(1993) 10 KL CK 0034

In the High Court Of Kerala

Case No : O.P. No. 1288 of 1993 C

Madhavan Pillai — APPELLANT

Vs

Director of Panchayats and Others — RESPONDENT

Date of Decision : 15-10-1993

Acts Referred:
Kerala Service Rules, 1960 — Rule 116, 3

Citation : (1993) 10 KL CK 0034

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : V.N. Achutha Kurup, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.J. Joseph, J.—Petitioner is a pensioner. He has retired from service on 30th April 1981 while working as a First Grade Executive Officer in the Panchayath Department and hence he became a pensioner on that date onwards. His grievance is that even though he has retired from service as early as on 30th April 1981, his Death-cum-Retirement Gratuity (hereinafter referred to as D.C.R.G.) was not given to him so far. The Accountant General of the State admitted the pensionary claims of the Petitioner including the D.C.R.G. on 16th October 1981 and an amount of Rs. 9,360 was sanctioned to the Petitioner subject to the production of non-liability certificate. But in spite of the various representations submitted by the Petitioner, the amount due to him under the D.C.R.G. has not been disbursed to him, is the case of the Petitioner. Thereafter, the first Respondent as per his proceedings dated 27th January 1992, evidenced by Ext. P-1 informed the Petitioner for the first time that his liability is fixed as Rs. 27,132:35 and called upon him to show cause why the amount should not be recovered from the D.C.R.G. benefits of the Petitioner. Petitioner submitted his objection before the first Respondent on 18th February 1992 denying his liability and requested the 1st Respondent to furnish the extracts of the audit objection on which the liability is fixed by the first Respondent. He has also complained that the said liability is fixed without giving any notice to him.

2. Accordingly, the first Respondent has informed the Petitioner as per Ext. P-2 letter that the Executive Officers of all the 13 Panchayats mentioned in Ext. P-1 were directed to furnish the details of the audit objections on which the liability is fixed to the Petitioner. There is a further direction to those Executive Officers to re-fix the liability of the Petitioner after receiving the Petitioner''s remarks on those objections. But only 3 Executive Officers alone furnished the details of the audit objections to the Petitioner, to which the Petitioner had furnished his explanations also. But he has not been given any information by those Executive Officers or by the Respondents intimating whether his explanation was accepted or not.

3. Thereafter on 30th October 1992, the Petitioner received a copy of the letter issued by the first Respondent to the Accountant General, Kerala State, Trivandrum evidenced by Ext. P-3 stating that his liability is fixed at Rs. 12,343.44 and to recover the said amount from the D.C.R.G. of the Petitioner. But it has also stated in Ext. P-3 that the amount to be recovered from the Petitioner can be got refunded to him as and when the audit disallowances are cleared. It is the case of the Petitioner that Ext. P-3 communication and the liability fixed on him were arrived a11 without giving sufficient notice to him by the Respondents and the same is against the provisions contained in Part III of K.S.R. The Petitioner, therefore, challenges Ext. P-3 proceedings of the first Respondent in this Original Petition and prays for quashing the above order by a writ of certiorari as illegal and unjust and passed without jurisdiction. He also prays for issuance of a writ of mandamus or other appropriate writ, direction or order directing the Respondents to disburse D.C.R.G. amount to the Petitioner with 18 per cent interest thereon and for consequential reliefs.

4. On behalf of the first Respondent, a counter affidavit has been filed in the case. No counter affidavit was filed by the 2nd or 3rd Respondents. According to the first Respondent, the Petitioner had retired from service on 30th April 1981 and the Accountant General, Trivandrum admitted the pensionary claims of the Petitioner on 16th October 1981 itself. The Petitioner has served in 15 Panchayats and during the year 1985, the liability certificate from almost all Panchayats could be obtained and the total liability was found to be at Rs. 37,099.38 and on subsequent verification by the Deputy Director, Panchayats, Kollam, the liability in respect of the four out of 12 Panchayats as on 1st September 1987 was considerably reduced and thereafter the liability position as on 21st October 1988 was intimated to the Government and according to the counter affidavit to the Petitioner also. Thereafter, the liability was finalised in the year. 1992 as Rs. 12,343.44 and on that basis, the liability certificate was forwarded to the Accountant General on 26th October 1992 with a request to recover the said amount from the D.C.R.G. of the Petitioner by Ext. P-3 order. The counter affidavit did not mention anything about the contentions raised by

the Petitioner in the Original Petition based on the provisions contained in the K.S.R. especially Rule 3 Note 2 in Part III of the K.S.R. and Rule 116 of Part III of K.S.R.

5. I heard the learned Counsel appearing on behalf of the Petitioner as well as the Government Pleader. Learned Counsel for the Petitioner has raised the contention that the Petitioner has become a pensioner from 1st May 1981 and till Ext. P-1 communication was issued to him on 27th January 1992, after the long lapse of nearly 11 years, no notice issued or orders have been passed fixing any liability on the Petitioner. Learned Counsel places reliance on Rule 3 Note 2 of Part III of K.S.R., as it stood prior to its amendment in the year 1986, and submits that liability to recover any amount from D.C.R.G. must be fixed before retirement of an employee and show cause notice also should be issued to him while in service. Admittedly, no such fixation of any liability had taken place or show cause notice had been issued in the case of the Petitioner while he was in service. He has retired from service as early as on 30th April 1981 and according to the Petitioner, till the issuance of Ext. P-1 communication, no liability was fixed and no show cause notice also was issued to him. Ext. P-1 is dated 27th January 1992-11 years long after the retirement of the Petitioner. The relevant rule applicable in the case of the Petitioner is the unamended Rule 3 of Part III which existed at the time of his retirement. Part III, Rule 3 of the K.S.R. is extracted below:

3. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the 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 proved 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 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 re-employment-

(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 proceedings in which an order of dismissal from service could be made in relation to the employee during his service;

(c) no such judicial proceeding, 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

(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 charge is issued to the employee or pensioner or if the employee 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.

6. From the above rules, it is clear that the rules made a distinction between the recovery of amounts from pension on the one hand, and D.C.R.G. on the other. In as much as Rule 3 mainly concerns itself about conversion of disciplinary inquiries against employees as inquiries for purposes of imposing cuts in the pension, the Explanation to Rule 3 must necessarily be confined to such a situation and not for recovering amount from D.C.R.G. When the Explanation to Rule 3 states that 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 employee has been placed under suspension, from an earlier date, the said Explanation cannot apply to a case of recovery of amounts from the D.C.R.G. In other words, even if the suspension had been made before retirement, it cannot help the recovery of amounts from the D.C.R.G. The only provision which deals with recovery from D.C.R.G. is Note 2 set out above. The Note clearly states that the word ''pension'' used in Rule 3 does not include D.C.R.G. The Note then states when any amount could be recovered from the D.C.R.G. It states that liabilities fixed against an employee can be recovered from the D.C.R.G. payable to him without the departmental/judicial proceedings referred to in Rule 3, but after giving the employee a reasonable opportunity to explain. The use of the word ''employee'' alone in Note 2 (before its amendment on 31st March 1986) makes it clear that in principle, the liability must be fastened on the person while he continues as ''employee'' and not after that, though if the liability is created, it could be quantified after retirement.

7. Note 2 before its amendment on 31st March 1986, required that the liability must be fastened, in principle, on the person while he was an employee and not thereafter. The Notes make it clear that the liability mentioned in it must have been fixed against a person while he was in employment and the show cause notice also must have been issued to him while he was in employment. As stated by the learned Counsel appearing on behalf of the Petitioner, unless these two conditions are satisfied, there cannot be any question of recovery of any liability from the D.C.R.G. before 31st March 1986. Admittedly, those two conditions are not satisfied in the case of the Petitioner.

8. As per the amended provisions to the rule by Government Order dated 31st March 1986 published in the Kerala Gazette dated 15th April 1986, Note-2 reads as follows:

In Note 2, after the word employee occurring in two places, the words ''or pensioner'' shall be inserted.

In Note 3 also, certain amendments have been made:

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

(emphasis supplied)

The liabilities of a pensioner should be quantified and intimated to him.

9. Ruling No. 3 is annexed to Note No. 2 which after the amendment of G.O. dated 31st March 1986 reads as follows:

The Note 2 above does not mean that the employee''s (or pensioner''s) consent should be obtained for recovering the liability from the death-cum-retirement gratuity payable to him. What is contemplated is only a communication of such liabilities to him so as to epable him to submit his explanation before the recovery is effected. It should be specifically stated in the communication that if no reply is received within 30 days of its issue, it will be presumed that the employee (or pensioner) has no explanation to offer and that further action will be taken on that basis. [G.O. (P) 45/68/Fin., dated 27th January 1968].

10. Even as per the amended provisions also, the liability of the employee can be quantified after his retirement and intimated to him after retirement within a period of 3 years on becoming a pensioner. Admittedly, the Petitioner became a pensioner as early as on 1st May 1981 and the outer period of 3 years mentioned in the amended Note for intimation of the quantified liability expires on 30th April 1984. Admittedly, no quantification of the liability or intimation of the said liability has happened before 30th April 1984 also. According to the statement in the counter affidavit, the liability position was intimated to the Petitioner only in the year 1988, whereas according to the Petitioner, only on 27th January 1992 when Ext. p-1 was communicated to him. But in either of this case, it is only

after the period of 3 years mentioned in the amended Note 2 to Rule 3 of Part III of K.S.R. This Court in the judgment reported in Director of Health Services v. Paul 1992 (1) KLT 313, has held that the liability to recover any amount from the D.C.R.G. must be fixed before retirement of an employee and a show cause notice also must be issued to him while he was in employment and not after his retirement. The above decision fully supports the case of the Petitioner.

11. Again under Rule 116, Part III of K.S.R. Ruling No. 5, if the liability of a retired Government Servant could not be assessed and adjusted within one year from the date of retirement of the Government employee, if any amount is withheld from the D.C.R.G. it shall be released. Part III, Rule 116 Ruling No. 5 of K.S.R. is extracted below:

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.

12. As can be seen from the above ruling, if liability could not be assessed within one year from the date of retirement of the Government employee, the amount withheld from, the D.C.R G. shall be released to him and disciplinary action shall be taken against the employees responsible for the failure to assess and adjust the liabilities within the said period prescribed. Admittedly, in this case, even though the Petitioner became a pensioner as early as on 1st May 1981, so far the amount due to him under the D.C.R.G. has not been paid to him and the pensioner was driven from pillar to post for getting his D.C.R.G. In the statements contained in the counter affidavit filed by the first Respondent, absolutely no justification or valid grounds are stated for the inordinate delay to take steps to fix the liability of the Petitioner, if any, and to finalise the same within a reasonable period. The liability position was first intimated to the Petitioner according to the counter affidavit only in the year 1988-7 years after the retirement of the Petitioner from service. It has also be remembered that the pension papers relating to the Petitioner were received by the first Respondent on 22nd July 1981 within a period of 3 months of his retirement and the same was Submitted to the Accountant General on 10th August 1981 and the Accountant General had admitted the pensionary claims of the Petitioner as early as on 16th October 1981. But his D.C.R.G. benefits were unjustifiably withheld by the Respondents without any valid or legal justification or grounds. Now the liability is fixed as per Ext. P-3 proceedings passed by the 1st Respondent on 22nd October 1992-more than 11 years and 6 months after the retirement of the Petitioner from service and that too without giving sufficient opportunity to the

Petitioner even to know the audit objections raised by the departmental officers and considering the explanation offered by the Petitioner in respect of the objections notified to him. Ext. P-3 order is, therefore, clearly illegal and unjust and issued in violation of Rule 3 of Part III of K.S.R. and Rule 116 of Pert III of K.S.R. and the same is set aside. Respondents are not entitled to reduce any amount from the D.C.R.G. of the Petitioner. Petitioner is entitled to get the entire amount of Rs. 9,360 as benefits under D.C.R.G. with 12 per cent interest from 1st May 1981 from the Respondents. I am fully justified in awarding interest to the Petitioner in the light of the decision reported in Gopinathan Nair v. State of Kerala 1992 (1) KLT 859. As directed by the learned Judge in the above case, I dm not directing the State to recover the interest amount payable to the Petitioner from the Government servants responsible for the inordinate delay or to take disciplinary action against those Government servants, since for complying with such directions, the State have to incur heavy expenditure, which also ultimately has to be borne by the tax payers of this State. But it is for the State Government to decide whether any such action should be taken against those persons responsible for such gross dereliction in the discharge of their duties under Rule 116 of Part III of K.S.R. But it is unfortunate to note that a Government servant retired from service in the year 1981, has to wait till the year 1993 to get a meagre amount due to him under D.C.R.G. and that too, at the intervention of this Court. The delay caused in the matter is inexcusable. Even though the rule applicable in the case of the Petitioner is the unamended Rule 3 of Part III of K.S.R. both under the amended and unamended rule, the department has no authority to order any recovery from the D.C.R.G. of the Petitioner. The payment is now delayed by 12 years. In the above circumstance, the 1st and 3rd Respondents are directed to disburse the entire amount of D.C.R.G. with interest at 12 per cent per annum for the said amount from 1st May 1981 till the date of payment to the Petitioner, within ten days from today.

Original Petition is allowed with costs. The advocate fee is fixed at Rs. 1,000.