

(2012) 04 KL CK 0023

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8703 of 2004

Karthikeyan, M. (Dr.)

APPELLANT

Vs

Director of Collegiate Education and others

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 ILR (Ker) 468 : (2012) 2 KLJ 677

Hon'ble Judges : Babu Mathew P. Joseph, J

Bench : Single Bench

Advocate : V. P. Seemandini and Smt. Lekshmy Ramanathan, for the Appellant;
N. Raghuraj for 2nd respondent, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Babu Mathew P. Joseph

1. The petitioner was appointed Lecturer in Malayalam in Sree Kerala Varma College, Thrissur under the Cochin Devaswom Board on 31-10-1966. He was the Head of the Department of Malayalam in that College from 10-3-1981 to 31-10-1994. He was relieved from that College on the afternoon of 31-10-1994 for taking up employment as a Professor in Sree Sankaracharya Sanskrit University, Kalady. He rejoined duty in Sree Kerala Varma College on the forenoon of 31-3-1997 and retired from that College on that day. Ext.P-1 service certificate issued from that College shows the service details of the petitioner. The pension papers of the petitioner could be submitted only on 22-4-2002 owing to the delay occurred in connection with a seniority dispute. As per Ext.P-2 order dated 29-7-2003, the Accountant General sanctioned Rs. 2,55,630 as Death-Cum-Retirement Gratuity (DCRG) and Rs. 7,743 as pension to the petitioner. The Accountant General has forwarded the order sanctioning DCRG and pension to the first respondent, the Director of Collegiate Education. The first respondent forwarded a copy of that order to the Deputy Director of Collegiate Education, Thrissur, with a direction to make immediate arrangements to forward

Non Liability Certificate (NLC), etc. Ext.P-3 is that communication. While so, to his dismay, the petitioner received Ext.P-4 copy of the letter dated 15-1-2004 sent by the second respondent, the Principal, Sree Kerala Varma College, Thrissur, to the Deputy Director of Collegiate Education, Thrissur, along with a copy of the Non Liability Certificate in respect of the petitioner. In that certificate, it is stated that a liability of Rs. 29,960 is outstanding towards the cost of missing library books and requested to recover the same from the DCRG of the petitioner. Immediately on receipt of Ext.P-4, the petitioner sent Ext.P-5 letter dated 29-1-2004 to the second respondent pointing out the true facts and the fact that he was not liable to pay any amount and requesting to issue fresh orders absolving him from the liability so fixed and for sending, at the earliest, his Last Pay Certificate (LPC) and NLC as directed in the order of the first respondent enabling him to draw his pension without delay. He has also forwarded a copy of Ext.P-5 to the first respondent. The first respondent, by his Ext.P-6 letter dated 20-2-2004, intimated the petitioner that he was not in a position to issue NLC as he had not received NLC/LC from the Deputy Director of Collegiate Education. Aggrieved by Ext.P-4 liability certificate issued by the second respondent and for quashing the same as also for a direction to the respondents to disburse the retirement benefits, the petitioner has preferred this Writ Petition.

2. The second respondent has filed a counter-affidavit disputing the averments of the petitioner.

3. Heard both the sides.

4. Learned counsel for the petitioner submitted that the liability of Rs. 29,960 fixed towards cost of missing library books was without any basis. During the period when the petitioner worked in that College, every year the stock of library was checked and ensured that no loss was caused to the library. Such a process was continued till he was relieved from that College on 31-10-1994 for joining Sree Sankaracharya Sanskrit University, Kalady. Thereafter, he rejoined the College only on 31-3-1997 and retired from service on that day. Therefore, the liability fixed was absolutely baseless and it was only to wreak vengeance on the petitioner by preventing him from enjoying the retirement benefits legally due to him. In the counter-affidavit filed by the second respondent, it is stated that in 2000 the departmental library was merged with the general library and hence stock verification was conducted by the general library authorities for the first time since the retirement of the petitioner. In that verification, 1118 books were found missing and their value is Rs. 29,960. Such a statement itself shows that after the petitioner was relieved from that College no proper verification of the stock of the library was conducted and inaction and lethargy on the part of the College authorities in keeping proper stock and accounts of the library alone was the reason for the deficiency, if any, in the stock of books, learned counsel further submitted. Refuting this contention, learned counsel for the second respondent submitted that the petitioner is responsible for the loss caused to the

library of the College and hence, the liability fixed against him is sustainable. According to the second respondent, the liability of Rs. 29,960 shown in Ext.P-4 towards the cost of missing library books is outstanding against the petitioner. The petitioner vehemently denies the same. Disputed questions of fact are raised by both the sides regarding the alleged loss caused by the petitioner. This Court does not propose to go into such disputed questions of fact exercising the jurisdiction under Article 226 of the Constitution of India.

5. There is no dispute with regard to the fact that payment of retirement benefits due to the petitioner is governed by the provisions contained in Part III of the Kerala Service Rules (K.S.R.). Learned counsel for the petitioner submitted that the DCRG and the pension were withheld by the respondents on the ground that a liability of Rs. 29,960 was outstanding against the petitioner. Such a liability has been fixed and intimated to the petitioner by the second respondent only by Ext.P-4 communication dated 15-1-2004. Whereas, the petitioner retired from service as early as on 31-3-1997. Therefore, the liability was fixed and intimated to the petitioner only after six long years after his retirement. Such an action of the second respondent cannot sustain in view of the relevant provisions contained in Part III of the KSR. Learned counsel, relying on Ruling 5 under Rule 116 of Part HI of KSR, submitted that liability, if any, should be assessed and fixed before the retirement of the employees and, at any rate, it should be assessed and fixed within a period of one year from the date of retirement of the employee concerned. If the liability could not be assessed within one year from the date of retirement, the DCRG withheld should be released to the employee. In this case, no liability has been assessed or fixed before the retirement of the petitioner nor it was assessed or fixed within a period of one year from the date of his retirement. Therefore, the non-payment of the DCRG to the petitioner was unsustainable in law. She further submitted, relying on Note 3 to Rule 3 of Part III of KSR, that the liabilities, if any, of a retired employee should be quantified and intimated to him within a period of three years after retirement. In this case, the second respondent neither quantified the liability nor intimated the same to the petitioner within the time frame stipulated under both these provisions. She has relied on a Division Bench decision of this Court in *Sugathan v. Cochin Devaswom Board* 2005(1) KLT 46 in support of her contentions.

6. Ruling 5 under Rule 116 of Part III of KSR reads as follows:

5. In all cases where the liabilities could not be assessed and fixed before retirement of the Government employees, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement of the Government employee concerned. If in any case, the liability could not be assessed and adjusted within one year, the amount withheld from the death-cum-retirement gratuity or the surety bond or cash deposit accepted under paragraph (1) or (3) above will be released. Disciplinary action shall be taken against the employees responsible for the failure to assess and adjust the liabilities within the prescribed period.

This Ruling shows that in the cases where liabilities could not be assessed and fixed before the retirement of an employee, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement of the employee concerned. If, in any case, the liability could not be assessed and adjusted within one year, the amount withheld from the DCRG or surety bond or cash deposit accepted should be released. It also provides that disciplinary action shall be taken against the employees responsible for the failure to assess and adjust the liabilities within the prescribed period. Therefore, as per this Ruling, in respect of a retired employee like the petitioner, the liability, if any, should be assessed within a period of one year from the date of retirement and, if the liability could not be assessed within one year, the amount of DCRG withheld should be released to the employee. Since Ext.P-4 NLC showing the liability of the petitioner has been issued only in 2004, after six years from the retirement of the petitioner, going by Ruling 5 under Rule 116 of Part III of KSR, the petitioner is entitled to his DCRG released to him.

7. Note 2 to Rule 3 of Part III of KSR shows that the liability fixed against an employee or pensioner can be recovered from the DCRG payable to him after giving the employee or pensioner concerned a reasonable opportunity to explain. But, this is subject to the restriction imposed in Note 3, which reads as follows:

Note 3.-- The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him.

This note shows that the liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. Also stipulates that the liabilities of a pensioner should be quantified and intimated to him. Therefore, Note 3, in unequivocal terms, mandates that the liabilities of a retired employee should be quantified and intimated to him after retirement within a period of three years on becoming pensioner. The second respondent does not have a case that the liability of the petitioner has been quantified and intimated to him after his retirement within a period of three years on becoming pensioner. Since the liability against the petitioner was not quantified and intimated to him within the period stipulated in Note 3, the liability assessed and intimated to him by Ext.P-4 cannot legally stand in his way to receive his DCRG or pension.

8. Learned counsel for the second respondent submitted that the petitioner had given Ext.R-2(a) letter to the second respondent on 31-10-1994 before he was relieved from the College for taking up employment in Sree Sankaracharya Sanskrit University, Kalady, undertaking that he would be responsible and liable for the loss, if any, caused to the library. The said undertaking reads as follows:

Since the verification of the library and other documents of the department takes

time, I do undertake the responsibility and liability of the same upto 31-10-1994.

In view of this undertaking, the petitioner cannot avoid the liability by raising contentions based on Ruling 5 under Rule 116 or Note 3 to Rule 3 of Part III of KSR, learned counsel contended. Learned counsel for the petitioner submitted that Ext.R-2(a) should be understood only as a letter given by the petitioner facilitating to relieve him from that College on 31-10-1994 itself for taking up employment in Sree Sankaracharya Sanskrit University, Kalady. That was not an admission of liability. As a matter of fact, he had not caused any loss to the library. Moreover, such an undertaking cannot affect the operation of Ruling 5 under Rule 116 or Note 3 to Rule 3 of Part III of KSR. Whether Ext.R-2(a) undertaking preclude the petitioner from raising contentions based on the said Ruling 5 or Note 3? Even without an undertaking employees are liable to make good the loss caused by them. But, certain restrictions and limitations have been prescribed in the KSR for enforcing such liability against the employees. The second respondent is bound by such restrictions and limitations. Ext.R-2(a) undertaking was given on 31-10-1994. The petitioner retired from service on 31-3-1997. Ext.R-2(a) does not enable the second respondent or other authority to quantify and recover the liability according to their will and pleasure ignoring the said Ruling 5 and Note 3. In other words, in spite of the fact that Ext.R-2(a) undertaking was given by the petitioner, the second respondent was duty-bound to follow the law applicable, i.e., the liability, if any, against the petitioner should have been fixed within the time frame mandatorily fixed under the said Ruling 5 or Note 3. The liability undertaken in Ext.R-2(a) is the liability to be fixed in accordance with law. Therefore, the argument of the learned counsel for the second respondent based on Ext.R-2(a) undertaking is rejected.

9. The time frame stipulated in Ruling 5 under Rule 116 and in Note 3 to Rule 3 of Part III of KSR is binding on authorities like the second respondent. On failure to assess and adjust the liability within a period of one year after retirement, the amount withheld from the DCRG shall be released to the employee. Similarly, the liability against a retired employee should be quantified and intimated to him within a period of three years on becoming pensioner. It is so held in Sugathan Vs. Cochin Devaswom Board, relied on by the learned counsel for the petitioner. Since the second respondent has not assessed and adjusted the liability within a period of one year after retirement of the petitioner and the liability against the petitioner has not been quantified and intimated to him within a period of three years on becoming pensioner, the liability shown in Ext.P-4 can be ignored for the purpose of releasing his DCRG and pension. The respondents are bound to release the DCRG and the pension due to the petitioner ignoring the liability shown in Ext.P-4.

10. Before parting with the matter, I shall also refer to Ruling 6 under Rule 116 of Part III of KSR which reads as follows:

6. If in any case the amount withheld on the Death-Cum-Retirement gratuity or the cash deposit, or the surety bond taken from the employee has been released

on the expiry of one year after the date of retirement without the liabilities being finalised and adjusted, or it is not adequate to cover the liabilities finally fixed, action will be taken against him under Rule 3 of Part III, Kerala Service Rules to make up the loss by withholding, withdrawing or effecting recoveries from the pension sanctioned. If action under Rule 3 *ibid* is not possible due to the expiry of the time-limit prescribed for such action, or due to any other reason, the retired employee will be proceeded against in a Civil Court for recovering the pecuniary loss caused to Government.

Therefore, in the light of the Ruling 6, in spite of the fact that the prescribed period of time under Ruling 5 or Note 3 is over, a retired employee can be proceeded against in a civil court for recovering pecuniary loss, if any, caused.

In the result, it is declared that the petitioner is entitled to receive his DCRG and pension ignoring the liability shown in Ext. P-4. As per interim order dated 12-3-2004, this Court directed to release the pensionary benefits including gratuity and pension to the petitioner after deducting an amount of Rs. 29,960. Accordingly, the petitioner was given the pensionary benefits withholding an amount of Rs. 29,960. Therefore, the respondents are directed to release the said amount of Rs. 29,960 to the petitioner within a period of three weeks from the date of receipt of a copy of this judgment.

This Writ Petition is thus allowed without prejudice to the right, if any, available to the second respondent to recover the pecuniary loss, if any, caused to the College from the petitioner.