(2009) 06 KL CK 0027

In the High Court Of Kerala

Case No : W.A. No. 1753 of 2006

Accountant General APPELLANT

Vs

James RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Kerala General Provident Fund Rules, 1963 — Rule 2
Kerala Service Rules, 1958 — Rule 11(1), 12(17), 12(23), 12(32)

Citation : (2009) 3 ILR (Ker) 259 : (2009) 3 KLT 164

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : R. Bindu, Government Pleader, for the Appellant; K.A. Abraham, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The point that arises for decision in this appeal is, whether Dearness Allowance could be reckoned as part of "emoluments", as defined in Rule 2(b) of the General Provident Fund (Kerala) Rules. The respondents in the Writ Petition are the appellants. Aggrieved by the direction of the learned Single Judge to pay interest for the amount deposited by the writ petitioner in his Provident Fund account which exceeded the maximum of his pay, this Writ Appeal is filed. The brief facts of the case are the following:

2. The respondent/writ petitioner was the Headmaster of a Government Lower Primary School. He retired from service on 31.5.2000. When his Provident Fund account was closed, he was paid Rs. 2,24,595/-. According to the computation of the respondent, he was entitled to get Rs. 2,53,764/-. There was deficit of an amount of Rs. 29,169/- in the amount released to him from the Provident Fund account. The appellants rejected the claim of the respondent stating that he has deposited monthly an amount which was in excess of the maximum of his pay and that he was not entitled to get interest on the said excess amount. In view of the above stand of the respondents, the Writ Petition was filed. The learned Single Judge, relying on the definition of emoluments in Rule 2(b) of the General

Provident Fund (Kerala) Rules (hereinafter referred to as "the Rules"), allowed the Writ Petition and directed the appellants to pay interest for the alleged excess amount deposited by the respondent. Feeling aggrieved by the said judgment, the appellants have preferred this appeal.

3. According to the learned Government Pleader, the learned Single Judge misunderstood Dearness Pay for Dearness Allowance and held that while computing the amount, Dearness Allowance also should be taken into account. If Dearness Allowance is excluded from emoluments, the amount deposited by the respondent is in excess of the ceiling limit. Relying on Annexure Al memorandum of the Central Government, the learned Government Pleader pointed out that Dearness Pay is Dearness Allowance converted as part of pay and the same cannot be treated as Dearness Allowance. So, he prayed for allowing the appeal.

4. Before referring to the submissions of the learned Government Pleader, we will refer to the relevant definitions contained in the Rules as also in the Kerala Service Rules. Rule 2(b) of the Rules reads as follows:

Except where otherwise expressly provided "emoluments" means pay, leave salary or subsistence allowance as defined in the Kerala Service Rules or other Service Rules applicable to the officer concerned and includes dearness pay appropriate to pay, leave salary or subsistence allowance if admissible and any remuneration of the nature of pay received in respect of foreign service.

Rule 11 of the Rules deals with the maximum amount that can be deposited in the Provident Fund account. The said Rule reads as follows:

11(1). The amount of subscription shall be fixed by the subscriber himself, subject to the following conditions:

(a) It shall be expressed in whole rupees.

(b) It may be any sum, so expressed, not less than 6 per cent of his emoluments and not more than his emoluments.

The word "emoluments" mentioned in the above quoted rule is to be understood in the light of the definition contained in Rule 2(b) of the Rules which we have already quoted. As per the definition of emoluments, it means pay, leave salary or subsistence allowance as defined in the Kerala Service Rules and includes Dearness Pay appropriate to pay, leave salary or subsistence allowance. Pay is defined in Rule 12(23) of Chap. II of Part I of the Kerala Service Rules. It reads as follows:

Pay.-Means the amount drawn monthly by an officer as:

(i) the pay, other than Special Pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre, and

(ii) personal pay and special pay, and

(iii) any other emoluments which may be specially classed as pay by the Government." Leave salary is defined in Rule 12(17), which reads as follows:

Leave Salary.-- Means the monthly amount paid by Government to an officer on leave.

Subsistence allowance is defined in Rule 12(32) of Chapter II of Part I of the Kerala Service Rules, which reads as follows:

Subsistence Allowance.- Means a monthly grant made to an officer who is not in receipt of pay or leave salary.

5. Going by the above definitions and the meaning of the word "emoluments" used in Rule 11(1) of the Rules, as defined in Rule 2(b) thereof, it is clear that Dearness Allowance cannot be reckoned for the purpose of emoluments. Now, it is useful to refer to Annexure A1 also which would explain the concept of Dearness Pay. When a portion of Dearness Allowance is converted as part of basic pay, such portion of the Dearness Allowance is called Dearness Pay, as per Annexure Al. It appears that the distinction between Dearness Pay and Dearness Allowance was not brought to the notice of the learned Single Judge. So, the finding of the learned Single Judge that Dearness Allowance can also be reckoned for the purpose of computing the maximum amount which could be deposited in the Provident Fund account is unsustainable. It is declared so. We are making this declaration so that the decision of the learned Single Judge may not cause difficulty to the Government in other cases. But, in this case, we are inclined to sustain the direction issued to the Government to pay interest to the respondent for the excess amount deposited by him in the Provident Fund Account for the reason that the Government did not alert him of the fact that he will not get interest for the excess amount deposited by him. Had he been told so, he would have diverted the excess amount and deposited it elsewhere. So, we are sustaining the direction of the leaned Single Judge to pay interest for the excess amount deposited by the respondent in his Provident Fund account.

The Writ Appeal is disposed of as above.

