

(1996) 11 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 17132 of 1996

Chandrasekhara Pillai, K.P.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Constitution of India, 1950 — Article 21
Kerala Service Rules, 1958 — Rule 2, 3C

Citation : (1996) 2 KLJ 778

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : Philip M. Varghese, for the Appellant; Alexander Thomas, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—The Petitioner retired on 1st November 1992 as Clerk in an aided school. While in service the Petitioner claimed an amount of Rs. 40,135 in lieu of earned leave salary and the above amount was paid to the Petitioner immediately after his retirement. As per Exhibit P-1 letter the second Respondent informed the Headmaster of the school that the Petitioner was allowed to continue in the School as a protected Clerk against a protected post for the period from 1972-73 to 30th April 1986 and therefore he was not eligible for any earned leave for the above period. Therefore, the Headmaster of the School was requested to effect refund of the amounts mentioned in Exhibit P-1 from the Petitioner. Thereafter Exhibits P-2 dated 13th March 1996 and P-3 dated 22nd May 1996 notices were issued to the Petitioner requesting to show cause why the pension in full may not be withdrawn permanently. The Petitioner challenges Exhibits P-2 and P-3 in this original petition.

2. According to the Petitioner, there is no provision in the K.S.R. to pass an order like Exhibits P-2 and P-3. Having sanctioned and paid the earned leave salary the Respondents, after several years cannot turn round and state that what was

sanctioned was irregular. The Petitioner has also a case that he was really entitled to get the earned leave salary taking into consideration the service which he rendered as a protected hand. Learned Counsel for the Petitioner relied on Rule 3C of Part-III K.S.R. which states as follows:

3C. Notwithstanding anything contained in these rules recovery of excess payments made to an officer by mistake within a period of four years before his retirement and which are detected within a period of four years after retirement may be made from his pension and other amounts due to him after retirement subject to the condition that such deduction if made from his pension shall be effected only in monthly installments in whole rupees and that the amount of each installment shall not exceed 10 per cent of the monthly pension admissible to him.

Therefore it is argued that for recovery of excess payments made to an officer by mistake the deduction can be effected only in monthly installments not exceeding 10 per cent of the monthly pension.

3. Learned Government Pleader submitted that Rule 2 of Part-III K.S.R. enables the Government to withdraw or withhold a pension either permanently or for a specified period. Therefore, according to the learned Government Pleader, Exhibits P-2 and P-3 are perfectly justified and passed with jurisdiction.

4. Rule 2(a) which has been relied on by the Government Pleader states as follows:

2(a) Future good conduct shall be an implied condition of every grant of a pension. - The Government may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Therefore, it is obvious that in order to attract Rule 2(a) the pensioner must be convicted of a serious crime or must be found guilty of grave misconduct. In this case there is no conviction for the Petitioner. The only other condition is whether the Petitioner was found guilty of grave misconduct. Neither Exhibit P-2 nor Exhibit P-3 shows any statement regarding the finding of guilty of grave misconduct as far as the Petitioner is concerned. Moreover, I do not find any justification to say that a person who has drawn excess amount by way of surrender of earned leave is guilty of grave misconduct. In the absence of any allegation to that effect much less a finding I do not think the Government can invoke Rule 2(a) in order to justify the stand taken by them.

5. The statement filed on behalf of the third Respondent mentions about the execution of a bond by the Petitioner in which he has agreed to pay the excess amount by way of Rs. 750 monthly installments. The execution of the above bond agreeing to pay the excess amount on a monthly instalment of Rs. 750 is directly against Rule 3C of Part-III K.S.R. where in the instalment shall not exceed 10 per cent of the monthly pension. It need not be repeated that by

withdrawing or deducting an amount of Rs. 750 in monthly installments from the Petitioner's pension, the payment of pension will be reduced to a pittance which will definitely be opposed to the rights of the Petitioner to receive pension which has been held to be not a bounty but a right and also property at the hands of the Petitioner. A payment of pittance as pension will also be violative of Article 21 of the Constitution of India wherein a right to live has been guaranteed.

6. Under these circumstances, I direct the Respondents to effect recovery of the excess amount received by the Petitioner as mentioned in Exhibits P-1 to P-3 strictly following Rule 3C of Part-III K.S.R. Such an order must be passed by the Government immediately, at any rate, within one month from the date of receipt of a copy of this judgment. The Petitioner is also entitled to get the arrears of pension from May 1996 onwards after deducting 10 per cent of the monthly pension as indicated above.

With this direction and observation the original petition is allowed.