(2015) 05 KL CK 0094

In the High Court Of Kerala

Case No : WP(C). No. 31279 of 2004 (W)

P. Gopalakrishnan Nair APPELLANT

Vs

The Kerala State Electricity Board and Others RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Citation : (2015) 05 KL CK 0094

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; N.N. Sugunapalan, SC and P. Santhalingam, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil K. Narendran, J—The petitioner retired from service on superannuation while working as Laison Officer in the Kerala State Electricity Board. He has approached this Court in this writ petition seeking a writ of certiorari to quash Ext. P5 notice issued by the second respondent in which it was proposed to recover a total sum of Rs. 71,525/- from his pensionary benefits.

2. Going by the averments in the writ petition, the petitioner had earlier approached this Court in O.P. No. 12013 of 2001 feeling aggrieved by the denial of retiral benefits. By Ext. P1 interim order, this Court has directed the first respondent to pay the amount due to the petitioner towards retiral benefits, less liability, if any, already fixed against him, provided there is no judicial/ departmental proceedings pending against him. A reading of Ext. P2 letter of the Secretary of the Kerala State Electricity Board addressed to the second respondent would also indicate that no departmental/judicial proceedings as contemplated under Rule 3A Part III of KSR are pending against the petitioner and in such circumstances the Board has decided to settle and pay final retiral benefits due to him on the strength of consolidated NLC and without insisting for Vigilance Clearance. As evident from Ext. P4 judgment, recording the submission made by the learned Standing Counsel for the Electricity Board that the entire

retiral benefits payable to the petitioner has been disbursed to him, O.P. No. 12013 of 2001 was closed on 11.10.2001.

3. The grievance of the petitioner is that after a lapse of more than three years from the date of retirement, he has been issued with Ext. P5 notice of the second respondent dated 30.9.2004 by which he was informed that a liability of Rs. 71,525/- as reported in letter dated 17.8.2004 of the Secretary of the Electricity Board is proposed to be recovered from his pensionary benefits. It is aggrieved by Ext. P5, the petitioner has approached this Court in this writ petition seeking various reliefs.

4. By order dated 26.10.2004, this Court granted an interim stay of all further proceedings pursuant to Ext. P5 and the said order is still in force.

5. The learned counsel for the petitioner would contend that Ext. P5 notice issued by the second respondent is legally unsustainable and the same is hit by Note (iii) to Rule 3 of Part III of the Kerala Service Rules (KSR). As per Rule 3 of Part III of KSR, the Government reserves 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 the Government, if in a 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. But Note (iii) to Rule 3 makes it abundantly clear that the liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner and that the liabilities of a pensioner should be quantified and intimated to him.

6. In State of Kerala v. Balan, 2003(3) KLT SN.16 (Case No. 22), a Division Bench of this Court interpreting Note (iii) to Rule 3 of Part III KSR has held that fixation of liability after affording an opportunity should be made within a period of three years of retirement.

7. In the case on hand, the petitioner retired from service on 31.10.2000. As evident from Ext. P5, the notice proposing to effect recovery from the pensionary benefits due to the petitioner was issued for the first time only on 30.9.2004, which is admittedly beyond the three year outer limit from the date of retirement prescribed in Note (iii) to Rule 3 of Part III KSR. In such circumstances, Ext. P5 notice cannot be sustained.

In the result, the writ petition is allowed, setting aside Ext. P5 notice dated 30.9.2014 issued by the second respondent.

