(2015) 02 KL CK 0226

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24355 of 2011 (T)

S. Sooryadas APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A
Kerala Lok Ayukta Act, 1999 — Section 9(1)

Citation : (2015) 02 KL CK 0226

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : S. Ramesh, Naveen T. and Pooja Surendran, for the Appellant; S. Jamal, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alexander Thomas, J—The petitioner had retired from service as a member of the teaching staff of the 4th respondent-S.N. College, Kollam, on 31.5.1999. Earlier he had held the charge in the post of the Principal of the said college for the period from 14.10.1995 to 24.1.1996 and from 1.4.1997 to 22.9.1997 in the said College. Among the sanctioned retiral benefits due to the petitioner, an amount of Rs. 80,000/- was sanctioned by way of Death Cum Retirement Gratuity (DCRG) to the petitioner consequent on his retirement. Alleging that during the time the petitioner had held the charge of the post of the Principal, he had incurred a liability of Rs. 57,470/-, the DCRG amount was withheld. Later the admitted balance amount due on account of DCRG coming to Rs. 22,530/- (viz., Rs. 80,000/- Rs. 57,470) was released to the petitioner on 31.1.2001 by the official respondents 2 and 3. Ultimately, the said balance amount of Rs. 57,470/-, which was withheld from the petitioner''s DCRG account, was finally disbursed to the petitioner only consequent on Ext. P-13 dated 8.6.2011. The main prayer of the petitioner is for grant of interest at the rate of 18% p.a. on account of the delayed payment of DCRG amount due to the petitioner.

2. The circumstances, that led to the withholding of the above said amount of Rs. 57,470/- from the DCRG amount of the petitioner, are as follows:- The Government and Department insist that the amounts collected from the students by the Private Aided Colleges against the Registration Fee is to be remitted to the personal deposit (PD) account to be maintained by the Principal of the College, which is to be appropriated to the Government Department. The 4th respondent is a Private College, which is aided by the Government of Kerala in terms of the Direct Payment System introduced in the State. The Registration Fee is primarily the sale proceeds of the application forms and prospectus issued to the applicants, who seek admission in the Colleges concerned. In the Government Colleges, the application forms, prospectus, memo cards, etc. are printed and supplied to the Principals of the respective Government Colleges concerned, by the Government Department concerned and the sale proceeds so collected from the applicants/students are to be appropriated to the Government account concerned. But in Private Aided Colleges, the printing of the application forms, prospectus, memo cards, interview cards, etc. is done only by the Management of the Private Aided College concerned and not by the Government or the Government Department concerned. In these circumstances, Private Colleges like the 4th respondent-S.N. College, Kollam, took the stand that there is no rationale or legitimacy in the Government department insisting that the Registration Fee collected by way of the sale proceeds of the application forms, prospectus, memo cards etc. sold to the applicants should be appropriated by the Government Department, as the entire cost of the printing and stationery involved in the printing and supply of application forms, prospectus etc. are borne exclusively by the Management of the College concerned and is not in any way borne by the Government. Therefore, it appears that the Managements like the 4th respondent-S.N. College, instructed the Principals of their Colleges to ensure that the sale proceeds obtained by way of such Registration Fee should be credited not in the P.D. account, but in the Manager''s account. The S.N. College Management appears to have brought this aspect to the notice of the Government and no decision was taken by the Government to resolve this controversy as is discernible from the averments in Ext. P-4 issued by the 4th respondent-Manager addressed to the Government and the Directorate of Collegiate Education. It is in this background that the petitioner, while holding the charge of the post of Principal of the 4th respondent-S.N. College, Kollam, had remitted Registration Fee coming to about Rs. 57,470/- to the Manager''s account and not to the P.D. account. The official respondents 2 and 3 therefore construed that this amounts to violation of the standing instructions and that therefore the non-remittance of the above said amount of Rs. 57,470/- to the P.D. account should be treated as the personal liability of the petitioner and therefore the said amount is to be appropriated from the DCRG amount due to the petitioner.

3. In a previous case, in the case of one Sri P. Madhavan Nair, who retired from service as Principal of the S.N. Training College, Nedumangad, on 31.3.1993, the

2nd respondent-Directorate of Collegiate Education, by Ext. P-8 dated 12.12.2000, had cleared the liability of the said incumbent by acting on the undertaking of the Manager of the S.N. College that the said amount may be deducted from the contingent and maintenance grants due to be paid by the Department to the S.N. College. In the instant case, the liability was alleged against the petitioner coming to the tune of Rs. 57,470/- on the above reasons as per Ext. P-1 dated 5.7.2000 issued by the 3rd respondent-Deputy Director of Collegiate Education, Kollam. Thereupon, the 4th respondent-Manager as per Ext. P-2 dated 25.8.2000, had given a declaration before the 3rd respondent-Deputy Director that the Management has no objection to adjust the above said liability alleged against the petitioner from the contingent and maintenance grant due to the College. The controversy on account of the Registration Fee collected by the petitioner and remitted to the Management account coming to Rs. 57,470/- (referred to in Ext. P-1), has also been specifically stated in Ext. P-2 declaration of the Manager. The Manager submitted Ext. P-3 dated 31.8.2000 requesting the 3rd respondent-Deputy Director to act on Ext. P-2 declaration and to absolve the petitioner from the above said liability so as to pay the entire DCRG amount due to him. Still further, the Manager had also submitted Ext. P-4 representation dated 28.10.2000 before the 1st respondent-Government and the 2nd respondent-Director of Collegiate Education pointing out all these aspects and requesting for issuing non-liability certificate of the retired Principals of the Colleges under their Management and absolving the principals like the petitioner of the said liability on the undertaking of the Management. Since no action was forthcoming, the 4th respondent-Manager further submitted Ext. P-5 representation dated 3.11.2000 requesting the 3rd respondent-Deputy Director to issue the non-liability certificate and disburse the DCRG amount due to the petitioner. It appears that even the balance admitted amount of DCRG coming to Rs. 22,530/- was released to the petitioner only on 31.1.2001. Since no action was taken by the official respondents to disburse the balance DCRG amount, the petitioner submitted Ext. P-6 dated 8.3.2007 to the 1st respondent-Government pointing out the above aspects. It is interesting to note that by Ext. P-7 proceedings dated 29.8.2008, the 1st respondent-Government has clearly informed the 2nd respondent-Director of Collegiate Education that since the petitioner herein had remitted the above said amount of Rs. 57,470/- to the Management account, it is not fair to withhold the balance amount of Rs. 57,470/- from the petitioner, who retired from service as early as on 31.5.1999 and the Government, therein directed the Manager to remit the amount of Rs. 57,470/- with interest to the PD account, etc. Since no action was taken by official respondents 1 to 3 to redress the grievances of the petitioner, he was constrained to approach the Lok Ayukta under Sec. 9(1) of the Kerala Lok Ayukta Act, 1999, by preferring Ext. P-8(a) complaint No. 532/2009 before the said forum with necessary prayers for redressal of such grievances. The Lok Ayukta, as per Ext. P-9 order rendered on 2.12.2009, held that in view of the undertaking made by the Manager of the S.N. College to adjust the said amount of Rs. 57,470/- from the contingent and maintenance grants due to the College from the Government Department, the petitioner has to be absolved from the said liability and it is further ordered that the petition viz, Ext. P-8(a) complaint No. 532/2009 is allowed. Though Ext. P-8(a) petition has been allowed by the Lok Ayukta, as per Ext. P-9 order dated 2.12.2009, that was not the end of the woes of the pensioner. Respondents 2 & 3 refused to comply with the said direction of the Lok Ayukta and the balance DCRG amount of Rs. 57,470/- was not paid to the petitioner. Therefore, the petitioner was again constrained to approach the Lok Ayukta by filing I.A. No. 610/2010 in complaint No. 532/2009 for effectuating the directions in Ext. P-9. It appears from a reading of Ext. P-10 that the defence put forward by respondents 2 & 3 herein before the Lok Ayukta was that the 4th respondent herein (Manager) was not claiming the contingent and maintenance grants due to the Colleges from the Department and on account of this, the official respondents 2 & 3 herein could not adjust the amount of Rs. 57,470/- from the contingent and maintenance grants due to the 4th respondent''s Colleges and that is the reason for not disbursing the balance DCRG amount of Rs. 57,470/- to the petitioner herein. The Lok Ayukta as per Ext. P-10 order dated 30.11.2010 passed in I.A. No. 610/2010 in complaint No. 532/2009 observed that if the College Management is not prepared to claim contingent and maintenance grants due to their Colleges as per the procedure, then nothing prevents the 2nd respondent herein (Director of Collegiate Education) from realising the amount from the College Management in any other manner since the liability has been taken over by those respondents. Accordingly, it was ordered in Ext. P-10 that payment of balance amount of DCRG due to the petitioner shall be made irrespective of the realisation of the amount from the College Management and posted the matter for reporting action taken thereon. Still further, in spite of issuance of Ext. P-10 order dated 30.11.2010, it appears that respondents 2 & 3 herein refused to comply with this direction. Instead they sought some clarification from the 1st respondent-Government and the Government by Ext. P-11 dated 11.11.2010 directed respondents 2 & 3 herein to show reasons as to why contingent and maintenance grant has not been allowed to S.N. College, Kollam, whether the College was ineligible for the same, whether there is any impediment in treating the case of the petitioner herein at par with the case of one Sri Madhavan Nair covered by Ext. P-8 herein and one Sri Suresh Babu after settling his liability and as to whether there is any possibility of any recovery of the amounts from the management fund etc. In reply to the Ext. P-11, the 2nd respondent herein submitted Ext. P-12 dated 15.12.2010 informing the Government, inter alia, that the S.N. College, Kollam is eligible for contingent and maintenance grant as per the Government Orders and that there is no impediment in treating the case of the petitioner herein at par with the case of one Sri Madhavan Nair covered by Ext. P-8 and one Sri Suresh Babu etc. Thereupon, it appears that the 1st respondent-Government issued a Government letter No. 22101/D1/07/H.Edn. dated 31.5.2011 (referred as 3rd paper in Ext. P-13) directing the 2nd respondent herein to issue non-liability certificate to the petitioner on condition that the amount so released will be adjusted against the contingent and maintenance grant due to the College. It is only after getting the said Government letter dated 31.5.2011 that the 2nd respondent herein issued Ext. P-13 proceedings dated 8.6.2011 ordering that in view of the 4th respondent-Manager''s undertaking as per Ext. P-2 dated 25.8.2000 and in view of the Government Direction contained in the Government letter dated 30.5.2011, the 3rd respondent-Deputy Director of Collegiate Education, shall take immediate measures to get Rs. 57,470/- from the contingent and maintenance grant of S.N. College, Kollam and the petitioner is relieved from the liability to the extent of Rs. 57,470/- under the above order and that the said Ext. P-13 is so issued in compliance with Ext. P-10 order dated 30.11.2010 of the Lok Ayukta. It is averred by the petitioner that it is only thereafter the petitioner received the balance DCRG amount of Rs. 57,470/- on 26.7.2011. It is in the light of these facts and circumstances that the petitioner has filed the writ petition with the prayer for a direction to grant interest on the belated payment of DCRG.

4. The 2nd respondent-Director of Collegiate Education has filed a counter affidavit dated 4.8.2012 in this writ petition. The main defence put forward in the said counter affidavit is that the petitioner herein violated the standing instructions inasmuch as he did not remit the above said Registration Fee amount of Rs. 57,470/- to the P.D. account to be appropriated by the Government Department and had instead remitted the said amount to the Manager''s account. Further, it is submitted in the said counter affidavit that the 4th respondent-Manager did not comply with the direction of the Government in Ext. P-7 dated 29.8.2009 to remit the amount of Rs. 57,470/- with interest to the P.D. account. It is accordingly contended that since the petitioner did not comply with the standing instructions regarding remittance of Registration Fee to the P.D. account, the said amount was rightly and lawfully treated as the liability to be recovered from the petitioner.

5. Heard Sri S. Ramesh, learned counsel for the petitioner and learned Government Pleader appearing for respondents 1 to 3 and Sri A.N. Rajan Babu, learned standing counsel appearing for respondents 4 & 5.

6. The main point to be decided is as to whether there was delay on the part of the official respondents in disbursing the DCRG amount due to the petitioner.

7. Before dealing with this aspect of the matter, it is to be noted that it is by now well settled that the retirement benefits like pension, DCRG etc. are no longer to be treated as bounty or as a gratuitous payment depending upon the sweet will or grace of the employer and not claimable as a right and therefore no right to pension can be enforced through court, and it is a right which is claimable by the provisions of Article 300A of the Constitution of India. The Apex Court in the case S.R. Bhanrale Vs. Union of India and others, (1996) 6 AD 195 : AIR 1997 SC 27 : (1996) LabIC 2576 : (1996) 5 SCALE 693 : (1996) 10 SCC 172 : (1996) 3 SCR 763 Supp : (1997) 1 SLJ 14 : (1996) AIRSCW 4176 : (1996) 6 Supreme 258 has observed that it is highly improper on the part of the governmental authorities to plead the bar of limitation against the claims of retired Government servants for

payment of withheld terminal benefits and related benefits like encashment of earned leave, increment arrears, special pay due, leave travel concession arrears etc., especially when the Government had defaulted in making payments promptly when the same fell due and that it is a sad commentary of affairs for making the pensioners run from pillar to posts to get their legitimate dues after serving the Government for long periods and it was specifically held that, had the amounts which was paid due to intervention of the court, been paid to the retired employee at the appropriate time, he would have been saved from a lot of unnecessary harassment and could have earned interest on that amount and could have utilised that amounts for other purposes and accordingly, directed the authorities concerned to pay a lumpsum amount towards interest compensation, litigation expenses etc. for the amounts wrongly withheld from the pensioner. Further, in the case of S.K. Dua Vs. State of Haryana and Another, AIR 2008 SC 1077 : (2008) 1 CLT 701 : (2008) 116 FLR 636 : (2008) 1 JT 331 : (2008) 1 SCALE 284 : (2008) 3 SCC 44 : (2008) 1 SCC(L&S) 563 : (2008) 3 SLJ 104 : (2008) AIRSCW 689 : (2008) 1 Supreme 95 , in para 14, the Apex Court held in that case concerning delayed payment of retiral benefits after four years from the retirement, that the grievance of the petitioner regarding payment of interest is well-founded and that if statutory rules are occupying the field, the retired Government servant could claim payment of interest on such delayed payment relying on such rules and if there are administrative instructions, guidelines or norms prescribed for the purpose, he could claim the benefit of interest on such basis, but that even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest by virtue of the provisions under Part III of the Constitution of India relying on Articles 14, 19 and 21 of the Constitution and that the aspect that retiral benefits are not in the nature "bounty", is the basis for the claim of interest on the delayed payment of retiral benefits. Accordingly, the Apex Court held therein that the High Court as per the judgment impugned therein, was not right in dismissing the Writ Petition on the ground that, since the writ petitioner sought only payment of interest on the delayed payment of retiral benefits, the matter is to be relegated to the civil court. The Apex Court held that the High Court ought to have entered into the merits of the matter on the basis of the records and that the Writ Petition should have been decided on merits. In the instant case, the petitioner retired on 31.5.1999. The one year period for payment of DCRG as envisaged in Rule 116, Ruling No. 5 of Part III KSR has also expired. The three year outer time limit for lawfully fixing the liabilities as per Note 3 to Rule 3 Part III KSR has also expired long ago. It is not as if the Department can wait till the end of outer time limit of three years. Note 3 Part III of the KSR stipulates disbursement of the DCRG amount due to the pensioner. Only if there are legitimate and justifiable reasons for the taking such long period of three years can the department be excused for taking the full period of outer time limit of three years stipulated in note 3 Part III KSR. If in a given case, if it is found that there was no legally justifiable reasons for taking such a long time, then the court is entitled to examine the claim of the pensioner for interest on the belated payment of DCRG.

8. In the instant case, even the undisputed amount of Rs. 22,530/- was released to the petitioner only as late as on 31.1.2001. The balance DCRG amount of Rs. 57,470/- was released to the petitioner only on 26.7.2011 in pursuance of Ext. P-13. It is in the background of these aspects, that the prayers of the petitioner should be considered. Indisputably, the liability alleged against the petitioner by respondents 2 & 3 was only to the tune of Rs. 57,470/- as evident from Ext. P-1 dated 5.7.2000. The balance DCRG amount of Rs. 22,530/- was released to the petitioner on 31.1.2001. There is absolutely no justification forthcoming from respondents 1 to 3 in not disbursing this undisputed amount of Rs. 22,530/- to the petitioner at least within three months from the date of retirement. Accordingly, the petitioner is entitled to interest @ 8% per annum on the amount of Rs. 22,530/- for the period from 1.9.1999 up to 31.1.2001.

9. The next aspect to be considered is as to whether the petitioner is entitled to claim interest on the balance DCRG amount of Rs. 57,470/- paid to him on 26.7.2011. Immediately after the fixation of liability in Ext. P-1 on 5.7.2000, the 4th respondent had submitted Ext. P-2 declaration on 25.8.2000 to respondents 2 & 3 that the amount of Rs. 57,470/- may be adjusted and deducted from the contingent and maintenance grant due to the Colleges. In similar case pertaining to a retired Principal of S.N. Training College under the very same Management, the 2nd respondent-Director of Collegiate Education, vide Ext. P8 proceedings dated 12.12.2000 had acted on such similar declaration given by the Manager and had directed payment of DCRG amount due to that pensioner (Sri P. Madhavan Nair) on condition that the amount of Registration Fee remitted by the incumbent in the Manager''s account shall be adjusted and deducted from the contingent and maintenance grants to be paid to the S.N. College. The Government has clearly and categorically held in Ext. P7 dated 29.8.2008 that since the petitioner herein had remitted the amount of Rs. 57,470/- to the Management account, it is not fair to withhold the liability of the petitioner who retired as early as on 31.5.1999. Moreover, in reply to the query raised by the Government in Ext. P-11, the 2nd respondent-Director of Collegiate Education by Ext. P-12 dated 15.12.2010 has clearly stated therein that there was no impediment in treating the case of the petitioner at par with Sri P. Madhavan Nair covered by Ext. P8 and that of Sri Suresh Babu. Therefore, there was no impediment that stood in the way of respondents 1 to 3 in treating the case of the petitioner at par with the case of Sri P. Madhavan Nair covered by Ext. P-8 and respondents 2 & 3 should have immediately acted upon Ext. P-2 declaration dated 25.8.2000 submitted by the Manager and should have resolved the controversy by issuing the nonliability certificate to the petitioner immediately and they should have ordered to deduct the amount of Rs. 57,470/- from the contingent and maintenance grants to be paid to the College Management. There is yet another aspect of the matter in Ext. P-9 order dated 2.12.2009. Lok Ayukta has ordered that in view of the undertaking given by the Manager as per Ext. P-2 herein, the petition filed before the Lok Ayukta stands allowed. This clearly means that the prayer in Ext. P-8(a) complaint No. 532/2009 stands

allowed by Lok Ayukta. The prayers in Ext. P8(a) are for direction for payment of DCRG amount and for interest on the said withheld amount. Therefore, Lok Ayukta by Ext. P-9 order has already allowed the prayers in Ext. P8(a), which is also inclusive of the prayer for direction for payment of interest on the withheld amount of DCRG.

10. It is to be noted that the petitioner retired from service on 31.5.1999. The College Management had consistently taken up the case of the petitioner before official respondents 1 to 3 as can be seen from Ext. P-2 dated 25.8.2000, Ext. P-3 dated 31.8.2000, Ext. P-4 dated 28.10.2000 and Ext. P-5 dated 3.11.2000. The petitioner has further submitted Ext. P-6 representation on 8.3.2007 to the official respondents 1 to 3. No action was forthcoming to redress the above said grievances of the petitioner. Still further, he was constrained to approach the Lok Ayukta and which led to the passing of Ext. P-9 order on 2.12.2009 allowing the petition. Even then, there was no compliance by respondents 1 to 3. Petitioner again constrained to approach Lok Ayukta by filing interlocutory application which led to the passing of Ext. P-10 order on 30.11.2010. Still respondents 2 & 3 did not come forward to comply with the direction issued by Lok Ayukta. The Government issued Ext. P-11 addressed to the 2nd respondent herein, subsequently clarifying as to whether the case of the petitioner could be treated at par with Sri P. Madhavan Nair who is the incumbent covered by Ext. P-8 herein. In spite of the clear stand of 2nd respondent in Ext. P-12 that there is no impediment in treating the case of the petitioner at par with Sri P. Madhavan Nair, no action was taken. It was only when the Government again insisted respondents 2 & 3 by letter dated 31.5.2011 (referred to in Ext. P13) that respondents 2 & 3 have woken up and issued Ext. P-13 order on 8.6.2011 which ultimately led to the disbursement of the balance DCRG amount of Rs. 57,470/- on 26.7.2011. Therefore, there is inordinate and unjustifiable delay on the part of official respondents 1 to 3 in paying DCRG due to the petitioner.

11. It is also to be noted that the entire controversy arose as to in which account the Registration Fee collected from the applicants-students should be remitted. In Government Colleges, the entire expenses borne for the printing of application form, prospectus, interview card etc. are borne by the Government and therefore Registration Fee collected from the applicants-students has to be invariably remitted to the Government account as expenses thereof are exclusively borne by the Government. But in Private Aided Colleges, the entire expenses for printing of such application forms, prospectus and memo cards etc. are met by the Private Management of the Aided Colleges concerned and not even a single paise in that regard is borne by the Government, it is stated. Therefore, prima facie, the contention of the 4th respondent-Management that the stand of the Government that the said amount should be remitted to the P.D. account so as to enable the Government Department by appropriating the same is wrong, etc., appears to be logically sound. But this Court is not pronouncing any final opinion on that aspects of the matter. It is a matter which should gain attention of the Government so as to resolve the controversy finally to the satisfaction of all

concerned. The College Management in Ext. P-4 has made a detailed discussion of the controversy in this regard and it is not known as to why the Government has not taken any decision on this matter. In case if the Government has not till date taken any final decision on this controversy as to whether or not the Registration Fee collected by the Private Aided Colleges should be remitted to the Manager''s account etc, then the same shall immediately gain the considered attention of the Government without any further delay. The Government shall invite representatives of the Private Aided College Management for a discussion on this issue and after consultation with the Director of Collegiate Education may take a considered decision on this aspect of the matter and issue standing instruction in this matter so as to resolve the controversy without any further delay. This the Government shall do within a period of eight months from the date of production of a certified copy of this judgment.

12. Ext. P-9 order allowing the petition has become final and conclusive between the parties as the official respondents 1 to 3 herein have not challenged the same before the appropriate forum. For the aforesaid reasons, this Court is constrained to hold that there was no legal impediment for respondents 2 & 3 to treat the case of the petitioner herein at par with the case of Sri P. Madhavan Nair who is covered by Ext. P-8. Therefore immediately after getting Ext. P-2 declaration dated 25.8.2000, official respondents 2 & 3 should have acted on the same and should have disbursed the balance DCRG amount of Rs. 57,470/- to the petitioner at least within a period of three months from 31.8.2000. The further delay in this regard is highly unjustified and without any reasonable cause. Therefore, the petitioner is entitled to get interest on the balance DCRG amount of Rs. 57,470/- for the period from 1.6.2002 (period from the date of expiry of three years from retirement) up to 26.7.2011. In this view of the matter, the writ petition stands allowed with the following directions:

(i) The Government, after discussion with all concerned, including the 4th respondent, shall take a decision on the issue as to whether the Registration Fee collected by Private Aided Colleges should be credited to the Manager''s account or not as suggested in Ext. P-4 by the 4th respondent-College Management and a decision shall be taken by the Government after taking into account their considered views within a period of eight months from the date of receipt of a certified copy of this judgment.

(ii) The petitioner shall be paid interest @ 8% p.a. on the amount of Rs. 22,530/- for the period from 1.9.1999 up to 31.1.2001.

(iii) The petitioner shall be paid interest @ 8% p.a. for the period from 1.6.2002 up to 26.7.2011.

(iv) In case the interest on the amount as directed above are not paid to the petitioner within a period of three months from the date of production of a certified copy of this judgment, the above said amounts shall carry interest @ 10% p.a.

The writ petition stands allowed as above.