(2007) 01 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 9702 of 1999

N. Raveendran Nair — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 23-01-2007

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9
Constitution of India, 1950 — Article 226

Citation : (2007) 01 KL CK 0003

Hon'ble Judges : V.K. Bail, C.J;S. Siri Jagan, J;M. Ramachandran, J

Bench : Full Bench

Advocate : V.N. Achutha Kurup, for the Appellant; Swathy Kumar, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—Perceiving a conflict between two Division Bench decisions of this Court, viz., Board of Revenue v. Parameswaran Nair 2000 (1) KLT 227 and Jayarajan v. State of Kerala 2001 (3) KLT 929 on the interpretation of Rule 3 of Part III of the Kerala Service rules (KSR) on the issue as to whether the Government can withdraw or withhold pension under the said rule as a punishment on a retired Government servant, even if the grave misconduct proved against the pensioner does not involve pecuniary loss to the Government, a learned Single Judge of this Court has referred this original Petition for the decision of a Full Bench of this Court to resolve the apparent conflict between the two decisions. It is on such reference this original Petition has come up before us for decision.

2. The facts necessary for the disposal of this original Petition are as follows: - The Petitioner retired from service while holding the post of Sub Inspector of Police in the Kerala Police Department. On the date previous to his retirement, i.e. 30-12-1995, a memo of charges was served on him alleging that while he was holding the post of Station House Officer, Balaramapuram, during the period

from 6-10-1987 to 30-11-1987, he had committed serious official misconduct in so far as he failed to register a case on the basis of a reference made by the Circle Inspector of Police, Vizhinjam. In his explanation to the charge-sheet, the Petitioner took the contention that since he is no longer a Government employee, Rule 3 of Part III of KSR cannot be invoked against him to continue the proceedings in view of the fact that the allegations did not involve any pecuniary loss caused to the Government. Dissatisfied with the explanation submitted by the Petitioner, a departmental enquiry was conducted against him in continuation of the disciplinary proceedings already initiated prior to his retirement and by Ext. P-2 enquiry report, the Enquiry Officer found the Petitioner guilty of the misconduct alleged against him. Since the Petitioner had retired from service, by Ext.P-3 show cause notice, the Petitioner was directed to show cause why the punishment of reduction of Rs. 50 per month from his pension for a period of 10 years should not be imposed on him. The Petitioner filed a reply, Ext. P-4. Since the disciplinary authority was not satisfied with the explanation submitted by the Petitioner, the punishment of reduction of pension of Rs. 50 per month for a period of 10 years was imposed on the Petitioner by Ext. P-5 order. The Petitioner is challenging Ext. P-1 charge-sheet, Ext P-3 enquiry report, Ext. P-5 order imposing punishment and Ext. P-6 order sanctioning pension to the Petitioner at the rate of Rs. 1025 per month instead of Rs. 1075 per month which was the pension due to him otherwise. While challenging the orders on merit, i.e., on the ground that there was no sufficient evidence adduced in the enquiry to prove the misconduct of the Petitioner, the Petitioner, inter alia, contended that since the allegations against him which resulted in the order of punishment, did not involve any monetary loss to the Government, the Government had no jurisdiction to continue the disciplinary proceedings invoking Rule 3 of Part III of Kerala Service rules.

3. The Government Pleader appearing for the Respondents contended that under Rule 3, the Government had the right to continue the departmental proceedings under Rule 3, and has the power to impose on the Petitioner the punishment of withholding or withdrawing pension or any part of it whether permanently or for a specified period, even if the proved misconduct did not involve any pecuniary loss caused to the Government, since by Rule 3 the Government reserved to itself the right of withholding or withdrawing pension as a punishment, in addition to the right of recovery from pension any pecuniary loss caused to the Government if in a departmental proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service and the misconduct resulted in causing loss to the Government.

4. The counsel for the Petitioner relies on the decision of Board of Revenue v. Parameswaran Nair (supra) and the State relies on the decision of Jayarajan v. State of Kerala (supra) in support of their respective cases. We are now called upon to decide as to whether there is any conflict between the two decisions and if there is, which of the said decisions gives the correct interpretation of Rule 3.

5. At the outset, we must note that in Parameswaran Nair''s case (supra) the rule which came up for interpretation of the court was not Rule 3, but Rule 2. In that case after the retirement of the Government servant on 31-5-1990, the Sub Judge, Thrissur, convicted him by judgment dated 26-10-1991, imposing on him a sentence of imprisonment for a period of one year and a fine of Rs. 500. He was drawing pension till November, 1994. As he as convicted minimum pension payable to him was stopped on the ground that he was undergoing imprisonment from 30-12-1994. Although the Government servant preferred his pension bill from December, 1994, the pension was not paid. In the original Petition the learned Single Judge found that there was no provision specifically authorising withholding of pension and directed that the pensioner be given minimum pension with interest @ 18% during the period of non-payment. In the writ appeal preferred by the Board of Revenue, the learned Division Bench upheld the decision of the learned Single Judge on the ground that for bringing into operation Rule 2, an order in writing by the Government is necessary and in that case, such an order was not in existence even till the decision of the Division Bench. Incidentally, the court also made a passing reference that Rule 3 had application when the withholding or withdrawing or recovery is relatable to pecuniary loss caused to the Government and if in departmental or judicial proceedings, a pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. That passing reference is what is relied upon by the Petitioner in this original Petition in support of his contention that Rule 3 could be invoked to withhold his pension only if the proved misconduct involved pecuniary loss to the Government. Since in that decision the question on the interpretation of Rule 3 did not arise at all, we are of opinion that that decision cannot be held to be an authority for the proposition that Rule 3 can be invoked only in cases where the misconduct proved against the Government servant involved pecuniary loss and not otherwise.

6. Now we shall consider the next decision which is relied on by the State in support of their case. Relevant portion of Rule 3 reads thus;

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.

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(emphasis supplied)

The rest of the provisions of Rule 3 are not necessary for our purpose. In Jayarajan''s case (supra) the later Division Bench held that a close scrutiny of Rule 3 would show that the Government reserve to themselves two rights:

(1) the right to withhold or withdraw a pension or any part of it whether permanently or for a short period;

(2) the right to order recovery from pension of the whole or any part of the pecuniary loss caused to the Government.

The Division Bench found that these two rights are distinct and separate of which the first could be exercised even in the absence of any pecuniary loss to the Government. In arriving at this conclusion the Division Bench relied on the decision of the Supreme Court in Union of India and Others Vs. Shri B. Dev, , which interpreted Rule 9 of the CCS (Pension) rules, which contains a similar provision. The said provision reads as follows:

9. Right of President to withhold or withdraw pension. - The President reserves to himself the right to withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, 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 the Union Public Service Commission shall be consulted before order are passed.

(emphasis supplied)

Interpreting the above rule, the Supreme Court in that decision held as follows:

Rule 9 gives to the President the right of (1) withholding or withdrawing a pension or part thereof, (2) either permanently or for a specified period, and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. This power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore, can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service. One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the Respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable.

(emphasis supplied)

The learned Division Bench held that this decision is an authority for the interpretation adopted by them on Rule 3 as well and therefore, relying on the said Supreme Court decision, held that the Government can impose on the pensioner the punishment of withholding or withdrawal of pension of any part of it either permanently or for a specified period even if the misconduct proved against him does not involve any pecuniary loss to the Government.

7. On a consideration of the above decision, we are satisfied that that decision lays down the correct law on the subject. From a comparison of Rule 3 of Part III of KSR and Rule 9 of CCS (Pension) Rules, (see particularly the underlined portions supra) it can be seen that the two provisions are pari materia in every sense and therefore, the decision of the Supreme Court is squarely applicable to a case under Rule 3 of Part III of KSR as well. We have no hesitation to hold that the learned Division Bench was correct in applying the said decision to the case under Rule 3 of Part III of KSR to hold that even without any pecuniary loss caused to the Government, on account of the misconduct proved against a pensioner, the Government had the right to withhold or withdraw pension or any part of it, whether permanently or for a specified period.

8. The language used in Rule 3 also lends support to our conclusion. In the first part of the first sentence the words used are "withholding or withdrawing" and in the latter part the word used is "recovery". It shows that the first part relates to the right of the Government to impose withholding or withdrawing pension as a penalty and the second part relates to recovery of the actual pecuniary loss caused to the Government. In the context of the Kerala Government Servants (Classification, Control and Appeal) rules, the word'' withholding" is used to denote a punishment only whereas the word "recovery" is used both as punitive as well as for recouping the pecuniary loss. The contents of the two rights are evidently distinct and separate. The first is punitive and the second is compensatory in nature. Further, the conjunction used in between is ''and'', which also would go to show that the intention of the rule making authority was to reserve to the Government both these two rights to be exercised independently of each other, so as to enable the government to exercise both rights in case of pecuniary loss and the first right alone in other cases.

9. We also perceive Anr. object in this rule. This rule helps to discourage Government Servants from committing misconducts on the eve of their retirement. Without this rule any Government Servant can with impunity indulge in misconducts with the sanguine belief that once they retire from service, the Government would be powerless to take action against them and they can get away with the misconduct. If the interpretation that the right under Rule 3 can be exercised only in case of pecuniary loss is accepted, that would encourage unscrupulous employees to commit misconducts at least those which would not involve pecuniary loss to the Government. This rule, as interpreted in the way we have done would certainly help to put such unscrupulous employees on guard against committing misconducts on the eve of retirement. Our interpretation of the rule would, therefore, be in tune with such an object which certainly is a laudable one for maintaining discipline among Government employees.

10. In this connection, we may also note that under Rule 2 of Part III of KSR, the Government has power to withhold or withdraw pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of a grave misconduct even after retirement. When the

Government has power to impose punishment of withholding or withdrawing pension of a pensioner in respect of grave misconduct committed after he became a pensioner, there would be no logic in the interpretation that the Government does not have the right of withholding or withdrawing the pension or any part of it, on a pensioner on his being found guilty of grave misconduct committed by him while he was in service unless the misconduct involved pecuniary loss to the Government. To understand the full import of this reasoning, we may extract the relevant part of Rule 2(a) of Part III of KSR also which reads as follows:

2 (a) Future good conduct shall be an implied condition of every grant of a pension. - The Government may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

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11. Accordingly, we hold that the Government has the right to impose on a pensioner the punishment of withholding or withdrawing pension or any part of it either permanently or for a specified period, if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, even if the misconduct and negligence do not involve pecuniary loss caused to the Government and that in a case of grave misconduct involving pecuniary loss to the Government, Government can exercise both the rights of withholding/withdrawing pension as punishment and recovering the pecuniary loss from the pension. While confirming the decision of the Division Bench in Jayarajan''s case we also make it clear that we do not subscribe to the passing reference made by the earlier Division Bench in Parameswaran Nair''s case regarding the interpretation of Rule 3 to the contrary which in any event, cannot be held to be a decision laying down the law relating to interpretation of Rule 3 as that question never arose for consideration in that case.

12. Now that we have held that the Government has power to impose the above punishment on the Petitioner, even without any allegation of causing pecuniary loss to the Government on account his misconduct, we have to further deal with the other contentions raised by the Petitioner against the findings in the enquiry for a final disposal of the writ petition. Before doing that we must remind ourselves that our jurisdiction under Article 226 of the Constitution of India in such matters is limited to the extent of considering whether the findings in the enquiry entered by the inquiring authority is perverse or not and we cannot reappreciate the evidence adduced in that enquiry to come to a different conclusion entered by the inquiring officer as we cannot sit in appeal over the findings of the inquiring officer. In other words, even if a different conclusion is also possible on the same evidence, our jurisdiction does not extend to substituting that decision of ours in the place of the decision of the inquiring officer and the disciplinary authority to absolve the Petitioner.

13. We note that the inquiring officer in his report, Ext. P-2 (Punishment Roll) came to the conclusion that the Petitioner was found guilty of the misconduct alleged against him on the basis of the depositions of five witnesses who have proved 11 documents marked as Exhibits P-1, P-2, P-3(a), P-3(b), P-3(c), P-4(a), P-4(b), P-4(c), P-5, P-6 and P-7 in the enquiry. P.W. 1 who was the Assistant Registrar of the Kerala State Government Co-operative Department, deposed that while he was working as the Assistant Registrar of the Audit Wing of the Registrar of Cooperative Societies, he came across serious acts of misappropriation of money in the Kattachakkuzhi Gandhi Smaraka Kaithari Sangham (Kattachakkuzhi Gandhi Memorial Handloom Co-operative Society). He filed a report (Ext. P-1 in the enquiry) in respect of the same and forwarded it to the Deputy Registrar (Audit) of Cooperative Societies, who in turn forwarded it to the District Superintendent of Police (Rural) as per Ext. P-2 in the enquiry. He further deposed that although on the basis of that report, Crime No. 126/88 was registered in the Balaramapuram Police Station, in the charge sheet framed in the case, there was no mention of any of the matters which were referred to in his report. He further deposed that in his report he had stated that the Secretary and the seven committee members of the society misappropriated an amount of Rs. 2,39,096 as rebate for the year 1984-85, whereas in the charge-sheet filed before the Court, what has been stated was that there was misappropriation of an amount of Rs. 1940 as sitting fees and expenses of litigation. He stated on oath that pursuant to the same, a complaint on the irregularities in the charge-sheet was filed and on the basis of that the special cell of the Vigilance Department had conducted an investigation in which his statement was also recorded. His statement was also recorded by the Vigilance Inspector later. This was supported by P.W. 2 who had also worked as unit auditor in the Office of the Assistant Registrar of Co-operative Societies, Neyyattinkara. P.W.3, the Deputy Superintendent of Police and P.W. 5, who was the Circle Inspector and superior officer of the Petitioner deposed to the effect that instructions were given to the Petitioner to take appropriate action on the report of P.W. 1 as per the endorsement in the report to that effect. The inquiring officer on the evidence before him found that the report with the endorsement with the direction to conduct investigation after registering a case was received at the Balaramapuram Station during the period when the Petitioner was the Station House Officer of that Station. It was further found that he, without any justification failed to register the case and did not handover the pending references in respect of the case to his successor in office. From a consideration of the inquiry report and the reasoning given therein we are unable to find anything which even remotely suggests any perversity in the findings of the inquiring officer. That being so, we do not find any merit whatsoever in the challenge against Ext. P-3 enquiry report. For a Sub Inspector of Police, the said misconduct proved against him is very serious and can certainly be termed as a grave misconduct or negligence on the part of the Petitioner. That being so, we do not find anything wrong with the invocation of Rule 3 of Part III of KSR to impose on the Petitioner the punishment of withholding/withdrawing pension at the rate of Rs. 50 per month for a period

of 10 years from the pension due to the Petitioner. In view of the above findings, we do not find any merit in the original Petition whatsoever and accordingly the same is dismissed, without any order as to costs.

Interlocutory applications stand closed.

