

(2001) 06 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 6618 of 2001

Kesavan Nair

APPELLANT

Vs

Director of Health Services

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Service Rules, 1958 — Rule 3, 3
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2001) 91 FLR 299 : (2001) 3 ILR (Ker) 432 : (2001) 2 KLJ 214

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : S. Gopakumaran Nair, for the Appellant; P.V. Asha, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The petitioner is a retired Government servant. He retired from services on 30.11.1993. His retiral benefits have not been finalised and paid, though sanctioned. He has approached this court seeking a direction to disburse the DCRG along with interest. The only ground urged in the statement filed by the respondents contesting the claim of the petitioner for DCRG is that a vigilance case VC 8/99 had been registered against the petitioner by the Vigilance and Anti-Corruption Bureau, Thiruvananthapuram alleging offence under S. 13(2) read with 13(1)(d) of the Prevention of Corruption Act and S. 120B IPC so far as he had committed certain alleged irregularities in the purchase of medicine while working in the District Medical Store, Thiruvananthapuram. Investigation has not been finalised and no final reports has been made to the criminal court concerned.

2. It is contended by the petitioner that unless a final reports is made before the Magistrate concerned enabling him to take cognizance of the offence alleged against the petitioner, it cannot be stated that any criminal proceeding is

instituted against the petitioner within the meaning of explanation (b) under R.3 Part III K.S.R. So, the DCRG cannot be withheld in terms of R.3-A.

3. R.3-A provides that where a judicial proceeding under R.3 against an employee who has retired from service, "no gratuity or death cum retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon". A judicial proceeding can be said to be instituted under R.3 Part III KSR "in the case of a criminal proceeding can be said to be instituted under R.3 Part III KSR "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", as per Explanation (b) (i) to that Rule. As the investigation is not completed and no final report is made at present, there is, except an information, nothing on which the Magistrate can act to take cognizance of the offence alleged against the petitioner. Therefore, it cannot be taken that a judicial proceeding is instituted against the petitioner at present. In such circumstances, no judicial proceeding is instituted against the petitioner under R.3 Part III KSR to deny him the DCRG in terms of R.3-A "until the conclusion of such proceedings". Therefore, on the ground of registration of a crime against the petitioner by the Vigilance and Anti-Corruption Bureau, in which admittedly no final report has been made to the Magistrate concerned, DCRG due to the petitioner shall not be denied or delayed. Accordingly, there shall be direction that the petitioner shall be paid his DCRG. But the case of the petitioner for interest cannot be granted because the discretion vested in this court in a proceedings under Art. 226 of the Constitution of India for grant of interest for delayed payment of DCRG cannot be exercised in respect of a person who is now charged with offence under Prevention of Corruption Act.

The Original Petition is allowed to the above extent.