
(2014) 03 KL CK 0048
In the High Court Of Kerala
Case No : O.P. (KAT). No. 70 of 2014

Ratheesh S. Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : (2014) 2 KLJ 858

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Suraj S. and Rekha Vasudevan, Advocate for the Appellant; Viju Thomas (Sr., GP), Advocate for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—We have heard the learned counsel for the petitioner and the learned Government Pleader.

2. The petitioner retired from service on 31.03.2010. DCRG was not released to him for want of last pay certificate/no liability certificate. He, therefore, filed an original application before the Kerala Administrative Tribunal in 2012. By the time that application was taken up for consideration in July, 2013, the applicant was eligible to receive the entire DCRG in terms of Rule 116 of Part III KSR, without any condition as to bond or deduction. The Tribunal, however, directed the establishment to release DCRG in terms of Ruling No. 5 under Rule 116 of Part III KSR within a period of two months from the date of that order. Amount was so released. The question of interest had been left open by the Tribunal.

3. The direction of the Tribunal to release the amounts under Ruling No. 5 under Rule 116 Part III KSR cannot be operated as it requires the petitioner to provide a surety or a bond. Since the time frame within which such condition could be insisted upon had run out, the establishment is not entitled to insist on any such requirement. The retiral benefits including DCRG are to be released to the petitioner without insisting on any condition in that regard.

4. Tribunal directed that the liability of the applicant shall be fixed within six months from the date of receipt of its order. This is criticized by the petitioner as in excess of the provisions of the statutory rules. Ruling No. 6 under Rule 116 of Part III KSR, inter alia, provides that if action under Rule 3 of Part III KSR is not possible due to the expiry of the time limit prescribed for such action, or due to any other reason, the retired employee could be proceeded against in a Civil Court for recovering the pecuniary loss caused to Government. Reverting to Note 3 to Rule 3 of Part III KSR, it can be seen 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. The liabilities of a pensioner should be quantified and intimated to him. This is the provision contained in Note 3 to Rule 3 of Part III KSR. This means that once that time limit is over, the Government will not have the authority to decide as an adjudicator as to what would be the liability of a particular pensioner. The right of the Government would be, as noted in the later part of Ruling 6 under Rule 116 of Part III KSR, one preserving to itself the right to sue the pensioner in the Civil Court. That procedure would then stand governed by the provisions of the CPC and substantive law in that regard. The quantification directed to be carried out by the Tribunal in paragraph 4 of the impugned order and the resultant quantification made by the Government as evidenced by Exts. P5 and P6 cannot by themselves be sufficient to fasten the liability on the pensioner. Exts. P5 and P6 could, at best, be treated as the stand of the Government and its pleading regarding the quantification of the loss sustained by it and recoverable from the pensioner concerned. That has to be put for adjudication in the competent Civil Court at the instance of the State and the State has to earn a decree through the remedy by way of suit in a civil court.

For the aforesaid reasons, the direction contained in paragraph 4 of the impugned order of the Tribunal to finalize the liability and any action taken by the Government or its officers, including by issuance of Exts. P5 and P6, which are consequential to such direction of the Tribunal, are hereby quashed. It is clarified that no surety or bond will be insisted upon for release of amounts to the petitioner. This original petition is allowed accordingly. No costs.