
(2004) 07 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 5562 of 2003 K

P.H. Shamsuddhin

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Citation : (2004) 3 ILR (Ker) 382 : (2004) 2 KLJ 359 : (2004) 2 KLT 1020

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : T.M. Abdul Latheef, for the Appellant; Lal George (GP), for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—Petitioner retired on 31-05-1999. He is aggrieved since a portion of the DCRG is withheld. Such withholding of the DCRG is as per Ext. P2. It is seen from Ext. P2 that there is an excess payment to the petitioner on two counts as follows:

1. Excess pay and allowances drawn due to re-fixation of pay for the period from 10-11-1986 to 13-10-1988 as per the Liability Certificate No. Estt. 1/2000 Dated 18-11-2000 issued by the Assistant Registrar of Co-operative Societies (Audit), Kanjirappally, Kottayam District. &
2. Excess subsistence allowances drawn while working as Village Extension Officer in the Block Development Office, Erattupetta as per letter No. D5/3346/86 Dated 25-09-1986 of the District Collector, Kottayam.

Learned Special Government Pleader referring to Rule 3C of Part III KSR contends that if any payment is made by mistake, the Government is within its powers to recover such excess payment. The only restrictions are that it should not be for a period of four years prior to retirement, and that the excess payment should be detected within four years of retirement. Rule 3 reads as follows:

3C. Notwithstanding anything contained in these Rules, recovery of excess payments made to an Officer by mistake within a period of four years before his retirement and which are detected within a period of four years after retirement may be made from his pension and other amounts due to him after retirement subject to the condition that such deduction if made from his pension shall be effected only in monthly instalments in whole rupees and that the amount of each instalments shall not exceed 10 per cent of the monthly pension admissible to him.

2. In the instant case, as can be seen from Ext. P2, the excess payment is for the period from 10-11-1986 to 13-10-1988, obviously during the period of four years prior to retirement, and the excess payment as subsistence allowance is during 1986, and that too, beyond the said period of four years. True, the excess payment is detected within four years of retirement, but that is not sufficient. The excess payment should be one made during the period of four years prior to retirement. Therefore, the objection is untenable. Learned Special Government Pleader contends that, as a matter of fact, the petitioner himself had given in writing agreeing to make the recovery. Even assuming so, if the recovery is otherwise impermissible, there is no justification in illegally extracting the benefits already granted to the Government servant who retired long back. So, that objection is also untenable. The Original Petition is hence allowed, directing the respondents to disburse the amount of Rs. 53,436/- within a period of two months from the date of production of a copy of this judgment. In the event of delay beyond the said period of two months, the petitioner shall be entitled to get interest at the rate of fifteen per cent and the officers responsible for the delay will be personally held liable for the interest from 01-01-2000.