
(1997) 07 KL CK 0037

In the High Court Of Kerala

Case No : O.P. No. 10234 of 1991-R

Chandrasekharan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Central Treasury Rules — Rule 353, 354

Citation : (1997) 07 KL CK 0037

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : M.P. Askok Kumar, for the Appellant; P.K. Santhamma, Government Pleader for 1st Respondent and C.C. Thomas, Addl. Central Govt. Stg. Counsel for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—The Petitioners in both the writ petitions were personnels in the Defence Service of the Union. On retirement from the Defence Service they got themselves re-employed; the Petitioner in O.P. No. 8242 of 1991 in the service of State Bank of Travancore and the Petitioner in O.P. No. 10234 of 1991 in the service of Police Department of the Kerala State. The question that has been raised in these writ petitions in substance is the validity or otherwise of the Office Memorandum dated 29th December 1976 (Ext. P-3 in O.P. No. 8242 of 1991) issued by the Government of India, Ministry of finance. The Petitioners claim retirement benefits by virtue of this order.

2. Under Rules 353 and 354 of the Central Treasury Rules, payment of Central Civil Pension is subject to submission of a declaration in the prescribed form to the effect that the pensioner is not in receipt of any remuneration for serving in any capacity in an establishment of the Central Government or a State Government or a Government Undertaking or Corporation or an autonomous body or form a local fund during the period for which the amount of pension is claimed. In other words, on re-employment the pensioner is required to furnish

necessary particulars of re-employment to the Pension Distributing Officer. However, the Government of India issued certain directions as per the Office Memorandum dated 25th December 1976 simplifying the conditions attached to disbursement of pension on re-employment. By the said order it has been decided in supersession of all earlier communications issued by the Department of Expenditure of the Ministry of Finance that a pensioner on re-employment may continue to draw the amount of relief along with the basic pension but the amount of relief so paid would be deducted by the employer from the pensioner's emoluments paid on re-employment. For this purpose, the total emoluments (including Dearness Allowance etc.) will be first determined by the employer and from the net emoluments becoming payable to the pensioner, the relief admissible on the pension will be deducted.

3. It appears the above Office Memorandum has been challenged in large number of writ petitions. In this context it was submitted that this court in the judgment in O.P. No. 7775 of 1984 declared that there was no jurisdiction for the Respondents to recover the relief payable on pension from the salary of the Petitioners. However, the Standing Counsel for the Respondents submitted that appeals had been filed before the Supreme Court as against the decision of this Court and also the decisions of various other High Courts. One of the questions came up before the Supreme Court was whether the decision of the Union of India not to allow Dearness Relief (D.R.) on pension to the Ex-servicemen on re-employment in a civil post was valid in law. In fact the same question is involved in the present writ petitions too.

4. This Court in *Narayanan v. Union of India* 1994 (1) KLT 897 observed:

During the period of re-employment of the Petitioners the payment of relief on pension has been completely stopped. This amount is not payable to the pensioner after termination of such employment. The loss is irretrievable. Therefore the stoppage of payment of relief on pension is deprivation of pension.

The Executive Government cannot deprive a pensioner of his property of any kind without specific legal authority *Wazir Chand Vs. The State of Himachal Pradesh*, . In this case there is no legislative sanction for depriving the Petitioners of the relief on pension. Therefore the stoppage of relief on pension by the orders impugned in these petitions is unconstitutional.

Of course, this Court took the view that the Dearness Relief became an integral part of pension and therefore it could not have been discontinued on re-employment. On the other hand the Delhi High Court in Civil Writ No. 1699 of 1992 took the view that Dearness Relief is different from pension. After analysing the different views expressed by the various High Courts the Supreme Court in *Union of India (UOI) and Others Vs. G. Vasudevan Pillay and Others*, observed thus:

...even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get

themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed pensioners it would be permissible in law to deny D.R. on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of D.R., as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed.

Ultimately the Supreme Court held that Ex-servicemen were rightly debarred from Dearness Relief on their pensions after they got themselves re-employed to any civil post under the Government of India.

5. Subsequently, a review petition has been filled before the Supreme Court seeking to review the judgment rendered by it in Union of India (UOI) and Others Vs. G. Vasudevan Pillay and Others, . The Supreme Court again evaluated the earlier judgment and the review petition has been dismissed as per the decision in National Ex-servicemen Co-ordination Committee and Others Vs. Controller General of Defence Accounts and Others, . While rejecting the review petition the Supreme Court observed:

We would, however, desire the Union of India to apply its mind to the question whether Ex-servicemen could be treated differently from others insofar as the matter at hand is concerned, in view of their service conditions said to be not attractive. We would also desire the Central Government to sympathetically consider the question of non-realisation of amount already disbursed to re-employed Ex-servicemen on the aforesaid account.

(Emphasis Supplied)

I do not hesitate to adopt the above observation in the present cases also.

In view of what is said above, the writ petitions are dismissed.