(1998) 06 KL CK 0073

In the High Court Of Kerala

Case No : O.P. No. 15680/92 N.

Mathew, P.V. APPELLANT

Vs

The State of Kerala and Others RESPONDENT

Date of Decision : 04-06-1998

Acts Referred:
Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 11

Citation : (1998) 06 KL CK 0073

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K.R.B. Kaimal, for the Appellant; P.V. Asha, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—The Petitioner is a retired Sales Tax Officer. As a result of disciplinary action taken against him the second Respondent passed Exhibit P-3 order which is as follows:

The Board orders that the next increment of Sri P.V. Mathew, Additional Sales Tax Officer-I, Ponkunnam in the time scale of Rs. 1370-40-1530-60-1830-80-2470-85-2640 be barred with cumulative effect.

The Petitioner filed Exhibit P-4 appeal before the first Respondent. The first Respondent confirmed Exhibit P-3 in Exhibit P-5. The third Respondent informed the second Respondent that Rs. 3,600 must be recovered from the Petitioner. The reasoning in Exhibit P-6 was that the above amount represents the monetary equivalent of one increment with cumulative effect. It is Exhibit P-6 that is really under challenge before this Court. In order to understand the scope and ambit of Exhibit P-6 and the rival contentions put forward by the learned Counsel on both sides it is necessary to refer to Rule 11(iii) of the Kerala Civil Services (CC and A) Rules:

(iii) Withholding of increments or promotion:

Note.-(1) Withholding of increments may either be permanent or temporary for a specified period. But withholding of promotion shall be only temporary for a specified period.

(2) Temporary period of withholding of increments shall not be less than three months and the temporary period of withholding of promotion shall not be less than six months and both shall not be for more than three years. If the period is not specified in the order it will be deemed to be 3 months in the case of temporary withholding of increments and 6 months in the case of temporary withholding of promotion. Temporary withholding of increments shall mean withholding of increments without cumulative effect, i.e., it shall not have the effect of postponing future increments.

(3) In case the order of withholding of increments cannot be given effect to, the monetary value equivalent to the amount of increments ordered to be withheld will be recovered from the pay of the officer. If the officer retires from service before the recovery could be effected the amount will be recovered from his pension or death-cum-retirement gratuity.

Explanation.- In case of stoppage of increment with cumulative effect the monetary value equivalent to the amount of increments ordered to be withheld may be recovered.

According to the above provisions, withholding of increments can either be permanent or temporary for a specified period. Temporary period of withholding of increment shall not be less than three months and shall not be more than three years. If the order of withholding of increments cannot be given effect to the monetary value equivalent to the amount of increments ordered to be withheld will be recovered from the pay of the officer. If the officer retires from service before the recovery could be effected, the amount will be recovered from his pension and his D.C.R.G. In case of stoppage of increments with cumulative effect the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered.

2. It is the explanation that has been pressed into service by the third Respondent while ordering the recovery of the monetary value equivalent to three times the amount of increments ordered to be withheld.

3. Exhibit P-3 order imposing the punishment was passed on 20th August 1991. The Petitioner retired on 31st May 1992. The increment for the year 1991, had already been sanctioned in July 1991, that is, before passing exhibit P-3 order. What the second Respondent ordered in Exhibit P-3 is to bar the next increment of the Petitioner with cumulative effect. Before the Petitioner retired the next increment did not fall due. Therefore, the Petitioner''s next increment could not be withheld. Therefore, it was argued that the monetary value of the next increment is only Rs. 100 and therefore only Rs. 300 can be recovered from the pay of the Petitioner. On the above basis it was stressed that it was wrong on the part of the third Respondent to calculate three years'' increments as the

monetary value of the increments barred.

4. In Note (3) to Rule 11(iii) it has been specifically stated that in case the order cannot be given effect to, the monetary value equivalent to the amount of increments ordered to be withheld can be recovered from the pay of the officer or from the pension or D.C.R.G. of the pensioner. In this case the next increment of the Petitioner did not fall due before his retirement. Therefore, in such cases only the monetary value equivalent to three times of the amount of increment can be recovered in view of the Explanation. When the order specifically says that it is the next increment that was barred, there was no necessity to calculate on the basis of the increment for three years.

5. Learned Counsel for the Petitioner points out the anomaly of the above argument. Suppose the Petitioner earns his next increment in September 1991, then the monetary value of one increment alone would be ordered to be recovered. In this case the Petitioner never earned the next increment before he retired. Therefore, to order recovery of the monetary value of three years increments on the basis of Explanation is unwarranted.

6. The learned Government Pleader on the other hand argued that the ''next increment'' is to be understood as next year''s increment. If such an interpretation is given, then the third Respondent''s order, Ext. P-6 can be sustained. But I do not think that such an interpretation is possible in view of Note 3 and explanation referred to above. It must be remembered that the Petitioner''s next increment alone was barred with cumulative effect. The above order could not be implemented before the retirement of the Petitioner. The Petitioner also did not earn his next increment. Therefore, it can only be taken that the monetary value equivalent to three times the amount of increment ordered to be withheld can be recovered. There is no necessity to import the "increments earned by the Petitioner for three years" for the purpose of calculating the monetary value. The explanation clearly mentions that it is the amount of increments ordered to be withheld that has to be taken into consideration for the purpose of recovery. As already stressed, the next increment of the Petitioner alone was ordered to be recovered. Therefore, the only interpretation is possible to accept in view of the explanation, is that the monetary value equivalent to three times the amount of increments means the three increments and not three years''s increments. Therefore, the third Respondent was in error in directing the second Respondent to recover an amount of Rs. 3,600 from the Petitioner. I quash Exhibit P-6. The Respondents are directed to refund the amount of Rs. 3,600 recovered from the D.C.R.G. of the Petitioner deducting Rs. 300 which the Respondents are entitled to deduct. This must be done within three months from the date of receipt of a copy of this judgment.

Original Petition is allowed as above.

