should not second-guess that evidence in a writ petition. ***Rattan Enterprises and Ors v. State of Odisha and Ors*** *(MANU/OR/0625/2023)* case emphasized that "no evidence" includes scenarios where the evidence as a whole fails to support the tribunal's finding. ***Management of Madurantakam Coop. Sugar Mills Ltd. v. S.Viswanathan*** *[(2005) 3 SCC 193]* reinforced that writ courts should not delve

into factual disputes unless findings are deemed perverse or lacking legal evidentiary support. The High Court cannot act as an appellate authority over the decisions of the Tribunal unless the findings are patently perverse. Absent such conditions, judicial restraint remains the appropriate course.

16. Though the petitioners in both writ petitions were directed to explore the possibilities of an amicable settlement in the facts of the case, such efforts also failed. In view of the findings rendered above, I am not in a position to hold that Ext.P8 order passed by the Tribunal warrants any interference by this Court.

Accordingly, WP(C) No.24620/2018 filed by the Co-operative Bank is dismissed, and WP(C) No.26004/2018 is allowed. The respondents are directed to comply with the order of the Kerala Co-operative Tribunal in Appeal No. 84/2017 dated 26.6.2018 without any further delay.

Sd/-

MOHAMMED NIAS C. P.,

JUDGE

MMG

APPENDIX OF WP(C).NO.24620/2018

PETITIONERS' EXHIBITS:

EXHIBIT P1.	**COPY OF THE PLAINT IN ARC 71 OF 2006 ON THE FILES OF THE KERALA STATE CO-OPERATIVE ARBITRATION COURT.**
EXHIBIT P1[A].	**COPY OF THE COUNTER STATEMENT FILED BY THE APPELLANTS IN ARC NO. 71/2006.**
EXHIBIT P2.	**COPY OF THE AWARD DATED 5.7.2012.**
EXHIBIT P3.	**COPY OF THE MEMORANDUM OF APPEAL IN AP NO.16/2013 OF THE CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.**
EXHIBIT P4.	**COPY OF THE JUDGMENT DATED 15.1.2014 IN APPEAL NO. 16/2013.**
EXHIBIT P5.	**COPY OF THE AFFIDAVIT AND PETITION DATED 12.01.2016 IN A.R.C 71 OF 2016 OF THE ARBITRATION COURT, THIRUVANANTHAPURAM.**
EXHIBIT P6.	**COPY OF THE ORDER DATED 16.06.2016 IN ARC 71/2006.**
EXHIBIT P7.	**COPY OF THE APPEAL, FILED BY THE FIRST RESPONDENT BEFORE THE TRIBUNAL.**
EXHIBIT P8.	**COPY OF THE JUDGMENT DATED 26.6.2018 IN A.P 84 OF 2017 OF THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.**

RESPONDENTS' EXHIBIT:

EXHIBIT R1(A)	**THE TRUE COPIES OF NOTICE OF HEARING DATED 7.6.2004, ALONG WITH THE ENVELOPE AND THE LETTER DATED 19.7.2004**
EXHIBIT R1(B)	**THE TRUE COPY OF THE JUDGMENT OF THE TRIBUNAL IN APPEAL NO.16/2013 DATED 15.01.2014**

EXHIBIT R1(C)	**THE TRUE COPY OF THE INTERLOCUTORY APPLICATION DATED 28.1.2014**
EXHIBIT R1(D)	**THE TRUE COPY OF THE APPLICATION DATED 17.3.2015**
EXHIBIT R1(E)	**THE TRUE COPY OF THE APPLICATION DATED 12.1.2016 FILED BY 1ST RESPONDENT UNDER SECTION 70(2) OF THE KERALA CO-OPERATIVE SOCITIES ACT AND SECTIONS 32, 65A AND 65B OF THE EVIDENCE ACT**
EXHIBIT R1(F)	**THE TRUE COPY OF THE APPLICATION DATED 29.1.2015**
EXHIBIT R1(G)	**THE TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE BANK DATED 25.2.2015**
EXHIBIT R1(H)	**THE TRUE COPY OF THE COUNTER STATEMENT**
EXHIBIT R1(I)	**THE TRUE COPY OF THE SAID RECEIPT**
EXHIBIT R1(J)	**TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT NO.E5971423**

APPENDIX OF WP(C).NO.26004/2018

PETITIONER'S EXHIBITS:

EXHIBIT P1:	**TRUE COPY OF LETTER DATED 19.7.2004 TO THE PETITIONER BY R4.**
EXHIBIT P2:	**TRUE COPY OF JUDGMENT DATED 10.10.06 IN WPC NO.22571/04.**
EXHIBIT P3:	**TRUE COPY OF ORDER DATED 16.6.16 IN ARC NO.71/06.**
EXHIBIT P4:	**TRUE COPY OF JUDGMENT DATED 26.6.18 IN APPEAL NO.84/17.**
EXHIBIT P5:	**TRUE COPY OF PETITION DATED 13.7.2018 SENT TO R1.**
EXHIBIT P6:	**TRUE COPY OF PETITION DATED 18.7.2018 SENT TO R3.**
EXHIBIT P7:	**TRUE COPY OF PETITION DATED 13.7.2018 SENT TO R4.**