
(2001) 04 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 769 of 2000

St. Berchman's College

APPELLANT

Vs

N.J. Thomas and Others

RESPONDENT

Date of Decision : 11-04-2001

Acts Referred:

Citation : (2001) 1 KLJ 979

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : K.M. Joseph and John Joseph Vettikad, for the Appellant; T.I. Abdul Salam and C.K. Pavithran, Govt. Pleader, for the Respondent

Judgement

Radhakrishnan, J.—Question that has come up for consideration in this case is whether management of a college could deny issuance of last pay certificate and non-liability certificate to a teacher on the plea that the teacher has to discharge some liability towards the management on the basis of certain transactions. Short facts which are necessary for disposal of this case is as follows: Petitioner in the original petition while working as Selection Grade Lecturer retired from service on 30-6-1997. Pensionary benefits were sanctioned vide Ext. P1 letter dated 13-3-1997 by the Accountant General (A & E) Kerala, Thiruvananthapuram. Vide Exts. P2 and P3 orders petitioner was granted monthly pension of Rs. 2550/- plus DR beyond 608 points from 1-7-1997, death cum gratuity to the tune of Rs. 79,050/- and other benefits. The amount of pension commuted was Rs. 850/-, the value of the same was Rs. 1,16,484/-. According to the petitioner he is entitled to get pension from 1-7-1997. As per the Education Rules, management has to send last pay certificate as well as non-liability certificate to the Office of the Accountant General. Due to non-issue of certificates, petitioner was not granted pension, DCRG etc. The reason for non-issue of non-liability certificate is that in connection with Platinum Jubilee Celebrations of the College of which petitioner was Convener of Art Committee, he arranged certain cine artists for the function. For the said purpose

management entrusted certain amounts with the petitioner. According to the management, they entrusted with the petitioner Rs. 80,000/- so as to arrange cine artists. Most of the cine artists did not turn up. Stand of the management is that due to the lapse on the part of the petitioner cine artists did not turn up. Consequently, he must recoup the amount. Management then served the petitioner with notice Exts. R5(c) and R5(d) to which petitioner filed detailed objection disputing the claim. Stand of the management is that Rs. 1,39,713/- is due from the petitioner. Due to the above reason last pay certificate and non-liability certificate were not forwarded by the Principal of the College to the Accountant General. Due to the non-issue of last pay certificate as well as non-liability certificate petitioner did not get any retirement benefits. Under such circumstances, petitioner approached this court by filing the present writ petition.

2. Learned single Judge disposed of the writ petition directing the Principal of the College to issue NLC and LPC of the petitioner to the Office of the Deputy Director of Higher Education, Kottayam within one month from the date of receipt of a copy of the judgment. Deputy Director of Higher Education was further directed to disburse the pensionary benefits due to the petitioner. It was made clear the amount alleged to have been due to the management should not be treated as a liability as against the petitioner. It was also ordered that the judgment of the learned single Judge would not preclude the management to recover any amount from the petitioner by initiating appropriate proceedings.

3. Aggrieved by the same this appeal has been preferred by the management. Counsel appearing for the management Sri. K.M. Joseph submitted that the management is not bound to issue last pay certificate and non-liability certificate since large amounts are due from the petitioner to the management in connection with the Platinum Jubilee Celebrations of the College. Counsel submitted Note to Rule 3 of Part III of Kerala Service Rules would enable the management to recover the amount due from the death-cum-retirement gratuity payable to the teacher. Counsel submitted the term liability occurring in Note to Rule 3 should be given a wider meaning so as to include the liability if any due to the management from the teacher. Reference was made to the decision of this court in *Joseph v. K.S.R.T.C.* (1997 (2) KLT 912).

4. Counsel appearing for the teacher Sri. T.I. Abdul Salam on the other hand, contended that death-cum-retirement gratuity as well as pension are to be paid by the State Government and not by the management. Counsel submitted no amount is due from the teacher to the Government. He strongly disputed the contention of the management that amount is due from him to the management. Even if any amount is due, counsel submitted, those are all matters between him and the management which are to be resolved elsewhere. It is his contention that the management is bound to issue non-liability certificate and last pay certificate. Counsel submitted delay in issuing last pay certificate as well as non-liability certificate, the pension and retirement benefits, due to the petitioner shall not be denied. We are of the view if there is any dispute between the

management and the teacher those are matters to be resolved by them elsewhere. Only question to be decided is whether any amount is due to the State Government from the petitioner. Counsel for the management fairly submitted that no amount is due to the State Government from the petitioner. According to him, he has to pay large amounts to the management in connection with the Platinum Jubilee Celebrations of the College. Note to Rule 3 Part III K.S.R. uses the expression "liabilities". We are of the view those liabilities would take in only those amounts due from the government servant to the Government. Since provisions of the Kerala Service Rules are made applicable to aided schools as well, if any amount is due from a teacher to the State Government he has to make good that amount. It is that liability that is referred to in Note to Rule 3. In this connection we may refer to Ruling No. 1 to Rule 3 Part III K.S.R. which says that amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies etc. though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with his consent in writing. There is no rule or provision in the K.S.R. which would enable the management to withhold DCRG on the plea that amount is due to the management from a teacher on the basis of some private transactions between themselves. In the absence of any statutory provision and in the absence of any agreement to that effect as in the case of ruling No. 1 we are of the view management is not justified in taking the stand that they are entitled to recover amount from the DCRG of the petitioner. Counsel for the management fairly submitted that no amount is due from the petitioner to the Government, but only to the management. We are of the view since no amount is admittedly due to the Government from the Teacher, the Accountant General and the departmental officials should proceed that there is no liability outstanding against the teacher. They should proceed accordingly and disburse the DCRG and pensionary benefits. Management ought to have issued last pay certificate as well. In case the Management fails to issue last pay certificate, departmental official would find out what was the last pay drawn by the petitioner and inform the Accountant General forthwith. This should be done within a period of two weeks from the date of receipt of copy of this judgment. Educational authorities and the officials in the office of the Accountant General would take expeditious steps to disburse the entire amount within a period of one month thereafter.

Writ Appeal is disposed of as above.