
(2022) 07 KL CK 0205

In the High Court Of Kerala

Case No : Writ Appeal Nos. 862, 882, 896 Of 2022

Kerala State Road Transport Corporation

APPELLANT

Vs

P.M. Johnson

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Citation : (2022) 07 KL CK 0205

Hon'ble Judges : A.K.Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench : Division Bench

Advocate : Deepu Thankan, K.P.Rajeevan, K.P.Rajeevan

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P., J.

1. The Kerala State Road Transport Corporation (KSRTC) and its officials are the appellants, aggrieved by the judgments of the learned single Judge that quashed the orders of recovery sought against the writ petitioners alleging excess pay and directed re-fund of the said amounts to the writ petitioners.

2.The brief facts necessary for the disposal of the writ appeals are as follows:-

The writ petitioners were retired employees of the appellant-Corporation. As per a bilateral agreement between the management and the employees of the Corporation, salary of the employees was revised with effect from 1.3.2011 and options were invited. The writ petitioners exercised their option on time to the concerned officer of the Corporation. The option was accepted and the payments were being made according to the option exercised.

After the writ petitioners retired, on the ground that the unit officers did not sign the option while the writ petitioners exercised the same, and treating such payments as excess, they were recovered from the pensionary benefits as well as the Death Cum Retirement Benefits (DCRG).

3. The Corporation contended that the impugned orders of recovery were made in 2017 and 2018 and that it had already realised the excess amounts drawn by the employees and the writ petitions were only filed in 2020 and therefore deserve to be dismissed on the ground of delay.

4. The learned single Judge, who considered the matter found that the writ petitioners were getting higher pay with effect from 1.3.2011 i.e., the cut off date fixed by circular dated 19.12.2015 which invited the options, and after their superannuation, amounts were recovered from the retiral benefits. The learned single Judge found that in an identical matter, WP(C)No.3322 of 2019 this Court had already considered a similar issue and held that the recovery made was illegal and quashed the same and directed the respondents to refund the amounts within a period of 45 days, failing which the amount was to carry interest at 6% from the officer responsible for the same. Following the said judgment, the writ petitions were allowed. The Corporation is in appeal assailing the judgments.

5. We have heard Sri. Deepu Thankan, the learned counsel for the appellant and Sri. Sri.K.P.Rajeevan, the learned counsel for the respondents.

6. Since identical issues arise in all these cases, they are being disposed by this common judgment.

7. The learned counsel for the appellant Sri. Deepu Thankan argues that there is delay on the part of the writ petitioners in filing the writ petition, that the judgment in *State of Punjab v. Rafiq Masih* [2015 (1) KLT 429] has no application to the facts of the case as the writ petitioners had committed an error while making the options and that the said judgment has no application as there is no equity in favour of the writ petitioners. He also argues that the Corporation is governed by Note 2 of Rule 3 of Part III of KSR which permits the employer/ Government to recover the amounts due from the employee, as per which liabilities fixed against an employee or pensioner can be recovered from the DCRG payable to him, without any departmental/judicial proceedings referred to in the rule, but after giving the employee or pensioner concerned a reasonable opportunity to explain. The Corporation has issued a notice to the respondent and that going by Note 2 of Rule 3 what is contemplated is only a communication of such liabilities to them so as to enable them to submit their explanation. This rule according to the learned counsel enables the Corporation to recover amounts at any time within three years and therefore, the principles of law in *Rafiq Masih* (supra) will not apply. The learned counsel also relied on the judgments in *State of Kerala & others v. P.K. Madhavan Nair and others* [2012(4) KHC 160], *Santhakumari v. State of Kerala* (2005 KHC 1815) and *Deputy Controller, Agricultural University and another v. K.P. Santhabai* [2007 (4) KHC 1060] to buttress his contention.

8. Having heard the learned counsel and perusing the records, we find ourselves unable to accept the proposition canvassed on the side of the appellants.

Generally speaking, it is certainly open to the employer/Government to recover the excess amount, if any, drawn by the employee and that power of the Government cannot be questioned. The said power flows from the settled legal position that administrative mistakes can be corrected by the Government at any point of time when the mistake is detected, for a perpetuation of the mistake without rectifying it would not be in public interest. In the instant cases, options were exercised in the year 2011 and pay was fixed at that point of time and the employees, all of whom belonging to the Class III, were drawing salary on that basis. It is after their superannuation that recovery was effected from their retiral benefits. In these cases, the employees do not admit that they have received anything in excess than what they are entitled to. There has been no determination of liability with notice to the petitioners while they were in service. The judgments relied on by the learned counsel in P.K.Madhavan Nair and others, Santhakumari and Agricultural University and another (supra) are all cases where this Court on the facts of those cases held that recovery is possible as excess payments have been made and further holding that the Government has the right to recover excess payment wrongly made. We are in complete agreement with the principle of law that the Government/ Administrative authority has the power to rectify mistakes at any time. The circumstances in which the recovery of excess amounts paid by mistake is not permitted is when the recovery would result in hardship of such nature which would far outweigh the equitable balance of the employers right to recover. In otherwords interference would be called for only in such cases where it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration and test to be applied, reference needs to be made to the situations noticed in the judgment in State of Punjab and Others v. Rafiq Masih White Washer [(2015) 4 SCC 334] . In cases where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error was detected or corrected, within a short time of the wrong payment, courts will not grant relief against recovery. The judgments relied on by the learned counsel are for the appellant clearly distinguishable .

9. In the instant case the reference to Note 2 of Rule 3 of Part III KSR also cannot be accepted. Rule 3 of Part III KSR is extracted hereunder:-

"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 departmental 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 10 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;

(b) such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his reemployment,-

i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made in relation to the employee during his service;

[(c) no such judicial proceedings, if not instituted while the employee was in service whether before his retirement or during his reemployment, shall be instituted, save with the sanction of the Government, in respect of a cause of action which arose or an event which took place more than four years before such institution and;

This amendment takes effect from 14th November 1966]

G.O(P) No.362/90/Fin. Dated 25-6-1990. (Takes effect from 14th November 1966)

(d) The public Service Commission shall be consulted before final orders are passed.

Explanation: - For the purpose of this rule -

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the employee or pensioner or if the employees has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of a criminal proceeding, on the date on which the complaint or report of police officer on which the Magistrate takes cognizance, is made, and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

Note 1. - As soon as proceedings of the nature referred to in this rule are instituted the authority which institutes such proceedings should without delay intimate the fact to the Audit Officer. The amount of pension withheld under this rule should not ordinarily exceed one-third of the pension originally sanctioned. In fixing the amount of pension to be so withheld regard should be had to the

consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

Note 2. The word 'pension' used in this rule does not include death-cum-retirement-gratuity. Liabilities fixed against an employee [or pensioner] can be recovered from the death-cum-retirement-gratuity payable to him without the departmental/ judicial proceedings referred to in this rule, but after giving the employee or pensioner concerned a reasonable opportunity to explain.

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

10. It is clear from Rule 3(b)(ii) that the proceedings if initiated also should be in respect of any event which took place more than four years before such institution. Note 2 which allows the pensionary benefits to be recovered also has to be in a proceeding which is instituted within the four year period as mentioned above. The principle in Rafiq Masih (supra) though it recognises the right to recover bars the recovery in certain cases as recovery after a long time would be iniquitous. In the instant case we find that the employees of the Corporation fall in the class mentioned at paragraph 12 of the judgment in Rafiq Masih (supra).

11. The learned counsel also attempted to argue that before the Corporation finds that excess payments are made, the employees need not be heard as there is no statutory provision mandating the same. We cannot accept the said argument. Since a recovery/ withholding of the amounts due to a person visits him with civil and pecuniary consequences, even in the absence of a statutory provision, requiring a hearing, principles of natural justice demands a hearing to be offered before such decisions are taken.

Accordingly, we find no merit in the writ appeals and the same will stand dismissed. Making it clear that the payments as directed by the learned single Judge would be paid by the appellants within four weeks from today.