(1992) 08 KL CK 0052

In the High Court Of Kerala

Case No : O.P. No. 9223 of 1991-W

I.J. George — APPELLANT

Vs

Tahsildar and Others — RESPONDENT

Date of Decision : 14-08-1992

Acts Referred:
Kerala Service Rules, 1960 — Rule 3, 3A

Citation : (1992) 08 KL CK 0052

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, for the Appellant; V.K. Mohammed Youseff, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—Petitioner was a Village Officer. He retired from service on superannuation on 30th April 1991. On 29th April 1991, he along with four others, was placed under suspension on the allegation that they demanded Rs. 400 from one Mr. Lineshah, S/o Pushkaran for taking steps to conduct ''pokku varavu''. Petitioner was not given his retirement benefits. So, he has moved this orginal petition inter alia praying for issuance of a writ of mandamus directing Respondents to sanction and disburse provisional pension pending criminal prosecution and also the gratuity amount due to him.

2. Along with the original petition, Petitioner moved C.M.P. 15676/1991. On 21st February 1992, this Court ordered:

Statement dated 16th January, 1992 is silent about the disbursement of the D.C.R.G. due to the Petitioner. By order dated 6th January 1992, Respondents were directed to file statement showing reason why the retirement benefits should not carry interest at the rate of 18 percent per annum. No justifiable reason has been given for withholdihg the amount covered by D.C.R.G. Since the statement is silent about that aspect, I order that the amount of D.C.R.G. will carry interest at 18 percent per annum till date of payment.

On 17th June 1992, this Court directed the District Collector to file a statement regarding the present position of the alleged vigilance enquiry against the Petitioner within ten days. District Collector has not cared to comply with this direction.

3. On behalf of Respondents, statement dated 19th March 1992 has been filed. The contention taken therein is to the following effect: Petitioner was involved in a criminal case resulting from an attempt of collecting illegal gratification. He is being proceeded against under the Prevention of Corruption Act. As provided in Rule 3A of Part III K.S.R. Petitioner is entitled only to provisional pension until the proceedings initiated are finalised. Rule 3A provides that no death-cum-retirement gratuity shall be paid to a delinquent officer until the conclusion of such proceeding and issue of final orders thereon. In this view, Petitioner has not yet become entitled to death-cum-retirement gratuity. There is no exception to Rule 3A. The moment criminal proceeding or departmental proceeding is initiated, the bar under Rule 3A comes into operation. So, Petitioner is not entitled to claim death-cum-retirement gratuity. Nor is he entitled to interest on that amount.

4. Subsequent to the filling of this original petition, provisional pension payable to the Petitioner has been fixed at Rs. 484 per month. Provisional pension, at that rate, is being paid to him regularly. No amount by way of death-cum-retirement gratuity has been disbursed to him. Reason for the non-disbursement of death-cum-retirement gratuity is the pendency of criminal proceedings against the Petitioner. Reliance has been made to Rule 3A of Part III K.S.R. in support of the contention that death-cum-retirement gratuity can be paid only after the conclusion of the criminal proceedings pending against him. So, the short question that arises for consideration is whether Rule 3A is attracted to the facts of this case.

5. Rule 3-A starts by saying:

Where any departmental or judicial proceeding is instituted under Rule 3 or where a departmental proceeding is continued under Clause (a) of the proviso thereto.

This means that Rule 3A can apply only to those departmental or judicial proceedings initiated under Rule 3 of Part III or Clause (a) to the proviso to that rule. For understanding the scope of the departmental or judicial proceedings coming within the purview of Rule 3A, one has therefore to refer to Rule 3. For a proper understanding of Rule 3, I read the same together with Clause (a) of its proviso:

3. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, 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-

(a) such department proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

As per this rule, Government has got the right of withholding or withdrawing a pension and right to order recovery from the pension whole or part of any pecuniary loss caused to the Government. This power of the Government can only be exercised for recovering the pecuniary loss caused to the Government. If the misconduct alleged against the Government servant is not one causing pecuniary loss to Government, no proceeding as contemplated by Rule 3 or Clause (a) of the proviso to that rule can come into operation. In the instant case, Respondents have no contention that misconduct alleged against Petitioner has resulted in pecuniary loss to Government. The misconduct alleged against the Petitioner is attempt to take bribe of Rs. 400 for effecting a pokku varavu. That misconduct may subject him to criminal prosecution. He may be liable for being proceeded under the provisions of Prevention of Corruption Act as well. Those proceedings can by no stretch of imagination be termed as proceedings for recovery of the pecuniary loss caused to Government. The attempt on the part of the Petitioner to take bribe for effecting pokku varavu has not resulted in pecuniary loss to Government. So, proceedings initiated against the Petitioner under the provisions of Prevention of Corruption Act are not proceedings coming within the purview of Rule 3 of Part III K.S.R. In this view of the matter, provisions contained in Rule 3A cannot have any relevance in this case. In Kolappa Pillai v. State of Kerala 1982 KLT 551 a learned Single Judge of this Court observed:

The object of this rule (Rule 3) is not to inflict a punishment upon a retired Government servant, but to recover from him amounts to recompense the Government for the loss caused by him. This recovery may be made either by withholding or withdrawing a pension or by specifically ordering recovery from the pension payable to him. In all those cases recovery is made by resort to denying the Petitioner so much pension as will make up for the loss caused to the Government. This is the object of Rule 3. Although such recovery may cause hardship to the person affected, it is not by way of punishment that that recovery is made, but only to adjust against specific loss found to have been caused by the person. I cannot accept the contention that, even where no loss is found to have been caused, amounts can be withheld, withdrawn or recovered from pension merely because a proceeding initiated under the C.C. and A. Rules is transmuted as a proceeding under the K.S.R. The object of the law in allowing such transmutation is not to inflict a punishment upon the retired Government servant, but to make him pay for the pecuniary loss which he has caused. This rule cannot be of any avail to the Government unless loss has been caused and found to have been caused.

As stated earlier, the case charged by the police against the Petitioner is under the Prevention of Corruption Act. It is not one for recovering any pecuniary loss sustained by the Government. Consequently, that proceeding is not one coming within the ambit of Rule 3 of Part III K.S.R. Therefore, Rule 3A cannot be pressed into service by the Respondents for withholding pension or death-cum-retirement gratuity.

6. In view of my finding that the departmental/judicial proceeding initiated against the Petitioner is not one for recovering pecuniary loss sustained by the Government, Petitioner is entitled to full pension and death-cum-retirement gratuity. Petitioner has been granted provisional pension only. Respondents are directed to pass final order fixing the pension legitimately due to the Petitioner. This order must be passed as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. Depending on that order, the entire arrears of pension should be paid after adjusting the amounts already paid.

7. In State of Kerala and Others Vs. M. Padmanabhan Nair, . Their Lordships emphasised the necessity to disburse the retirement benefits due to a Government employee in the following terms:

The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be overemphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

Respondents have withheld the death-cum-retirement gratuity due to the Petitioner for no justifiable reason. As per the order on C.M.P. 15676/1991, Petitioner is entitled to interest on death-cum-retirement gratuity at the rate of 18 percent per annum. Respondents are, therefore, directed to disburse the entire death-cum-retirement gratuity due to the Petitioner together with interest at the rate of 18 percent per annum from 1st July 1991 till date of payment. After paying interest as stated above, Government should take urgent effective steps to fix the person who was responsible for causing the delay in disbursing the death-cum-retirement gratuity and recover the same from his salary.

Original Petition is ordered, in the above terms.

