
(2004) 08 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 27086 etc. of 2002

Gopinatha Pillai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Kerala Service Rules, 1958 — Rule 100

Citation : (2005) 1 ILR (Ker) 18 : (2004) 3 KLT 290

Hon'ble Judges : K.S. Radhakrishnan, J;J.M. James, J

Bench : Division Bench

Advocate : K. Ramachandran and T. Krishnan Unni, for the Appellant; Lal George, Spl. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in this batch of cases is whether re-employed pensioner who is regulated by the provisions of Rule 100 Part III of the Kerala Service Rules is entitled to draw pension and dearness relief thereon alongwith re-employment pay?

2. A Division Bench of this Court in State of Kerala v. Govindankutty 1999 (2) KLT 746, held that a District Judge re-employed after retirement as President of the Consumer Disputes Redressal Forum would be governed by the Consumer Protection Act and the Rules and not by Part III of the Kerala Service Rules.

3. The Apex Court in M.S. Chawla and Others Vs. State of Punjab and Another, , had occasion to consider similar issue and held that a retired District Judge re-appointed as President of the Consumer Disputes Redressal Forum would be governed by the relevant provisions of the Punjab Civil Service Rules and consequently upheld the order by which pension was deducted from the salary of the President of the Consumer Disputes Redressal Forum. Going by the decision of the Apex Court, Justice Balakrishnan Nair felt that the decision in Govindankutty's case, supra requires reconsideration. Learned Judge therefore

referred the matter to a Division Bench for an authoritative pronouncement on the following issues:--

(1) Whether the decisions of this Court in *Govindankutty v. State of Kerala* 1996 (2) KLT 1007, and *State of Kerala v. Govindankutty* 1999 (2) KLT 746, require reconsideration in the light of the decision of the Apex Court in *M.S. Chawla and Others Vs. State of Punjab and Another*,

(2) Whether the petitioner is governed by the provisions of the Kerala Service Rules.

4. Petitioner in O.P.No. 27086 of 2000 was a District Judge coming under the Kerala State Higher Judicial Service Rules. While he was serving as M.A.C.T., he was appointed as President of the Consumer Disputes Redressal Forum at Ernakulam as per notification dated 24.5.1997. Petitioner retired on superannuation as District Judge on 31.5.1998 from the judicial service. Though he retired as District Judge on 31.5.1998 from the judicial service he continued to hold the post of President of the Forum on re-employment.

5. 10(2) of the Consumer Protection Act, 1986 enables such persons to continue in the post of President of the Forum for a term of five years or upto the age of sixty five years, whichever is earlier. Government then examined the matter and allowed persons like the petitioner to continue in the post of President of the Forum on re-employment basis. Communication to that effect was sent by the Secretary to Government to the Accountant General, Kerala by proceedings dated 9.12.1998. Before the petitioner retired as District Judge on 31.5.1998, Government had issued G.O.(P) No. 1088/98/Fin. dated 23.3.1998 by which re-employed persons were allowed to enjoy the pensionary benefits. The Government felt that there is no justification in denying or withholding or reducing or adjusting pensionary benefits or dearness relief on pension from the pay and allowance of re-employed pensioners since pension is a right earned for past services. Government also ordered that necessary amendments to Rule 100, Part III of the Kerala Service Rules would be issued. Relevant portion of the order reads as follows:

(i) Re-employed pensioners will be given pay and all other allowances attached to the re-employed post. They will also be eligible to get all pensionary benefits including D.R. on pension due to them in full.

(ii) The re-employed pensioners will be allowed the minimum of the scale of pay of the post of retirement or equivalent post or re-employed post (as revised from time to time) or the salary they had drawn at the time of retirement whichever is higher. If the pay drawn at the time of retirement is not a stage in the relevant scale or pay, it will be fixed at the stage immediately below in that scale, the difference being treated as personal pay to be absorbed in future increments. All variants of pay as specified in para 3(ii) of G.O. read as fourth paper above will be counted for fixation of re-employment salary.

(iii) The re-employed pensioners will be eligible to get D.A., H.R.A., C.C.A. etc. and periodic increments like other employees.

This order will have effect from 1.1.1996.

By virtue of the above mentioned order, the Accountant General permitted the petitioner to draw salary as well as his pension as District Judge from 1.6.1998 onwards.

6. The Government later received representations from various service Organizations complaining that by virtue of the above mentioned order, re-employed persons are getting double the benefits compared to service employees for discharging the same duties and therefore wanted to rectify that anomaly. The Government then examined the matter and decided to restore the pre 1.1.1996 position of the statutory Rule 100 Part III K.S.R. by cancelling the Government Order dated 23.3.1998 and 16.1.1999 as per G.O.(P) 946/2000/Fin. dated 7.6.2000. Government in pursuance of the above order, restored the pre 1.1.1996 position of statutory Rule 100 Part III K.S.R. Petitioner is aggrieved by the order passed by the Government on 7.6.2000 and the "steps taken for recovery of the amounts which have already been paid to him.

7. Counsel appearing for the petitioner in O.P.No. 27086 of 2000 Sri. K. Ramachandran submitted that the petitioner was appointed as President of the Forum before his retirement as District Judge on 31.10.1998. Government Order which governed him as President of the Forum at that time was the order dated 23.3.1998 and he continued to be governed by that order even after retirement. Consequently he is entitled to get pension and the pay and allowances attached to the post of President of the Consumer Disputes Redressal Forum. Counsel submitted that the principles laid down by the Division Bench of this Court in Govindankutty's case, supra 1999 (2) KLT 746, is squarely applicable to the petitioner. In any view of the matter, since the amount has already been paid to the petitioner the same shall not be recovered.

8. Petitioners in O.P.No. 33373 of 2000 and connected matters have also raised almost identical contentions. Petitioner in O.P.No. 33373 of 2000 was functioning as Vigilance Tribunal and he retired from Service on 27.11.1996 and was appointed as President of the Consumer Disputes Redressal Forum on 20.1.1997. Petitioners in O.P.No. 33847 of 2001 had retired as Deputy Director and Joint Director respectively from Animal Husbandry Department and were later re-employed as Honorary Veterinary Consultants. Petitioners in rest of the Original Petitions were also employed after retirement from the Central Government Services as Assistant Youth Welfare Officers in various Block Development Offices and they also claimed the benefit of the Government Order dated 23.3.1998.

9. Before we examine the various grievances raised in these cases, we may examine the question of law raised for determination. The provision dealing with re-employment of pensioners is dealt with in Chapter VII of Part III of the Kerala Service Rules. Reference may be made to Rule 92 of the Kerala Service Rules,

which reads as follows:

92. No person discharged on pension or gratuity shall be re-employed whether temporarily or permanently without the sanction of Government. When a person who was formerly in the employment of the Government of India or of any other State Government obtains re-employment, whether temporarily or permanently, in Government service or in the service of a Local Fund, it shall be incumbent on him to declare the amount of any gratuity, bonus or pension granted to him in respect of the previous employment. The order of re-employment shall specifically state whether any deduction is to be made from pension or salary as required by the rules of this Chapter and a copy of the order should be communicated to the Audit Office.

The attention of every employee who is re-employed should be specifically called to the provisions of this chapter by the authority re-employing him, and by the Audit Officer whenever he becomes aware of such an appointment; but the failure of such authority to do this will not be admitted as a ground for condoning any breach of the regulations contained in this Chapter,

The above mentioned rule stipulates that the order of re-employment shall specifically state whether any deduction is to be made from pension or salary as required by the rules of Chapter VI and a copy of the order should be communicated to the audit office. Further, rule also stipulates that attention of every employee who is re-employed should be specifically called to the provisions of the said Chapter by the authority re-employing him and by the audit office whenever he becomes aware of such an appointment; but the failure of such authority to do so will not be admitted as a ground for condoning any breach of the regulations contained in the said Chapter.

Rule 100 of Part III K.S.R. deals with salary of re-employment pensioners, which is extracted below for easy reference.

100. The pay of re-employed pensioner will be fixed at an amount equal to the difference between the pay drawn by him at the time of his retirement and pension and pension equivalent of other forms of retirement benefits admissible to him, limited however, to the minimum of the scale of pay of the post of re-employment, provided that the pay plus pension and pension equivalent of other forms of retirement benefits shall not exceed Rs. 3,500. He will also be allowed to draw the full pension in addition to the pay so fixed but will not be given temporary or adhoc increase in pension. He will get the basic pension besides the re-employment pay fixed under the rule plus full Dearness Allowance on the re-employment pay. No increment will be earned during the period of re-employment, except in the case of military pensioners re-employed in civil posts.

Rule 1 (a) of Chapter I of Part III K.S.R. states that pensions of all employees to whom the Rules apply are regulated by the provisions in the general rules. Above mentioned rules would indicate that the authority competent to fix pay and allowances of the post to which pensioner is re-employed has to determine

whether pension shall be claimed wholly or partly. Further pay of a re-employed pensioner will be fixed at an amount equal to the difference between the pay drawn by him at the time of his retirement and the pension and pension equivalent of other forms of retirement benefits admissible to him, limited however, to the minimum of the scale of pay of the post of re-employment provided that the pay plus pension and pension equivalent of other forms of retirement benefits shall not exceed Rs. 3,500/-:

10. The above mentioned provisions would have applied to all the Writ Petitioners but for the Government order dated 23.3.1998. Petitioner in O.P.No. 27086 of 2000 though was appointed under S, 10 of the Consumer Protection Act, 1986 is a pensioner governed by the Kerala Service Rules. The Division Bench in Govindankutty's case, supra 1999 (2) KLT 746, held that since Consumer Protection Act is a Central enactment in view of Rule 9 of the Consumer Protection Rules, general rules relating to re-employment contained in Rule 100 of Part III K.S.R. would not have overriding power vis-a-vis Consumer Protection Act and the Rules. In our view, this reasoning cannot be sustained. However, we need not labour much on this point since that issue has been directly considered by the Apex Court in M.S. Chawla and Others Vs. State of Punjab and Another, , while dealing with the provisions of the Consumer Protection Act vis-a-vis Punjab Civil Service Rules. The Court, held as follow;-:

"Neither in the Act nor in the Rules framed thereunder, has there been any indication as to whether on being appointed as President of the District Consumer Forum, after superannuation as a District Judge," the pension receivable is to be deducted. The pension of such superannuated District Judges is governed by the Punjab Civil Services Rules, Vol .11. Rule 11 (a) of the Punjab Civil Services (Pension) Rules, Vol.II unequivocally stipulates that the Rules in this part regulate the grant of pensions to the Government employees to whom the Rules in Vol.1 of these Rules apply. The Punjab Civil Services Rules have been Issued by the Governor of Punjab under the proviso to Art.309 of the Constitution. The Punjab Civil Services Rules apply to all Government employees except those who are specifically excluded from the operation of the Rules by a general or special order of the competent authority. Appendix (2) to the Rules contains a list of those employees who have been excluded from the operation of the Rules. The expression "State Government employees" has been defined to mean all persons whose conditions of service may be regulated by the Rules made by the Governor of Punjab under proviso to Article 309 of the Constitution, It is undisputed that the pension of a District Judge, on his superannuation is determined in accordance with the Punjab Civil Services Rules, Vol.II Chapter II Vol.II deals with general provisions relating to grant of pensions. Rule 2.1 thereof provides that every pension shall be held to have been granted subject to the conditions contained in Chapter VII of these Rules.....

.....The appointment of a District Judge, after his superannuation as the President of the District Consumer Forum under

the Consumer Protection Act, cannot but be held to be a case of re-employment of a pensioner inasmuch as the District Judge is in respect of a pension for the services rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Service Rules Vol. II. Since Rule 2.1 of Chapter II Vol.II unequivocally states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII and Chapter VII contains Rule 7, 18 as well as Note 3(a)(i), which have been extracted before, the conclusion is irresistible that the appropriate authority will have to decide the pay and allowances, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under the Consumer Protection Act and while fixing the same, the principle underlined in Note 3(a)(i) has to be followed".

The Consumer Protection Rules vis-a-vis Kerala Service Rules is part materia to that of Punjab Civil Services Rules. The Kerala Service Rules have been issued by the Governor of Kerala in exercise of the powers conferred under Article 309 of the Constitution of India. The pension of superannuated persons as we have already indicated earlier would be governed by Part III of the K.S.R. It is not disputed that all the petitioners are pensioners governed by the provisions of Part III of the K.S.R., but the entire case is built upon the Government Order dated 23.3.1998. It is only an executive order. The order itself stated that necessary amendments of Rule 100, Part III of Kerala Service Rules would be issued, but no such amendment was effected. Later Government by another executive order dated 7.6.2000 cancelled its earlier order. The Government also took the view that excess if any paid prior to 7.6.2000 on the basis of its order dated 23.3.1998 would not be recovered. We are of the view that the order dated 7.6,2000 is perfectly in line with the Kerala Service Rules. The Apex Court in M.S. Chawla's case, supra, has already held that the Consumer Protection Act and Rules would not override the provisions of the Punjab Service Rules governing pension. Identical is the situation in these cases. The pension of a District Judge on superannuation is admittedly governed by the provisions of the Kerala Service Rules, just like any other superannuated Government employee. On retirement even if a person is holding the post of President of the Consumer Disputes Redressal Forum it would be treated to be a case of re-appointment of a pensioner and would be governed by the provisions of Rule 100 Part III of the K.S.R. Identical is the situation of the petitioners in other cases also and the same principle would be equally applicable to them. That being the legal position, Govindankutty's case, supra 1999 (2) KLT 764, has not been correctly decided and is no more good law in view of the decision of the Apex Court in M.S. Chawla's case. We therefore hold that pensioners like the petitioners are governed by the Rule 100 of Part III K.S.R. and the provisions of the Consumer Protection Rules have no overriding effect in the matter of pay and allowances.

11. The question now to be decided is whether the amounts which have already been paid could be recovered or not. Government themselves created confusion by issuing Government Order dated 23.3.1998 in the light of which some of the

petitioners have already received the benefit by various Government Orders and stay order granted by this Court. The Government also ordered that the amounts already paid prior to 7.6.2000 would not be recovered. We further make it clear amounts which have already been paid on the basis of the Government Orders and stay granted by this Court be not recovered. The reference is answered accordingly. All the Writ Petitions would stand dismissed with the above directions.