
(2016) 09 KL CK 0025
In the High Court Of Kerala
Case No : OP(KAT).No. 95 of 2016

Attingal Municipality

APPELLANT

Vs

K. Baby Jyothilayam

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2017) 1 ILRKerala 205 : (2017) 2 KerLJ 201 : (2017) 1 KLT 970

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Dama Seshadri Naidu, JJ.

Bench : Division Bench

Advocate : Sri.Ayyappan Sankar, Sri. Jayan John and Smt. S. Hridya, Advocates, for the Petitioner; Sri.K.P. Rajeevan, Advocate, and Sri. Bijoy Chandran, Sr. Government Pleader, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Dama Seshadri Naidu, J. - The petitioner is the respondent in O.A. (EKM) No.1301 of 2015 and C.P. No. 67 of 2016 pending before the Kerala Administrative Tribunal, Thiruvananthapuram.

2. To begin with, the first respondent, a retired employee (referred to as "employee"), filed the OA questioning the petitioner's inaction in paying to him the pensionary benefits. The learned Tribunal through an interim order in Ext.P2 directed the petitioner, the employer, to pay the admitted pensionary benefits within six weeks.

3. When the employer-Municipality did not comply with the Ext.P2 interim direction, the employee filed C.P. No. 67 of 2016 contending that the employer has wilfully violated the interim order. Later, the Tribunal, as part of its adjudicatory process, seems to have ordered one of the employer's officials to appear. At that juncture, the employer filed this Original Petition.

4. Now, before us, the employer's Standing Counsel has, first, submitted that the sole reason for the delay is the financial constraints faced by the Municipality.

He has, second, submitted that owing to earlier judicial directives by this Court and also the learned Ombudsman, the Municipality has been paying the pensionary benefits on a priority basis, especially going by the seniority of the retired personnel. He has, finally, submitted that funds are due from the Government, and the Municipality has been trying to have them released expeditiously.

5. The learned Government Pleader, for his part, has submitted that the Government has been trying to see that whatever funds legitimately due to the Municipality are released early. He has, in that context, submitted that the second respondent has already written to the Government to release substantial amounts, and it will be done in due course.

6. At this juncture, the learned counsel for the employee has submitted that the issue of interest to be paid to the employee on the delayed disbursement of the terminal benefits assumes importance. And that this Court may adjudicate on that aspect as well.

7. Heard the learned Standing Counsel for the employer-Municipality, the learned Government Pleader, and the learned counsel for the employee, apart from perusing the record.

8. It is to be borne in mind that this original petition is against the interim order, the non-compliance of which is also the subject of separate contempt proceedings before the Tribunal. First, addressing the issue of interest raised by the employee, we clarify that the employee is free to raise all issues, including that of interest, before the Tribunal at the relevant time; that is, when the Tribunal considers the matter on merits.

9. As to the compliance with the Tribunal's interim direction, we are satisfied with the assurance given by the learned Standing Counsel: The Municipality, treating it as a special case given what is said to be the employee's pitiable condition, will disburse an amount of `2,00,000/- on a priority basis to him by 30.09.2016. Concerning the rest of the amounts, it shall be based on the order to be rendered by the Tribunal and also the method of seniority, if any, being followed by the Municipality.

10. We do hope that the Government will take all necessary steps to ensure that it releases the funds due to the Municipality without further delay.

11. Though we are inclined to close the Original Petition, essentially based on the concessions made by the learned Standing Counsel and the learned Government Pleader, before parting, it is meet to mention about the form of the Original Petition and the procedure adopted by the petitioner. Going by the pleadings, we gather that the OP seems to have been animated by the Tribunal's summoning the petitioner's official. Further, there is conflation or multifariousness of causes of action. Before the Tribunal, the Original Application and the Contempt Case are two different, distinct proceedings. Before us, the petitioner has sought these

reliefs: (a) A direction to the learned Tribunal to dispose of the OA; (b) a further direction to the Tribunal to keep in abeyance (i) the ex parte interim direction and (ii) all further proceedings in Ext.P9 contempt petition. The interim relief sought by the petitioner, too, reflects both these (i) and (ii) prayers together.

12. Well settled is the principle of law that as against an ex parte interim order, a party, however aggrieved, cannot rush to an appellate or a revisional forum except after contesting the matter and inviting an order on merits. In other words, the aggrieved person should place its defence on record and seek the vacation of the ex parte order. Instead, the petitioner has rushed to this Court without exhausting any of the intra-Tribunal procedures. The compelling cause seems to be the contempt, and the direction for appearance, at that. We are afraid in this OP simultaneous adjudication of two independent proceedings-Original Application and Contempt Case-is impermissible.

13. Regardless, we clarify that there does not seem anything amiss in the learned Tribunal's trying to ensure that judicial directives are enforced with utmost promptitude. We further clarify that the petitioner may represent before the learned Tribunal the need to close the contempt case in the light of the directions given above.

With the above observations, we dispose of this Original Petition. No order on costs.