

(1991) 01 KAR CK 0063
In the Karnataka High Court
Case No : W.P. No. 21017 of 1983

D. Krishnamurthy

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 9

Citation : (1991) 1 KarLJ 462

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-Action taken against the petitioner by serving a demand notice for payment of a total sum of Rs. 29,593-31 based on an audit report, after he retired from service as Chief Officer, is questioned in this writ petition.

2. The relevant facts are that the Auditor in his report pointed out certain irregularities attributed to the petitioner when he was in service as a Chief Officer of the Municipality. The audit report is dated 4-1-1983 relating to the years 1973-74, 1978-79 and from 1-4-1978 to 31-1-1979. The petitioner retired from service on 31-1-1979. The irregularities are anterior to the date of his retirement and the audit report is subsequent to the retirement of the petitioner from service. The demand notice is based entirely on the audit report. No enquiry preceding the recovery proceeding was held.

3. In the above circumstances, the question is whether the recovery proceeding against the petitioner is valid in law.

4. Even assuming that the authority serving the demand notice on the petitioner is invested with the power to recover money from the petitioner as demanded under the demand notice, the real question is whether such an action could be taken without holding an enquiry and without giving an opportunity of hearing to the petitioner and without determining the liability on the basis of the report made by the Auditor. In my opinion, the alleged irregularities are misfeasances stated to have been committed by the petitioner based on allegations of facts. Allegations which have not been tried and proved cannot form the basis for fixing

the liability. In short, mere allegation is not proof. The liability can only be determined and fixed after a due enquiry giving an opportunity to the petitioner to defend himself against the allegations after making them known to him. Though it may be a cumbersome method, any other procedure making short shrift of fair administrative procedure may result in mockery of law. In the instant case, the petitioner is confronted with the possibility of loss of his pension and D.C.R.G. benefits. There can be no liability to pay and the right to recover in the absence of an enquiry consistent with the requirements of natural justice. The petitioner has a right to be heard and this right cannot be short circuited merely because there is a report of the Auditor alleging irregularities on the part of the petitioner. The petitioner had no occasion to appear and an opportunity to represent either before the Auditor or before the authority seeking to enforce recovery proceeding against the petitioner.

5. In *D.V. Kapoor v Union of India*, AIR 1990 SC 1923, the Supreme Court took the view that the right to gratuity is a statutory right and there is no power reserved to withhold the same as a measure of punishment. On page 1925. the Court relied on a passage from the decision in *D.S. Nakara v Union of India*, (1983)2 SCR 165: AIR 1983 SC 130 in regard to pension as follows:

"At page 190-D (of SCR): (at p. 140, para 36 of AIR) it is stated that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is mostly needed and least available, namely in the fall of life. Therefore, when a Government employee is sought to be deprived of his pensionary right when he had earned while rendering services under the State, such a deprivation must be in accordance with law. Rule 9(1) of the rules provides thus:

"The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem."

Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the Government,

if in any, proceeding in the departmental enquiry or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement."

6. Thus, could be seen the sanctity of even the pension which is payable to a retired Government servant. In the instant case, there is no judicial enquiry or a departmental enquiry finding the petitioner guilty of negligence or a conduct resulting in loss of money to the Government or to the local body.

7. In the light of the above discussion, I am of the opinion that the action taken against the petitioner is contrary to law.

8. For the above reasons, the writ petition is allowed and the respondents are directed to release full pension and D.C.R.G. with effect from 1-2-1979 to the petitioner within ninety days from the date of receipt of a copy of this order. However, it is open to the respondents to take such action on merits and in accordance with law against the petitioner for any proved violation.