
(1999) 02 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 11087 of 1995.

Subraya Bhat

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 1 KLJ 1017

Hon'ble Judges : A.S. Venkatachala Moorthy, J

Bench : Single Bench

Advocate : K. Mr. Hari Rao and K.R. Raghunath, for the Appellant; C.T. Ravikumar, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachala Moorthy, J.—The prayer in this Original Petition is to declare that Rule 14(4) of the Kerala Aided Schools Employees' Provident Fund Rules, 1967 (hereinafter referred to as rules) is illegal and violative of Art. 14 of the Constitution of India. There is yet another prayer seeking to issue a direction to the respondents to grant the petitioner interest at the rate of 18% per annum on the amount as on 30-4-1993 available in his credit in the Provident Fund Account No. C6059 from 1-5-1993 to the date of payment, that is December, 1994. The case of the petitioner is that after a long service he retired as Headmaster of the Aided Lower Primary School, Bayar on 30-4-1993. During his service he was contributing a portion of his salary to his Provident Fund Account. In September, 1992, he stopped the contribution. According to the petitioner, he ought to have been paid whatever the amounts available to his credit in the Provident Fund on the eve of his retirement. It is also stated in the petition that courts have held that if there is a delay in payment of pension or pensionary benefits aggrieved persons are entitled to get interest at the market rate from the date of retirement till the date of payment. On that basis, the petitioner would claim interest till the date of payment in December, 1994 on the Provident Fund

amount received by him at the rate of 18% per annum. According to the petitioner, Rule 14(4) of the Kerala Aided Schools Employees' Provident Fund Rules is arbitrary, irrational and violative of Art. 14 of the Constitution of India and hence the same has to be struck down.

2. On behalf of the first respondent a counter-affidavit has been filed. In para.3 of the said affidavit, it is stated that immediately on receipt of the application for closure of the Provident Fund steps were taken to close the account and to make payment to the petitioner. On scrutiny and verification of the closure application, it was found that the declaration in Annexure-III submitted by the petitioner was not counter-signed by the controlling officer, namely, the Assistant Educational Officer, Manjeswar and as it was found defective, the same was returned for curing defects and in that process the delay occurred. A general statement is made to the effect that on account of the fact that large number of teachers are retiring by the end of the academic year, great number of closure applications are received by the end of every academic year and owing to the great pressure of work and bulk receipt of closure applications it is practically impossible to settle the account immediately after the retirement. It is further claimed that as per the rules the authorities have six months time to process the application and for that period interest is also allowed. Reliance is placed in the counter-affidavit to rule 110 of Chapter VIII Part III of the Kerala Service Rules and claimed that the pension proposal should have been submitted by the petitioner one year ahead of actual date of retirement, but, in the instant case, the application was in fact filed only in September, 1992, that is only six months ahead of actual date of retirement. As far as the present case is concerned, it is stated that the authorisation slip for claiming the Provident Fund amount was sent from the 2nd respondent on 28-11-1994 and as such, as per the P.F. Rules, interest could be paid only for a period of six months from the month in which the amount became due. In para.6 of the counter-affidavit, it is stated that the delay occurred on account of the fact that the closure application was not duly counter-signed by the Controlling Officer and the petitioner should have taken care to see that the closure application is submitted in proper form and in full shape and hence the petitioner was also responsible for the delay in settling the account.

3. Before this Court takes up for consideration the case on hand, it is necessary to refer to certain rules which are relevant for the purpose of this case. The Kerala Aided School Employees' Provident Fund Rules came to be introduced in the year 1967. Rule 3 deals with constitution of the fund. The said rule is to the effect that there shall be a fund called the Kerala Aided School Employees' Provident Fund and the Fund shall be maintained in rupees. A note is added to the effect that the Fund is non-contributory and neither Government nor managements of schools will contribute to the fund. According to rule 4, it shall be compulsory for all full time employees of aided schools, who are either permanent or if officiating having a continuous service of not less than one year and who are governed by the rules in Chapters XXIV-B or XXVII-B of the Kerala Education Rules, to subscribe to the fund. Of course, there is a proviso to the

said rule to the effect that any employee who insured his life in the State Life Insurance (Official Branch) will not be required to join the fund if he does not want to join it. The next relevant rule is rule 14 which deals with the interest payable. Rule 14(1) is to the effect that subject to the provisions of sub-rule (5), interest at such rate as may be fixed by Government subject to a minimum of 4 per cent per annum shall be annually credited by the Government to the account of each subscriber. Rule 14(4) lays down that in addition to any amount to be paid under the rules of final withdrawal, interest thereon upto the end of the month preceding that in which the payment is made or upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, shall be payable to the person to whom such amount is to be paid.

Rule 43 deals with closure of Provident Fund Account and is to the effect that a subscriber who under the fourth proviso to rule 9 elects not to subscribe to the Kerala Aided School Employees' Provident Fund during the last one year of service immediately preceding the date of his retirement, can apply for closure of his Provident Fund account three months after the date of such option and the amount standing at his credit shall become payable to him before the date of his retirement.

4. The first question that arises for consideration is whether Rule 14(4) in so far as it lays down that the interest shall be payable only upto the end of the month preceding that in which the payment is made or upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, is liable to be struck down. In other words, the provision that a subscriber to the Provident Fund on final withdrawal would be entitled for interest only for the period as stipulated in R. 14(4) irrespective of the fact when the said amount is paid can be said to be rational, reasonable and in consonance with the settled legal position.

5. A subscriber who has contributed to the Provident Fund on his retirement or otherwise except where such subscriber died or resigned from the aided school service and desires to close the Provident Fund Account and claim the amount, has to follow the procedure laid down under Rule 43. As per the said rule, a prescribed Form, namely, Form No. E1, has to be filled up and signed by the subscriber as well as the Head Office and shall be sent by the Head of the Institution where the subscriber is working sufficiently early to the Controlling Officer concerned so as to enable him to forward the same along with necessary documents to the Accounts Officer within a fortnight of the event which necessitates the closure of the Fund account. If the withdrawal amount is paid within the period for which interest is payable under Rule 14(4), such subscriber cannot have any grievance because in such an event he will be paid interest as stipulated under Rule 14(1) of the said rules. But, however, suppose in a given case, inspite of the fact that the subscriber submitted the application for closure of the Provident Fund Account sufficiently early but the delay occurred in the

concerned authorities taking up follow up action in closing the Provident Fund account and disbursing the amount to the subscriber, would it be proper and reasonable to deny any interest to the subscriber for the period beyond the period stipulated under Rule 14(4) of the rules. In this context, one has to remember that the entire Provident Fund amount is the contribution by the subscriber himself, this being a non-contributory Provident Fund. The Government only receives contribution from the subscriber towards the Provident Fund and keeps the said amount in its deposit and on closure of the Provident Fund account pays the amount available in the said account to the subscriber along with interest as per rule 14(4) at the rate as stipulated in rule 14(4) of the rules. The Apex Court, while considering the liability of the Government to pay interest in respect of delayed payment of the pensionary benefits, in the ruling reported in *State of Kerala and Others Vs. M. Padmanabhan Nair*, , in the opening paragraph of the judgment, has categorically observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The Apex Court further observed that the necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate. What applies to a Government servant would equally apply to persons like the petitioner, who served in an aided school. Similarly, directions of the Apex Court issued to the authorities with regard to disbursal of gratuity and pension amounts could safely be extended to the amounts due to a subscriber of the Provident Fund on closure of the account. Imposing a restriction in Rule 14(4) to the effect that interest will be payable only for the period as stipulated in Rule 14(4) is arbitrary, irrational and unreasonably taking away the valuable property rights of persons like the petitioner. Consequently, rule 14(4) of the said rules, in so far as it restricts the payment of interest on the final withdrawal amount upto the end of the month preceding that in which the payment is made upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, has to be struck down. It has to necessarily follow that the liability of the Government to pay interest on the withdrawal amount would continue to extend till the actual date of payment.

6. Coming to the facts of this case, the first objection raised is that the petitioner failed to file the necessary application one year before his retirement and because of that the petitioner also contributed for the delay and that being so, he will not be entitled for interest beyond the maximum period stipulated under Rule 14(4).

7. This submission on behalf of the respondent cannot be accepted. This is because rule 43 does not prescribe any such period. As already pointed out, all that is contemplated under Rule 43 is that the application must reach the

Controlling Officer sufficiently early so as to enable him to forward the same to the Accounts Officer. In this case, the petitioner submitted his application in September, 1992 in the prescribed form and the petitioner retired nearly after 8 months, that was on 30-4-1993, which could well be said sufficiently early.

8. The provision relied on (i.e.) rule 110 of Part III K.S.R. would not apply to the facts of this case. That rule is applicable only where a person makes a claim for pensionary benefits.

9. The second objection raised by the respondents is that the application that was filed by the petitioner was not counter-signed by the Assistant Educational Officer and as it was found defective the same was returned for curing defects and in that process the delay occurred. Even if it is so, the petitioner cannot be found fault on that score. The third objection by the State Government is that because of the great pressure of work and bulk receipt of closure applications it is practically impossible to settle the accounts immediately after the retirement. Certainly, this cannot be an excuse on the part of the government and needless to mention the government has to employ more persons in such an event to settle the claims and that cannot in any way affect the claims of the petitioner.

10. Thus, this Court is of the view that the State Government has absolutely no defence with regard to the claim of the petitioner. A reading of the judgment of the Apex Court in Union of India (UOI) Vs. Ujagar Lal, would show that if there is delay in disbursement of the pensionary benefits and the same occurred due to administrative lapses on the part of the government, then certainly the person would be entitled to get interest.

11. In the light of the various conclusions arrived at by this Court supra, this Court is inclined to hold that the petitioner would be entitled for interest on the Provident Fund amount received by him in December, 1994 for the entire period (i.e.) till the date of payment from the date when it became payable, as per the rules.

12. In this Original Petition, the petitioner has claimed interest at the rate of 18% per annum on the withdrawal amount, namely, the Provident Fund amount from 1-5-1993 till the date of actual payment, i.e. December, 1994. The relief as sought for cannot be granted. The petitioner has not questioned the validity of that part of rule 14, particularly rule 14(1) of the said rules, which prescribes the rate of interest payable on the amount due to the subscriber under the rules. The answer for the question as to what is the rate of interest that the petitioner/subscriber will be entitled to can be found in rule 14(1), namely, the interest at such rates as may be fixed by the government.

13. In the result, Rule 14(4) of the Kerala Aided Schools Employees' Provident Fund Rules, in so far as it restricts the payment of interest on the final withdrawal amount upto the end of the month preceding that in which the payment is made or upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, is hereby

struck down. The petitioner, in the instant case, will be entitled for interest on the final withdrawal of provident fund amount from the day when it became payable under the rules till the date of actual payment at the rate as fixed by the Government under rule 14(1) of the said Rules.

14. Before parting with this case, this Court is inclined to make the following observation:

The Kerala Aided Schools Employees' Provident Fund Rules, 1967 has been framed for the benefit and in the interest of the employees. On their retirement, the employees get a lump sum which will help them very much to lead a peaceful retirement life. Any delay in disbursement of the Provident Fund amount may defeat the very purpose and object for which the rules have been framed. The State Government shall endeavour to bestow special and immediate attention in this regard and see that the retired employees get their Provident Fund amount atleast within a period of sixty days from the date of retirement subject of course their complying with the formalities and conditions as stipulated in the Rules.

It appears, the rate of interest that is being paid is around 12%. The apex court, while considering the interest payable on the delayed disbursement of the gratuity, fixed interest at the rate of 18% on the amount as reasonable, in the ruling reported in Harnam Singh (dead) through L.R's etc. Vs. Smt. Khema Kumwar (dead) through L.R's and Others, . In fact, in another ruling reported in State of Kerala and Others Vs. M. Padmanabhan Nair, , for the delayed disbursement of pensionary benefits, the Apex Court observed that interest has to be paid at the current market rate. In the light of these rulings, it is open to the Government to consider the enhancement of the interest payable on the Provident Fund contribution as well as on the final withdrawal amount on the closure of the Provident Fund Account.

The Original Petition is allowed as indicated.