(2008) 10 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1593 of 2005

Pappachan S. APPELLANT

Vs

The State of Kerala and Others RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Citation : (2008) 4 ILR (Ker) 664 : (2008) 3 KLJ 736 : (2008) 4 KLT 676 : (2009) 5 RCR(Civil) 208 : (2009) 2 SLJ 171

Hon'ble Judges : M.C. Hari Rani, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : C. Unnikrishnan Kollam, S. Harikrishnan and Nidhi Balachandran, for the Appellant; Benjamin Paul (Sr. GP), for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioner retired from Government service as Secretary of Budhannor Grama Panchayat on 31/08/1998. The DCRG due to him was not released, as the liabilities against him, which he incurred while serving in various Grama Panchayats, were not finalized. He had worked as Secretary in Vazhikkadavu. Poruvazhy, Vallikkunnam, Budhannor and Thiruvandoor Grama Panchayats. After the lapse of about 3 years of his retirement, he was served with a notice on 22/10/2001, pointing out certain liabilities of him as per the audit officer''s report He submitted his explanation on 17/06/2002. Later, he was informed by Ext.P1 letter dated 28/11/2002 that all the proceedings initiated to recover the liabilities, as per paragraphs 36, 39 & 47 of the audit report, were dropped. It was also informed that for other liabilities, action will be taken against him. Later, the Deputy Director of Panchayats, served Ext.P2 notice dated 18/01/2003 on him pointing out that the liability of the petitioner will come to Rs. 3,57,908.36/-. He submitted his explanation, and thereafter, the Deputy Director passed Ext.P4 final order dated 22/11/ 2004, fixing his liability as Rs. 2,67,209.36/-. The said officer also asked the concerned officers to take action as per Ruling No. 6 of Rule 116 of Part-III KSR, to recover the amount due from the petitioner. The DCRG amount due to him is Rs. 90,669/-. The said amount was already adjusted towards the liability of Vallikkunnam Grama Panchayat, which is evident from Ext.P4. This writ petition is filed, challenging Ext.P4 and also for a direction to repay the DCRG due to him with interest at the rate of 12% per annum from 31/08/1998. The learned counsel for the petitioner relied on Note 3 of Rule 3 of Part III KSR and submitted that liability, if any, has to be fixed against a pensioner within three years of his/her retirement. Since the same was not fixed within the said time limit, the retention of the DCRG was illegal. The learned counsel has also relied on Ruling No. 5 of Rule 116 of Part-III KSR. He has also brought to our notice Ruling No. 6 under the above Rule and contended that since within one year of retirement, the liability was not fixed, the DCRG should have been released after one year. So, the direction issued under Ext.P4 is illegal. Therefore the petitioner prays for quashing Ext.P4 and for ordering release of the DCRG due to him.

2. The 3rd respondent has filed a counter affidavit, resisting the prayers in the writ petition. According to the Government, the liability has been fixed in accordance with law against the petitioner, and the DCRG amount being only Rs. 90,669/-, the same was adjusted towards the liability, and the balance amount has to be recovered from him.

3. Before dealing with the submissions of the petitioner, we will refer to the relevant. Rules. Rule 3 of Part-III KSR deals with the power of the Government in withholding or withdrawing a pension or any part of it, whether permanently or for a specified period. Note 2 of Rule 3 would make it clear that the Rule does not cover the withholding of DCRG Note 3 of the said Rule says that liability of a pensioner shall be fixed within three years of his becoming a pensioner. Rule 3 of Part III KSR reads as follows:-

Rule 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 reemployment after retirement:

Provided that.-

(a) Such departmental proceedings, 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 proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment, 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 charges 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 civil proceeding, on the date of presentation of the plaint in the Court.

Note 1 - As soon as proceedings of the nature referred to in this rule are instituted the authority which institutes such proceedings should without delay intimate the fact to the Audit Officer. The amount of pension withheld under this rule should not ordinarily exceed one-third of the pension originally sanctioned. In fixing the amount of pension to be withheld; regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

Note 2- The word ''pension'' used in this rule does not include death-cum-retirement gratuity. Liabilities fixed against an employee or pensioner can be recovered from the death-cum-retirement gratuity payable to him without the departmental/judicial proceedings referred to in this rule, but after giving the employee or pensioner concerned a reasonable opportunity to explain.

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

A reading of the above Rule would show that there is a time limit fixed for fixation of liability against a pensioner. But KSR are silent as to what will happen if the liability is not fixed within the said time limit. The Rules do not say that thereafter no liability could be fixed or recovered. The Rules also do not say that all liabilities will obliterate on completion of three years after retirement. Ruling Nos. 5 & 6 of Rule 116 of Part - III KSR reads as follows:-

Ruling No. 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.

Ruling No. 6:- If in any case the amount withheld from the death-cum-retirement gratuity or the cash deposit, or the surety bond taken from the employee has been released on the expiry of one year after the date of retirement without the liabilities being finalised and adjusted, or it is not adequate to cover the liabilities finally fixed, action will be taken against him under Rule 3 of Part III, Kerala Service Rules to make up the loss by withholding, withdrawing or effecting recoveries from the pension sanctioned. If action under Rule 3 ibid is not possible due to the expiry of the time limit prescribed for such action, or due to any other reason, the retired employee will be proceeded against (in) a Civil Court for recovering the pecuniary loss caused to Government.

Ruling No. 5 says if the liability of a pensioner is not fixed within one year of his retirement, the DCRG, if any, withheld shall be released and disciplinary action shall also be taken against the employees responsible for the failure to assess and adjust the liabilities within the prescribed period of one year.. Ruling No. 6 says, if the amount is released under Ruling No. 5, and if action under Rule 3 cannot be initiated due to expiry of the time limit prescribed for such action, or for any other reason, the retired employee will be proceeded against in the Civil Court for recovering the pecuniary loss caused by him to the Government. Going by the above Rule, the DCRG due to the petitioner should have been released, after 31/08/1999. In this case, the same was not done. The liability was fixed only as per Ext.P4 dated 22/11/2004.

4. We notice that the petitioner has made several complaints against the fixation of the liability. He even goes to the extent of saying that Ext.P4 cannot be treated as an order fixing his liability at all. But whatever be that, the Government have computed what is the amount due from the petitioner and the officers concerned have been asked to proceed against him as per Ext.P4. So, it can taken as the fixation of liability of the petitioner. But, whatever be the procedural flaws that may be alleged against the fixation of liability after three years, it is not in dispute that any loss caused by an employee while in service

can be recovered from him, after he becomes a pensioner, by instituting a civil suit The period of limitation for the Government for instituting such a suit is 30 years under the Limitation Act. We also notice that by invoking the provisions of the Kerala Public Accountants Act, any liability from a pensioner can be recovered. So, it is not a case where after the time limit is over the liability is obliterated and no recovery is permissible. What is canvassed before us is that the Government should not have retained the DCRG beyond one year and it should have been released, especially in view of the fact that within three years after the retirement, the liability is not fixed. We find considerable force in the said submission. If the petitioner has approached this Court immediately after August, 1999, this Court would have normally ordered to pay the DCRG to him. The petitioner has chosen to approach this Court only after the fixation of his liability as per Ext.P4 dated 22/11/2004. When an amount of more than Rs. 2 lakhs is due from the petitioner to the Government and the Government are taking steps to recover it, it is not just or proper to ask the Government to release the DCRG amount due to the petitioner with it. The right of a creditor to adjust any amount of the debtor with him towards the letter''s liability should be conceded to the Government also. So, by exercising the discretionary jurisdiction, we are not inclined to order the Government to release the DCRG amount due to the petitioner and thereafter to collect it back. In view of the interim order obtained by the petitioner against Ext.P4, the officers could not have proceeded against the petitioner further also. In view of the above factual background, we order that the respondents, if so advised, may proceed to recover the amount due from the petitioner; by instituting a civil suit or initiate proceedings under the provisions of the Kerala Public Accountants Act, within four months from the date of receipt of a copy of this judgment The petitioner shall serve a copy of this judgment by registered post with acknowledgment due on all the respondents herein simultaneously. If no civil suit is instituted, or other proceedings are initiated, to recover the amount due from the petitioner within four months from the date of receipt of a copy of this judgment, the DCRG of the petitioner shall be released to him with 6% interest from 01/12/1998, within one month after the expiry of the aforementioned four months'' period. It is clarified that even if the amount of DCRG happens to be released to the petitioner pursuant to this direction, the power of the Government to recover the entire amount due from the petitioner by instituting a suit or by other proceedings will not be affected by the same.

The writ petition is disposed of as above.

