

(2014) 09 KL CK 0199
In the High Court Of Kerala
Case No : O.P. (KAT) No. 295 of 2014

Somarajan Nair C.V.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2015) 3 KHC 12 : (2015) 2 KLT 753

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J.

Bench : Division Bench

Advocate : M.V. Thampan, R. Reji, Thara Thampan, B. Bipin and Arun Bose, for the Appellant; S. Jamal, Senior Government Pleader, for the Respondent

Final Decision : Disposed off

Judgement

Antony Dominic, J. This OP is filed by the applicant in TA No. 3131/12, who is aggrieved by the order dated 13th of March, 2014 passed by the Kerala Administrative Tribunal, Thiruvananthapuram. Petitioner, who was a Joint Block Development Officer under the respondents, retired from service on 31/08/2008. His prayer in the TA was mainly to direct the respondents to release the DCRG amount due to him. The Tribunal by the impugned order directed DCRG amount to be released to the petitioner after deducting an amount of Rs. 75,095/- with 9% interest from 01/12/2008 till the date of payment. It was further directed that the 2nd respondent shall finalise the liability taking into account the objection of the petitioner also.

2. In this OP, the contention raised by the learned counsel for the petitioner is that in view of the provisions contained in Note 3 to Rule 3 of Part III KSR, liability cannot be fixed beyond the period of three years and that recovery cannot be effected based on such fixation of liability from the DCRG due. Counsel also relied on the Division Bench judgment of this Court in Ratheesh S. Nair Vs. State of Kerala, to buttress the said contention. Therefore, according to him, direction of the Tribunal entitling the respondents to deduct Rs. 75,095/- with 9% interest thereon from 01/12/2008 from the DCRG due to him is illegal.

3. We have heard the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

4. According to the learned Government Pleader, in pursuance of the orders passed by the Tribunal, by order dated 09/07/14, the liability of the petitioner has been fixed at Rs. 1,00,144/-. In this OP, we are only concerned with the correctness of the order passed by the Tribunal entitling the respondents to withhold a part of the DCRG due to the petitioner towards the liability that is due from him.

5. The recovery from DCRG is permissible only if it is otherwise provided in the provisions of KSR. Note 3 to Rule 3 of Part III KSR and also the terms of Rule 116 fixes a time limit for such an action to three years from the date of retirement. Insofar as this case is concerned, admittedly, the petitioner retired from service on 31/08/2008. If that be so, recovery from the DCRG based on fixation could have been possible only if the liability is fixed within three years from the date of retirement. This position is also covered by the Division Bench judgment referred above. If that be so, the direction of the Tribunal entitling the respondents to withhold Rs. 75,095/- together with interest at 9% from 01/12/2008 cannot be sustained. We, therefore, set aside the order of the Tribunal entitling the respondents to withhold an amount of Rs. 75,095/- with 9% interest from 01/12/2008 till the date of payment and order that the entire gratuity due to the petitioner shall be released to him. However, it is clarified that this judgment will not in any manner affect the right of the respondents to recover the amount, if any, due to them in accordance with the provisions of law. The above directions shall be complied with, at any rate, within eight weeks of receipt of a copy of this judgment.

OP(KAT) is disposed of as above.