(2008) 11 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25909 of 2006

Manni, C. APPELLANT

Vs

Divisional Forest Officer and Another RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Kerala Service Rules, 1959 — Rule 3

Citation : (2008) 11 KL CK 0039

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Anand, for the Appellant; Smitha, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—W.P.C. is filed challenging retension of Petitioner''s retirement benefits, particularly DCRG, pursuant to request for recovery made by KSFE. Counsel for the Petitioner contended that though Petitioner signed security documents standing as surety for another colleague for releasing loan amount by KSFE to him, he was not aware of the consequences. Government Pleader submitted that Petitioner in the format issued by the company stood as surety unconditionally agreeing for recovery from his salary and retirement benefits which obviously include DCRG, if the borrower defaults payments. Admittedly defaulter has not made payments and recovery is initiated pursuant to the request made by KSFE in terms of security bond executed by the Petitioner. Even though counsel for the Petitioner submitted that in order to recover from DCRG, Petitioner has to express his concent. I do not think such consent should always be in favour of the department. In other words, even consent given to creditor organisation like KSFE or Bank unconditionally agreeing for recovery from his retirement benefits will be sufficient compliance of Ruling 1 of Rule 3, Part III KSR, which authorises recovery for Government companies and other financial institutions based on consent given by the parties. In this case, consent for recovery is admittedly given to KSFE in the form of security bond executed by the Petitioner. Therefore there is compliance of Rule above referred and therefore

Petitioner cannot challenge recovery proceedings in the form of attachment of DCRG benefits.

2. Petitioner''s case that his colleague deceived him by getting papers signed and Petitioner is an illiterate person calls for enquiry if the borrower for whom he stood as surety is still in service. If the Petitioner approaches higher authorities of the department with a complaint in this regard there will be direction to such authority to conduct enquiry and take appropriate action if an illiterate person in the department is cheated by cleverer one in the department. Similarly if the borrower has any assets, on equitable grounds, such assets should be sold in recovery proceedings first and only if recovery is not possible, Petitioner''s retirement benefits should be proceeded against.

In the circumstances, even though challenge against recovery is not maintainable, I dispose of the Writ Petition directing the Respondents to withhold DCRG and other benefits to the Petitioner for another three months from now. In between Petitioner will file a complaint against the person who cheated him and in any case Petitioner can collect information pertaining to fixed assets, like land and building of the defaulter, give details of the same to KSFE and if such details are furnished with a copy of this judgment, KSFE will immediately take steps for revenue recovery and such revenue recovery against the defaulter should be completed within two months from now. However, if recovery is not possible for want of assets, then retirement benefits including DCRG of the Petitioner should be released to KSFE to the extent required for settlement of liability and balance remaining should be released to the Petitioner.