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(1985) 08 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 376 of 1985

Kamlesh Saxena and Others APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 14-08-1985

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 3(1), 50, 71, 75, 77
Constitution of India, 1950 — Article 19, 19(1), 21, 300A, 309

Citation : (1985) 14 ILR HP 605

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : P. Saxena, for the Appellant; M.S. Guleria, Assistant A.G., and P.A. Sharma, Central Government Standing Counsel, for the Respondent No. 3, for the Respondent

Judgement

P.D. Desai.C.J.

1. The Petitioners are the widow (Petitioner No. 1) and the sons (Petitioners No. 2 to 5) of one Jagmohan Saxena, who died, while in service of the State Government, on May 27, 1983, after putting in service for a preiod of 28 years, 1 month and 14 days. At the time of his death, the deceased was working as Exhibition Assistant in the Department of Public Relations and was drawing the basic pay of Rs. 1280/-per month.

2. On June 30, 1983, Petitioner No. 1 forwardod the Family Pension/Death-cum-Retirement Gratuity (hereinafter called the "DGRG") papers in respect of the deceased to the Director, Public Relations, Himachal Pradesh, (second Respondent) with a request that the case be finalised at an early date in order that she may not have to undergo any financial hardship (vide: Annexure PA). On October 22, 1983, the second Respondent forwarded the pension case to the Accountant General, Himachal Pradesh (third Respondent) but the case papers were actualy received by the third Respondent on November 19, 1983. The letter forwarding the pension case, Annexure-R-2, contained a request to the effect

that the DCRG amount might be withheld till further instructions but the Family Pension might be released at an early date. On January 28, 1984, vide Annexure-PB, the third Respondent certified and authorised the payment of Family Pension to the first Petitioner at the rate of Rs. 200/- per month upto May 27, 1990 and thereafter at the rate of Rs. 100/- per month. The payment of the DCRG, which was worked out at Rs. 8680/- was, however, withheld in view of the request made by the second Respondent as aforesaid and also because certain material information essential for the finalisation of the pension case was not furnished by the second Respondent. On February 6, 1984, the second Respondent furnished the necessary information to the third Respondent, vide Annexure-R-3. The said communication, inter alia, mentioned that the deceased was holding the charge of store/stock pertaining to the Exhibition Scheme and that upon physical verification thereof a recovery of Rs. 10,607.31 was detected. The third Respondent was, therefore, requested to withhold a sum of Rs. 10,607.31 out of the gratuity amount till further instructions but the balance amount was requested to be released to the family of the deceased. Upon receipt of the communication aforesaid, the third Respondent issued a revised certificate and authority on July 21, 1984, Annexure PC, authorising the payment of Family Pension to the first Petitioner at the rate of Rs. 320/- per month upto May 27, 1990 and at the rate of Rs. 160/- per month thereafter. The DCRG amount, which upon revision worked out to Rs. 17360/- was, however, not authorised to be released in view of the recovery of Rs. 10,607.31 and also on the ground that there was an overpayment of pay and allowances on account of the wrong determination of dates of next increment in the revised pay scale effective from January 1, 1978. The second Respondent was advised to intimate the final position concerning the recoveries in light of the overall circumstances in order to enable the issue of authorisation for the payment of the DCRG amount. The third Respondent having received no reply to the communication aforesaid sent two reminders to the second Respondent on April 30, 1985 and June 24, 1985, Annexures R-6 and R-7, respectively but to no avail.

3. The Petitioners thereupon instituted the present petition on June 25, 1985, seeking the relief, inter alia, in the nature of a writ, order or direction to the Respondents to release the DGRG amount due and payable to them as the legal representatives of the deceased and not to effect any recovery from the Family Pension/DCRG amount on account of the alleged over-payment of pay and allowances and the alleged shortages in store/stock in charge of the deceased at the time of his demise. Notice was ordered to issue on the petition on July 1, 1985 and it was made returnable on July 3,1985. On July 9, 1985, the Court passed an interim order on the petition, the material portion whereof reads as under :

The disputed amount of gratuity shall be deposited in the Registry of this Court on or before July 24, 1985.

It is. settled law that pensionary benefits are property within the meaning of

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Article 300-A of the Constitution which provides that no person shall be deprived of his ''property'' save ''by authority of law''. Unless, therefore, the decision to withhold the gratuity is supported by law, and law means ''enacted law'', the action of withholding the gratuity would be wholly without authority of law and violative of Constitutional guarantee .contained in Article 300-A.

Let the first Respondent review the case relating to the release of gratuity in light of the abovementioned observations within a period of one month from today.

The second Respondent has reported compliance to he aforesaid directions vide his affidavit dated August 8, 1985. The affidavit discloses that : (i the amount of Rs. 17360/- payable and by way of gratuity to the Petitioners was deposited in the Government Treasury, Shimla, on July 20, 1985 through the Registry of this Court and (ii) the State Government, on reviewing the ease, has waived off the recovery of a sum of Rs. 6,144.54 being the price of cloth purchased before 1975 and that a sum of Rs. 5580.12 only (Rs. 558. 88 price of cloth purchased in 1982, plus Rs. 1844.64 price of miscellaneous stores found short, plus Rs. 2059.25 price of 218 Metre Coirmatting found short, plus Rs. 1117.45 on account of overpayment of pay and allowances) is ordered to be recovered from the DCRG of the deceased. A copy of the decision of the State Government as conveyed by the Secretary (Public Relations.) by his letter dated August 7, 1985 is placed on the record along with the said affidavit at Annexure-III.

4. Be it stated that the return on behalf of the first and second Respondents was, meanwhile, filed on July 18, 1985 and that on behalf of third Respondent was also filed, meanwhile, on July 1, 1985. The case having come on for hearing today, it is being finally disposed of by this judgment.

5. From the foregoing narration of facts it would appear that the dispute now survives regarding the sum of Rs. 5580.12, as detailed above, and the precise question for determination is whether the said amount can be legally recovered by an executive order from the gratuity amounting to Rs. 17360/- which is payable to the Petitioners as the heirs of the deceased.

6. The fact that pension includes gratuity (including Death-cum-Retirement Gratuity) needs no reiteration and is beyond the pale of dispute in view of the definition of the words "gratuity" and "pension" in clauses (j) and (o) respectively of sub-rule (1) of Rule 3 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"). Pension is not a bounty payable on the sweet will and pleasure of the State. The right to pension is a valuable right vesting in a government servant. The grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to the employee not because of the said order but by virtue of the Rules (See: Deokinandan Prasad Vs. The State of Bihar and Others, Indeed, till the deletion of Sub-clause (f) of Clause (1)

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of Article 19 and of Article 31 by the Constitution (Forty-fourth Amendment) Act, 1978, with effect from June 20, 1979, the right to receive pension was regarded as "property" and, therefore, fundamental right within the meaning of those constitutional provisions (See: Deoki-nandar''s case supra) and a retrospective amendment in the Pension Rules made in exercise of the powers conferred by the proviso to Article 309 read with Article 313, which had the effect of depriving or abridging the fundamental right of a government servant to receive pension according to the rules in force on the date of his retirement, was struck down as void (See: Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh, . With the simultaneous deletion and enactment of Sub-clause (f) of Clause (1) of Article 19 and Article 31 on one hand and Article 300-A on the other, the right to property has ceased to be a fundamental right but it still retains the character of a constitutionally recognised legal right. Since the right to receive pension was held to be "property" under Article 19(1)(f) and Article 31(1), it must be regarded as falling within the coverage of Article 300-A which provides that no person shall be deprived of his "property" save "by authority of law". Article 300-A thus safeguards the right to receive pension against executive interference which is not supported by law and "law" here; means "enacted law" or "State law". Besides, such law must be a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and should not infringe on auy of the fundamental rights which the Constitution provides for. It is apparent, therefore, that the substantive or procedural provisions of such law or the executive action supported by such law cannot be arbitrary, unfair, unjust, oppressive or unreasonable (See: A.K. Gopalan Vs. The State of Madras, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, wherein the word "law" occurring in Article 21 has been given similar meaning and has been held to be subject to similar limitations). The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right, and, therefore, not enforceable through Court, has thus been swept under the carpet by these judicial dicta of the highest Court which have interpreted the relevant constitutional provisions and statutory law.

7. Now, the decision of the State Government arrived at pursuant to the interim order passed by this Court on July 9, 1985, and conveyed to the second Respondent vide letter dated August 7, 1985, Annexure-III, justifies the recovery in the sum of Rs. 5580.12 out of the DORG amount due and payable to the Petitioners on the basis of the following reasoning:

Article 300-A of the Constitution of India provides that no person can be deprived of his property save by authority of Law. In this behalf Rule 75 of the Central Civil Services (Pension) Rules which deals with the recovery and adjustments of Government dues is reproduced below:

RULE 75 OF CENTRAL 6IVIL SERVICES (PENSION)

RULES

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''Recovery and adjustment of Government dues:

(1) It shall be the duty of every retiring Govt. servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Govt. servant does not clear the Govt. dues and such dues are ascertainable-

(a) an equivalent cash deposit may be taken from him, or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertainable Govt. dues shall be deducted therefrom.

Explanation.- The expression ascertainable Govt. dues includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Govt. accommodation, over-payment of pay and allowances and arrears of income tax deductable at source under the Income Tax Act, 1961 (43 of 1961).

From the above it would be revealed that the Govt. dues can be recovered from the gratuity payable to the retiree. The recovery mentioned against items 1-3 of para 1 above has been ascertained as a result of loss sustained to the Govt. from the stores which were under the direct control of the deceased. Hence these fall under the category of Govt. dues. In explanation below Rule 75, the use of the word ''includes'' shows that only some examples of ascertainable Govt. dues have been given and the list is not exhaustive.

So far as the recovery of pay and allowances is concerned it has been specifically provided in the explanation of the above rules that Govt. dues include the over-payments of pay and allowances. Hence there is clear legal authority for effecting the recovery on this account from the Gratuity payable to the heirs of the deceased.

There is no difference between the shortages attributable to a Government servant and other arrears or dues. The basic point to see is whether anything is recoverable from the Government servant and due to the Government. For example, ''arrears of rent and other charges pertaining to occupation, of Government accommodation'' has been specifically mentioned in the Explanation. If a Government servant does not return the fixtures and furnitures on vacation of a Government house, the value of shortages is covered in the . expression ''other charges pertaining, to occupation of Government accommodation, and would be recoverable as Government dues. There is no qualitative difference between such recoveries and the recovery of shortages of stores.

Further, if it is held that such shortages cannot be recovered in this manner, Government will have engage in unnecessary litigation in recovering this amount. The Hon''ble High Court has taken suo motu cognizance of various connected matters during the course of writ litigation. It can do so in the present case also and decree the amount in favour of the Government to be adjusted against the

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amount due to the heirs.

8. The decision in the aforesaid terms arrived at by the State Government upon a review of the case is wholly unsustainable and, in our opinion the deductions thereunder ordered to be made from the DCRG amount payable to the Petitioners are without any authority of law for more than one reason.

9. There is, in the first place, a total non-application of mind in reaching the decision since Rule 75 of the Pension Rules upon which reliance has been placed applies to retiring Government servants. Besides, the Rule stands omitted by virtue of Notification No. 6(l)-Pen. (A)/79, dated the 19th May, 1980, issued by the Department of Personnel and Administrative Reforms, Government of India. The learned Assistant Advocate General was unable to show to us any other statutory authority to support the deductions ordered to be effected from the DCRG amount. However, a perusal of the Pension Rules shows that there are other provisions which may authorise the ascertainment, assessment and recovery/adjustment of "Government dues" from the amount of DCRG becoming payable to the family of a deceased Government servant. The question which still survives for consideration, however, is whether those provisions are attracted on the facts and in the circumstances of the case and, if so, whether the impugned decision is sustainable even on the strength of those provisions.

10. Clause (ii) of sub-rule (1) of Rule 3 of the Pension Rules defines the expression "Government dues" to mean "dues as defined in sub-rule (3) of Rule 71." Sub-rule (3) of Rule 71 defines the expression "Government dues " to include "(a) dues pertaining to Government accommodation including arrears of licence-fee, if any ; and (b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the income tax Act, 1961 (43 of 1961)". Both these provisions read together indicate that the expression "Government dues" is exhaustively defined therein. This interpretation appears to be reasonable since the definitions viewed conjointly are couched in the form of "means and includes" and clause (b) of the inclusive definition, while describing Government "dues other than those pertaining to Government accommodation", uses the word "namely," which has the same meaning as the expression "by name" or "to wit" or "that is to bay", all of which have a restrictive property. It would thus appear that the provisions in the Pension Rules, which authorise the recovery/adjustment of "Government dues" from the amount of DCRG becoming payable to the family of a deceased Government servant, may not apply to all recoveries in the present case, since, the dues, if any, on account of the alleged shortage of stock/store, are not expressly specified as falling within the coverage of "dues other than those pertaining to Government accommodation" in clause (b) of sub-rule (3) of Rule 71 of the Pension Rules. The recovery of the sum of Rs. 4462.77 ordered on account of the price of cloth, miscellaneous store articles and coir-matting allegedly found short would, therefore, appear to be wholly

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without authority of law.

11. For the purposes of the present case, however, it is not necessary to rest the decision on this issue on this ground only. The legality and validity of the recovery of the aforementioned sum as well as of the sum of Rs. 1117.45 on account of the alleged over-payment of pay and allowances may be alternatively and independently examined on the basis of ah assumption that both these sums are covered within the meaning of the expression "Government dues" and that, therefore, they are recoverable, as such, from the DCRG payable to the family of a deceased Government servant under the relevant provisions of the Pension Rules, if other conditions are satisfied. Those relevant provisions may be briefly noticed at this stage.

12. Rule 50 authorises the payment of DCRG to the family of a Government servant who dies while in service after completing the qualifying service. Rule 80-C deals with the adjustment of Government dues from the DCRG becoming payable to the family of a deceased Government servant. Sub-rule (1) of Rule 80-C authorises the recovery of the dues pertaining to Government accommodation from the DCRG payable to the family. Since the recovery of such dues is not involved in the present case, it is not necessary to dwell upon the provisions of the said sub-rule. Sub-rule (2) reads as under :

(2) Dues other than those referred to in sub-rule (1):

The Head of Office shall, within one month of the receipt of intimation regarding death of a Government servant, take steps to ascertain if any dues as referred to in Rule 71 excluding the dues pertaining to the allotment of Government accommodation were recoverable. from the deceased Government servant. Such ascertainable dues shall be recovered from the amount of death-cum-retirement gratuity becoming payable to the family of the deceased Government servant.

On a bare reading of the sub-rule, it is apparent that what can be recovered thereunder from the amount of DCRG becoming payable to the family of a deceased Government servant are ascertainable Government dues (other than those pertaining to the allotment of Government accommodation). However, before such recovery can be effected, the Head of Office is under a duty to take steps, within one month of the receipt of intimation rgarding (he death of the Government servant, to ascertain whether such dues were recoverable from the deceased. Even assuming that the expression "Government dues" takes in all kinds of dues on the footing that the definition thereof being inclusive in nature is extensive in character, the Head of Office must find that the sum sought to be recovered in a given case satisfies the character of dues and that such dues are ascertainable and were recoverable from the deceased Government servant.

13. Now, what is the true legal connotation of the word "dues" ?An eminent English Judge, Darling, J., has defined the expression "due" thus: "I think, in a legal sense, that money only can be said to be ''due'', which may be recover ed by action. That which a man is under no legal obligation to repay, for whatever

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reason, is in my opinion, no longer money ''due'' [See: Re Moss (1905) 2 K. B. 307]. The word "due" means that which is owed and a debt or other obligation is due when it is legally enforceable, that is, when the creditor has a right to demand payment and to enforce collection (See: Custodian General of Evacuee Property, New Delhi and Ors. v. Harnam Singh AIR 1957 Pun 58). The "Government dues" recoverable under sub-rule (2) of Rule 80-C must, therefore answer the above description. But that is not all. Such dues must also be "ascertainable", that is capable of being precisely determined or definitely found out and "recoverable" in law from the deceased Government ser vant.

14. The next question which must inevitably arise and which must be decided is whether the process of ascertainment of Government dues will require an inquiry being held or con ducted by the Head of Office and, if so, what is the true nature and character of such inquiry. On the interpretation of sub-rule (2) of Rule 80-C given above, it is apparent that the Head of Office of the deceased Government servant will, in the first instance have to gather from different sources all the material particulars to satisfy himself whether any sum(s) was factually owed by the deceased to the Government and, if so, what precisely was such amount(s). It will have to be determin ed next whether the ascertained sum(s) was legally due and recoverable from the deceased Government servant. In the very nature of things, several questions of fact and law will ordi narily arise in this process which the Head of Office will have to determine and some sort of an enquiry, suitable to the occasion and appropriate in the circumstances of the case, is thus inevitable on his part in order to arive at a just, proper and legal decision in the discharge of the duly legally entrusted to him under the law. The association of the family of the deceased Government servant with such an enquiry will be essential either to gather facts or to seek clarifications on issues of fact and law. That apart, the process of ascertain ment of Government dues cannot but be regarded as quasi- judicial in nature, since, the ultimate decision may result in the recovery of such dues from the amount of DCRG and may thus involve civil consequences for the family of the deceased Govrnment servant. The duty to act judicially and to afford a rasonable opportunity of being heard to an authorised representative(s) of the family of the deceased Government servant in the course of the inquiry must, therefore, be regarded as implicit in sub-rule (2) of Rule 80-C. Unless the sub-rule is so understood and enforced, it would be exposed to the vice of unconstitutionality. A reasonable opportunity of hearing coupled with the duty to arrive at a just and fair decision pur suant to an inquiry must, therefore, be regarded as a sine qua non to the exercise of power of recovery of the Govern ment dues from the amount of DCRG payable to the family of the deceased Government servant.

15. Against the aforesaid background, the conclusion is inevitable that the decision to recover the sum of Rs. 5580.12 from the amount ofDCRG payable to the Petitioners is illegal and ultra vires. The mind of the first and/or second Respondent is not shown to have been precisely applied to the case in hand from the various relevant and pertinent angles ger mane to the inquiry, as explained

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above, which was required to be held in order to ascertain the Government dues, if any, and to order their recovery from the DCRG amount. Besides, neither the first nor the second Respondent has afforded a reasonable opportunity of being heard to the Petitioners or any of them before ascertainment of the so-called Government dues and before ordering their recovery from the DCRG amount payable to them.

16. It would be pertinent to mention, in this connection, that so far as the recovery sought to be effected on the ground of alleged shortage of stock/store is concerned, the physical verification of the stock/store was made and the items found short on such physical verification were listed on September 26, 1983 (vide Annexure-P-D) in the presence of the brother-in-law of the first Petitioner and brother of the deceased, Shri R.M. Saxena, and the Deputy Director, Public Relations. The shortage amounting to Rs. 10,607.31 as detailed in the list was certified to have been detected during the course of the physical verification under the signature, inter alia, of Shri R.M. Saxena. However, at the foot of the list, Annexure-P-D, Shri R. M. Saxena, is found to have made the following endorsement:

We do not accept the recovery worked out on the basis of actual cost regarding cloths. It should be worked out on the basis of depreciation and life of the cloths.

It is thus clear that although rhe shortage in stock/store was duly detected in the presence of an authorised representative of the family of the deceased at the time of physical verification conducted as aforesaid, the precise valuation of the items found short was squarely in dispute even at that stage. In other words, although the factual detection of shortage may be regarded as having been admitted by virtue of the endorsement, the liability, if any, in law and in fact, of the deceased or his family to make good the shortage or the resultant loss cannot be regarded as having been absolutely or unconditionally admitted. In para 13 of the petition, the liability, if any, to make good the shortage or the resultant loss, has been disputed on various grounds, such as: (a) that all the articles, especially cloth and coir-matting, found to be short had been damaged due to their use in exhibitions and that they had since long become unserviceable and that, therefore, any loss on that account was liable to be written off; (b) that a detailed list of unserviceable articles had been found amongst the papers of the deceased, which appeared to have been prepared sometime after 1976 and which specified articles purchased from 1965 onwards to 1976, including, inter-alia, the articles found short on physical verification; (c) that the head of Office was under an obligation to physically verify the store at least once in a year and to record a Certificate of verification with its results on the list, inventory or accounts, as the case may be, but no such physical verification was done in the instant case after 1976; (d) that the stock was required to be revalued periodically and profits and losses due to revaluation were required to be duly recorded and adjusted after taking into consideration the depreciation which also was not done in the instant case; and (e) that under

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the relevant Rules, the articles which had become unserviceable and were liable to be written off and/or have been actually written off, could not be taken into account. The case of the Respondents in the return, inter-alia, is: (a) that in the absence of any proof available on record or produced by the representative of the Petitioner, the cloth and coir matting could not be taken as having been damaged due to their use in exhibitions; (6) that as pe''r the available record, no articles of the exhibition unit including the articles found short were ever written off and that, therefore, the question of the articles found short being not taken into account did not arise ;(c) that even if no physical verification in respect of the stores in possession of the deceased has been done after 1976, the deceased could not escape the responsibility for the shortage since the stock/store had remained in his personal custody all throughout; (d) that the Rules relating to the revaluation of stocks were not applicable to the Department of Public Relations as it was a non-commercial department; and (e) that since no unserviceable articles were found in the stock/store at the time of the physical verification, all the missing articles had to be taken as shortages and their value had to be determined on no other basis than the book value, that is to say, the purchase value.

17. In view of the aforesaid position which emerges from the record and the rival contentions, the requirement of afford-ing a reasonable opportunity to the Petitioners or any of them to show cause at the stage of the final ascertainment of Government dues, if any, and of ordering their recovery from the D.C.R.G. amount payable to them, was not merely an empty formality but a substantial requirement of the rules of natural justice. Without affording such an opportunity, the competent authority could not have arrived at a just and fair decision. This having not been done either by the first or the second Respondent, the direction with regard to the recovery of the sum of Rs. 4462.77 must be regarded as wholly without law. It is pertinent to observe that the objections raised by Shri R. M. Saxena at the stage of physical verification and several other objections raised in the petition, some of which are founded on the facts which are admitted in the return, are not without substance and that if those objections had been taken into consideration in a just and fair manner after giving proper opportunity to the Petitioners or any of them, the decision to order the recovery of the sum of Rs. 4462.77 from the D.C.R.G. amount payable to the Petitioners might not possibly have been arrived at.

18. The deduction ordered for the Government dues on account of the alleged over payment of pay and allowances stands on the same footing. The alleged excess payment in the sum of Rs. 1117.45 is stated to have resulted on account of an error said to have been committed in the fixation of the rate of increment in the revised pay scale. The date of increment, instead of 1-1-1979, is stated to have been erroneously fixed as 1-5-1978 (vide Annexure R-5) and on that account there was overpayment of pay and allowances over a period of time commencing from 1-5-1978. It is not in dispute that no opportunity whatsoever was given either by the first or the second Respondent to the Petitioners or any

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of them before the aforesaid Government dues were ascertained and recovery was ordered. If such an opportunity had been afforded they could have pointed out that there was no overpayment either as a result of a mistake of law or of fact, or that the Government was not entitled to recover the alleged overpayment, spread over a period, after such a lapse of time, or that the Government was estopped from claiming restitution since the overpayments, if any, were made due to the negligence in the discharge of duty on the part of the concerned employees of the Respondents to determine the emoluments correctly and not to misrepresent them, and since the deceased, bonafide, in reliance on the conduct in making the payment from month to month over a period of time, was entitled to treat the money as his own, and without notice of their claim, had spent the whole of the sums overpaid in ordinary living expenses or otherwise for his own purposes, and that it would be unjust and inequitable to recover from the pensionary benefits those sums. It would not be out of place to mention in this connection that clause (a) sub-rule (2) of Rule 78 provides that for the purpose of determination of emoluments of family pension and D.C.R.G., the Head of Office shall confine the verification of the correctness of emoluments for a maximum period of one year preceding the date of death of the Government servant. The policy of the law is thus clear, namely, that so far as the determination of the amount of family pension and DCRG in respect of a Government servant dying while in service is concerned, an attempt to delve deep into the past to verify the correctness of emoluments is frowned upon by law. In light of and against the aforesaid background, the Petitioners could have legitimately pleaded, if a fair opportunity of hearing had been afforded to them, that the overpayment of pay and allowances, if any, should, atleast, be waived off. Be it stated that some of these points have already been raised in the writ petition by the Petitioners. Even the recovery of the sum of Rs. 1117.45 on account of the alleged overpayment of pay and allowances is thus without authority of law.

19. For the foregoing reasons, the decision of the competent authority to recover the sum of Rs. 5580.12 as Government dues from the DCRG amount payable to the Petitioners is quashed and set aside. On the facts and in the circumstances of the case, the Court is of the view .that the ends of justice do not require any inquiry being held now for the purposes of the ascertainment and adjustment of the Government dues, if any. For several reasons, it would not be just, proper and equitable to subject the Petitioners to the gamut of a fresh enquiry 2-1/4 years after the deceased departed from the world. In the first place, the recovery of Rs. 4462.77, as held earlier, does not appear to fall within the meaning of the term "Government dues" as defined in clause (b) of sub-rule (3) of Rule 71 and, therefore, the recovery of such amount from the DCRG amount may not be permissible. In the next place, for the reasons indicated, the cha llenge to the recovery of the sum of Rs. 5580.12, even on merits, cannot be regarded as wholly being without any force and under such circumstances a fresh enquiry to substantiate the case does not appear to be called for. In the last place, the

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amount involved is not large and having regard to the time which has elapsed since the demise of the Government servant and taking into consideration the period for which the payment of the DGRG amount is withheld, any further delay in the payment of the said pensionary benefit to the heirs is not considered justified. Under the circumstances, the Respondents are restrained from initiating any fresh proceeding for the recovery of the sum of Rs. 5580.12 from the DGRG amount payable to the Petitioners. Consequently, the sum of Rs. 17360.00, being the amount of DCRG which was deposited in the Government Treasury on July 20, 1985, through the Registry of this Court pursuant to the interim order made on July 9, 1985, is ordered to be released in favour of the Petitioners in accordance with their proportionate shares therein.

20. The ultimate question which survives for consideration is whether the Petitioners are entitled to any interest on account of the delayed payment of the DCRG amount. In State of Kerala and Others Vs. M. Padmanabhan Nair, the law on the subject has been declared in no uncertain terms by the highest Court. The pertinent observations made in that case are reproduced hereinbelow:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

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...The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised 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.

These observations laying emphasis on the prompt payment of the retirement dues to a retiring Government servant on the pain of penalty of payment of interest at the current market rate must apply with still greater force to the payment of the pensionary benefits to the family of a Government servant dying while in service since, in the latter case, the family is, more often than not, left without any means to support itself on the death of the bread-winner and, in such circumstances, any undue or unjustified delay in the payment of the pensionary benefits to the beneficiaries cannot but be regarded as culpable. The claim for interest at the rate of 12 per cent per annum advanced by the Petitioners on account of the delayed payment of the DCRG amount to them must be decided against the aforesaid backdrop as well as in light of the obligation cast under the Pension Rules on the Head of Office to determine and authorise the payment of the amount of DCRG, or a portion thereof, as the case maybe, to the family of the deceased Government servant, within the time-limit laid down in the relevant Rules.

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21. Rule 77 of the Pension Rules enjoins a duty upon the Head of Office, who has received an intimation about the death of a Government servant while in service to ascertain, inter alia, whether any DCRG is payable in respect of the deceased government servant and, if so, to address the person concerned for making a claim in the prescribed form. Under Rule 78, while taking action to obtain such claim from the family of the deceased, it is the duty of the Head of Office to simultaneously undertake the completion of Form 18 (Form for assessing and authorising the payment of family pension and death-cum-retirement gratuity when a Government servant dies while in service), This work is required to be completed within one month of the date on which intimation regarding the date of death of the Government servant has been received. The process of determination of qualifying service and qualifying emoluments is also required to be completed by the Head of Office within one month of the receipt of such intimation and the amount of DCRG is to be calculated accordingly. Similarly, under Rule 80-C(2), within the same time-limit of one month, the Head of Office must take steps to ascertain if any Government dues excluding the dues pertaining to the allotment of Government accommodation, were recoverable from the deceased Government servant. Rule 80 provides that on the receipt of the claim, the Head of Office shall complete the presented Form 18 and send the said Form in original to the Accounts Officer with other relevant, documents not later than one month of such receipt. While forwarding the said Form, the Head of Office is required to draw the attention of the Accounts Officer: (a) to the details of the ascertained Government dues outstanding against the deceased Government servant, which are recoverable out of the DCRG amount and (b) to the amount of gratuity to be held over partly for adjustment of Government dues which have not been assessed and partly as a margin for adjustment in the light of the final determination of the gratuity. The maximum amount of gratuity to be held over for the purpose stated in (b) above must be limited to ten per cent of the amount of gratuity or rupees one thousand, whichever is -less. Under Rule 80-A, after the documents referred to in Rule 80 have been sent to the Accounts Officer, the Head of Office is under an obligation, inter alia, to draw hundred per cent of the gratuity duly determined. For the said purpose, the Head of Office must issue a sanction letter in favour of the claimant(s) indicating : (a) the amount of the hundred per cent of the gratuity duly determined and (b) the amount(s) recoverable out of the gratuity under rule 80. After the issue of the sanction letter, the Head of Office is duty bound to draw the amount of hundred per cent gratuity worked out after deducting therefrom the above-mentioned recoverable sums and to disburse such amount immediately after the same has been drawn accordingly. Under Rule 80-B, the Accounts Officer is under a duty to check and complete Form 18, within a period of three months from the date of receipt of the documents referred to in Rule 80, and, inter alia, to assess and to determine the amount of the balance of the gratuity after adjusting the amount, if any, outstanding against the deceased Government servant and to intimate to the Head of Office the amount so determined with the remark that said amount be drawn and disbursed by him to the peison or persons to whom the provisional

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gratuity has been paid. If the amount of gratuity disbursed by the Head of Office proves to be larger than the amount finally assessed by the Accounts Officer the beneficiary is not to be required to refund the excess. Rule 79 lays down the steps which are required to be taken in case the service records are incomplete and, accordingly, in so far as it is relevant for the present purposes, if the deceased Government servant had rendered more than twenty-four years of qualifying service, and the entire service is not capable of being verified and accepted but the service for the last five years has been verified and accepted, the family of the deceased Government servant has to be allowed, on provisional basis, the DCRG equal to 12 times of the emoluments and the final amount must be determined by the Head of Office on the acceptance and verification of the entire spell of service which shall be done by the Head of Office within a period of six months from the date on which the authority for the payment of provisional gratuity was issued. The balance, if any, becoming payable as a result of the determination of the final amount of DCRG has then to be authorised to be paid to the beneficiaries.

22. The above time-bound procedure has been laid down in order to facilitate the expeditious issue of the authority for the payment of family pension and death - cum-retirement gratuity so that the family of the deceased Government servant is not put to hardship. The Head of Office has to ensure that action to obtain the claim or claims from the beneficiaries, completion of Form 18 and assessment of Government dues is initiated simultaneously. Special efforts have to be made to get the claims in the rsspective Forms from the family of the deceased Government servant as early as possible. Where the family is residing in the place of duty of Head of Office, the Forms and documents which are required to be completed by the family may, if possible, be obtained personally and for this purpose the services of the Welfare Officer could be utilized. If the family is residing outside the place of the duty of the Head of Office all the Forms and other documents which are required to be sent to the family should be forwarded with clear instructions so that unnecessary correspondence is avoided [Vide Government of India Ministry of Finance O. M. No. F. 11 (9)-E.V (A)/77, dated the 15th February, 1979].

23. Now, in the instant case, Petitioner No. 1 had forwarded the Family Pension DCRG papers to the second Respondent on June 30, 1983 that is. at the expiry of a period of one month from the death of her husband, with a request that the case be finalised at an early date in order that she may not have to undergo any financial hardship. The second Respondent took as many as about four months to forward the-papers to the third Respondent under the cover of a letter dat3d October, 22, 1983 and the papers were actually received by the third Respondent on November 19, 1983. The letter forwarding the pension papers contained a request to the effect that the DCRG might be withheld till further instructions. On February 6, 1984, the second Respondent wrote to the third Respondent to withhold a sum of Rs. 10,607.31 out of the gratuity amount till further instructions but a request was made that th3 balance amount be realeased to the

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family of the deceased. The third Respondent, however, could not release the balance amount since, according to him, there was an overpayment of pay and allowances on account of wrong determination of the date of next increment in the revised pay scale effective from January 1,1978. The third Respondent advised the second Respondent to intimate the final position concerning the recoveries in light of the overall circumstances in order to enable the issue of author isation for the payment of the DGRG. The necessary corrigendum with regard to the date of increment was thereupon issued by the second respon-* dent as late as on May 20, 1985. Even on the date of the institution of the petition, the third Respondent was not given any intimation with regard to the actual sum recoverable as Government dues, if any, in spite of the fact that he had sent two reminders to the second Respondent on April 30,1985 and June 24,1985. These facts are an eloquent proof of the culpable delay in the settlement and disbursement of the amount, of DGRG to the Petitioners. It cannot be overlooked, in this connection, that the second Respondent was under a legal duty to take steps to ascertain and determine the Government dues, other than those pertaining to the allotment of Government accommodation, within one month of the receipt of the intimation regarding the death of the husband of Petitioner No. 1 and that not more than ten per cent of the amount of gratuity, or rupees one thousand, whichever is less, could have been withheld for the adjustment of Government dues which had not been assessed till the stage of the forwarding of the pension papers to the third Respondent within one month of the receipt of the claim from the Petitioners. It cannot be overlooked also that after the pension papers were accordingly forwarded, the second Respondent was under a legal duty to issue a sanction letter and to disburse the DCRG amount on a provisional basis in accordance with law. Even if the service record of the deceased was incomplete, the second Respondent. was duty bound to follow the prescribed procedure and to order the payment of the DCRG amount on a provisional basis in terms of Rule 79 read with Rule 50. None of these steps are shown to have been taken or taken within the prescribed time limits. The relevant rules have been observed more in breach than compliance. The explanation furnished in the return in this regard is not acceptable; There is no reason why the physical verification of stock/store could not have been completed till September 26, 1983 although Petitioner No. 1 had offered the keys of the store on June 3, 1983 and the keys were in any case recovered from her on August 1, 1983. Besides, there is no reason why a firm decision could not have been arrived at, even after the verification, with regard to the recovery on account of the alleged shortage in stock/store till the writ petition was filed and an interim order was made. Even if the Government dues were not ascertained and the service record was not complete there is no reason why the gratuity on a provisional basis could not have been paid as provided in the Rules. Having regard to these and other circumstances of the case, there is no manner of doubt that there has been a culpable delay in the settlement and disbursement of the DCRG amount to the Petitioners. There is no reason, therefore, why the payment of the gratuity in the sum of Rs. 17,360.00 should not be ordered to be made

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with interest at the rate of 12 per cent per annum from August 1, 1983 till the date of deposit, especially when the ascertainment and adjustment of the Government dues, which have since been determined and ordered to be deducted from the amount of DCRG, pursuant to the interim order made pending the final hearing of the petition, are found to be wholly without the authority of law. The interest payable accordingly will be deposited in the Registry of this Court by the first and second Respondents within a period of fifteen days from today. Upon such deposit being made, each of the Petitioners will be entitled to withdraw the said amount in the same proportion in which he/she is entitled to the amount of DGRG.

24. The Court cannot part with the case without dealing with the observations made in the ultimate paragraph of the letter dated August 7, 1985 (Annexure-III) which is quo ted hereinabove and which records the decision of the first Respondent arrived at pursuant to the interim order made by this Court. The Court finds that those obssrvations are based upon a thorough misconception. The ascertainment and j recovery of Government dues, other than those covsred by the Pension Rules, have to be done by means of a properly constituted suit in a Court of competent jurisdiction, especially when there is a dispute. The Government cannot be a judge in its own cause in the absence of a statutory provision empowering it to act as such and it cannot evade having recourse to the remedy provided by the ordinary law on the specious grounds that it will have to engage in "unnecessary litigation." It is strange to find one of the biggest litigants, namely, the State, so averse to seeking adjudication from a civil Court in regard to its dues on the wholly unacceptable ground that to engage in such litigation would be "unnecessary". It is still more surprising to find it coming forward with an untenable claim that suo motu relief be granted to it in writ jurisdiction for the recovery of the alleged Government dues. The writ jurisdiction is not a remedy for the Government to enforce such disputed claims. Merely because Government dues are involved, no privilege of obtaining a "decree" in writ jurisdiction can be claimed by the Government. The analogy of public interest litigation, which is a strategic arm of the legal aid movement intended to bring justice within the reach of those who complain of violation of constitutional or legal rights and who are unable, on account of poverty, ignorance or socially or economically disadvantageous position, to seek redressal of injustice done to them, through the machinery of the hierarchy of Courts, has no relevance in this context.

25. Rule made absolute in terms aforesaid.

26. Dasti order on usual terms.

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