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(2007) 06 KL CK 0079

In the High Court Of Kerala

Case No : O.P. No. 18536 of 2001

Director, Economics and Statistics and Another — APPELLANT

Vs

Subramania Pillai and Others — RESPONDENT

Date of Decision : 14-06-2007

Acts Referred:
Kerala Lok Ayukta Act, 1999 — Section 8(1)

Citation : (2007) 06 KL CK 0079

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Smitha Sukumaran, for the Appellant; K.A. Abraham and S.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—This writ petition, by an officer in the Government in his official capacity, is filed challenging the decision of the Kerala Lok Ayukta.

2. The first Respondent, a Government servant superannuated. He complained to the Lok Ayukta that his pensionary benefits were not released in time and the delay was culpable and therefore he is entitled to a claim, in connection with his retirement, compensation or interest, as the case may be. The Lok Ayukta, after elaborately considering all the materials placed before it and making necessary enquiry, came to the conclusion, on facts, that it was a case where the first Respondent herein was entitled to an order for payment of an amount quantified as interest on the DCRG amount for the delay, which according to the Lok Ayukta, was answerable.

3. In so far as the findings of facts are concerned, the Lok Ayukta adverted to and considered the materials on record. The quality of office of the Lok Ayukta and the nature of authority conferred do not not call for a judicial review at the hands of the writ court, at any rate, as if it is sitting in appeal, on the findings of

facts by the Lok Ayukta. May be that, in exceptionally exceptional cases of total perversity, this Court may step in, but, I find no such, on facts in this case.

4. Learned Government Pleader raised a question of law that claim for interest on delayed payment of DCRG is not a claim on which the Lok Ayukta could adjudicate upon. In support of this contention, it was argued that the claim made by the first Respondent before the Lok Ayukta is not one which arises on retirement and is therefore not among those items excluded from the prohibition emanating out of Clause (d) of the Second Schedule read with Section 8(1) of the Kerala Lok Ayukta Act, hereinafter referred to as the "Act", for short.

5. Section 8(1) of the Act provides that the Lok Ayukta shall not conduct any investigation under the Act in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule. Clause (d) in the Second Schedule reads as follows:

(d) Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service.

6. Therefore, the Lok Ayukta cannot take any action in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants. But, that prohibition does not extend to take any action in respect of actions relating to claim for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service. Therefore, the Lok Ayukta has jurisdiction to take action in relation to a grievance in respect of any action relating to claims for pension, gratuity, provident fund as also any claim which arise on retirement, removal or termination of service. The entitlement to pension, gratuity and PF arises on retirement. The delay in paying pension, gratuity or PF as the case may be, if found to be objectionable or culpable, would give rise to a claim for compensation for the delay which would be determinable applying the yardsticks of a rate of interest or otherwise. That is the concept of awarding interest for delayed payment of retiral benefits. Therefore, a claim for interest on account of delay in disbursing the retiral benefits is a claim which arise out of retirement. Similarly, the entitlement to pension, gratuity and PF, if not satisfied within the time fixed by the Rules, would attract the legal liability of the Government as the employer to compensate for the delay. As a necessary corollary, that will give rise to an actionable claim in favour of the employee, who suffers out of the delay. This is the jurisdictional equation which works in the later part of Clause (d) of the Second Schedule, thereby generating appropriate cause of action in favour of the employee, like the first Respondent to agitate a claim by way of compensation or interest on account of delayed payment of retiral benefits. Such a claim would therefore necessarily fall within the sweep of the second limb of Clause (d) of the Second Schedule. Therefore, the Lok Ayukta has the authority

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to decide such issue.

7. Hence, I find no legal infirmity or jurisdictional error in the impugned order.

Writ petition fails. It is hence dismissed. But there will be no order as to cost.

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