
(2005) 09 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 1654 of 2003

Surendran

APPELLANT

Vs

Mavelikara Primary Co-op. Agrl. and R.D. Bank Ltd.

RESPONDENT

Date of Decision : 09-09-2005

Acts Referred:

Citation : (2005) 4 ILR (Ker) 435 : (2005) 4 KLT 619

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : P. Ravindran, for the Appellant; K.R. Chandrasekharan Nair and Vaheeda Babu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Hema, J.—Can an amount due to a Co-operative Society from its member be recovered from the Death-cum-Retirement Gratuity (DCRG, for short), u/s 37 of the Cooperative Societies Act, 1969 ("the Act" for short)? Can such dues be recovered from DCRG under Rule 3 Part III, Kerala Service Rules (KSR, for short)? What does the term "salary" mean in this context? These are the three main questions which are to be considered in this appeal.

2. Brief facts are as follows: Appellant retired from government service on 30.6.2000 as Sub Registrar. But, DCRG was not paid even after expiry of two years of retirement and hence, he filed O.P.No. 22258 of 2002 before this Court. Accordingly, this Court directed for fixation of liability and payment of DCRG within three months from the date of receipt of copy of the judgment. Thereafter, 2nd respondent-District Registrar issued Ext.P8 letter dated 26.2.2003 to Sub Treasury Officer to withhold an amount of Rs. 76000/- from appellant's DCRG, that being the dues from appellant towards first respondent-Society. Ext. P9, Liability Certificate was also issued by second respondent on the same day, certifying that appellant's liabilities (which includes the dues to the society referred above) are to be recovered from his DCRG. Hence the present Writ Petition was filed seeking a writ of certiorari to quash Exts. P8 and P9 and also

for a direction to respondents to disburse DCRG and retirement benefits due to the appellant, as fixed in Ext. P5 which is the Gratuity Payment Order issued from the Account General's Office, with 10% interest. The Writ Petition was dismissed as per the impugned order and hence this appeal..

3. Learned Counsel appearing for the appellant strenuously contended that even if the alleged liability of appellant is admitted, recovery of such dues cannot be effected from DCRG, either under the provisions of Co-operative Societies Act or under Rule 3 Part III, KSR, since it will be against the express provisions contained therein. Neither the Act, the Rules nor KSR permits any such recovery to be made from DCRG. As per Section 37 of the Act, recovery of the dues to a society from its member can be made only from "salary" and not from DCRG.

4. To appreciate merits of the above arguments, reading of Section 37 of the Act as well as Rule 52 of the Rules will be apt. Section 37 of the Act can be extracted as hereunder:

" Section 37. Deduction from salary to society"s claim in certain cases.--

(1) Notwithstanding anything contained in any law for the time being in force, a member of a society, may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the Society.

(2) On the execution of such an agreement, the employer or the officer disbursing the salary or wages of any such member as is referred to in Sub-section(1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction."

5. Before dealing with the scope of the provision extracted above, a skeletal reference to some more factual details will be relevant. As per the averments in the counter statement filed by first respondent-society, we find that the very foundation of the society"s claim against appellant rests on a document executed by appellant in favour of the society. The copy of the said document is Ext. RI(b). It is revealed from Ext. RI(b) that appellant stood as surety to a loan availed of by one Anil Kumar from the first respondent-Society. But, as per Clauses 3 and 4 of Ext. RI(b), the loan amount is to be repaid in bimonthly instalments by the principal debtor and if such instalments are defaulted, the society can require the Controlling Officer to deduct and recover the amount from the "salary" of appellant, in accordance with Section 37 of the Co-operative Societies Acs, 1969.

6. The principal debtor admittedly defaulted payment, and therefore, respondents would contend that the society is entitled to recover the dues from

appellant, in accordance with the terms of Ext.RI(b) which is executed as per Section 37 of the Act. Reliance was also placed on the contents of another document, Ex R1 (c), which is the copy of a certificate issued by the controlling officer. This is appended to Ext. RI(b). As per Ext. RI(c), the disbursing Officer of appellant had undertaken that recovery of the amount which fell due from appellant to the society shall be effected on receipt of requisition from the society for recovery of the amount, "consistent with Section 37 of the Act XXI of 1969 of the Kerala Co-operative Societies Act".

7. Thus, a joint reading of Ext. RI(b) and Ext. RI(c) would reveal that appellant as well as the disbursing officer had agreed and undertaken to act in accordance with Section 37 of the Act, in the matter of recovery of the amount which appellant is liable to pay to the society. Genuineness of Ext. RI(b) and Ext. RI(c) is not disputed. So, it follows that as per Ext. RI(b), appellant's dues, which the society is entitled to realise can be recovered through appellant's disbursing Officer, u/s 37 of the Act. Whatever amount is due to the society from the appellant can be recovered as per the terms in Ext.RI(b) and Ex. RI(c) and in accordance with Section 37 of the Act.

8. But, the crucial question is, can such dues can be recovered from DCRG? A plain reading of Section 37 of the Act reveals that deduction in respect of the society's claim, can be made by the employer or disbursing officer only from the "salary" of the defaulting member of the society. To enable a recovery u/s 37 of the Act, a member of a society will have to execute an agreement in favour of the society. In such agreement, certain specific terms as stated in Sub-section(I) of Section 37 of the Act are to be incorporated. As per such statutorily stipulated terms, the employer or the officer disbursing salary/wages of the defaulting member shall be competent to deduct the amount specified in the agreement from the "salary/wages" of such employee. Sub-clause (2) of Section 37 of the Act also provides that on execution of such an agreement, such employer or the disbursing officer, if so required by the society, by requisition in writing shall deduct such amount in accordance with the terms of the agreement.

9. Ext.RI(b) appears to be the document executed by appellant u/s 37 of the Act. Ext. RI(b) also shows that the terms of the said document permits deduction only from "salary" as stated under the said section. What is agreed to by appellant/member under Ext. RI(b) is deduction from the "salary" alone, and not from DCRG. It is clear from Section 37 of the Act also that a deduction can be made only from "salary".

10. Section 37(2) of the Act also provides that when an agreement is executed u/s 37(I), a deduction can be made only in accordance with the terms of such agreement. Even the essential terms of such agreement are specifically prescribed under sub-clause (1) of Section 37 of the Act which authorise recovery from "salary" alone. Thus, neither Section 37 of the Act nor the terms of the agreement which is to be executed by appellant thereunder, authorise any recovery from DCRG.

11. But, the term "salary" is not defined under the Act. The relevant provisions of the Act and Rules however, clearly indicate what legislature intended by the expression "salary". Section 37 of the Act and Rule 52 of the Rules reveal that "salary" referred to in the provision is monthly payment to be made to the employee while in service. It is provided in Rule 52 (1) of the Rules that on execution of agreement under Sub-section(I) of Section 37, the Society has to issue intimation of execution of the agreement to the employer or the officer disbursing the salary of the member, and under Sub-rule (2) of Rule 52, the Society has also then to send to such employer or such officer, a requisition "every month" for the recovery from the "salary" of such member.

12. Rule 52 (2) of the Rules further provides that such requisition shall be made in Form No. 9 and the total amount to be recovered from the salary or wages of the member "for the month" shall be specified therein. Such requisition is required to be made u/s 37(2) of the Act by the Society to the employer or officer disbursing the salary. Form No. 9 and also Rule 52(2) would further show that the requisition shall be sent 7 clear days prior to the last working day of each month. It is clear from the above provisions that the requisition has to be sent to the disbursing officer every month, that too within a specified period and then only, the recovery can be effected.

13. Sub-rule (5) of Section 37 of the Act also provides that the employer or the disbursing officer of the salary shall furnish to the Society a statement of the recoveries etc., in Form No. 10. Form No. 10 indicates that recovery of the specified amount can be made only monthly. From all what is discussed above, it can be concluded that the expression "salary" used in Section 37 of the Act refers to monthly and periodical payment to be made to the employee while he is in service. The word "salary" used in Section 37(I) can be interpreted to mean only monthly remuneration to be made to the member of the Society.

14. "Salary" in the present context therefore, means "a recompense or consideration generally periodically made to a person for his service in another person's business" (vide Jowitt's Dictionary English Law (1959 Edition)). Salary is the monthly payment to be made to the relevant employee as indicated in Form No. 9, Form No. 10, Section 37 of the Act and Rule 52 of the Co-operative Societies Rules. Such meaning alone will reconcile or be consistent with the provisions contained in the Act and Rules.

15. Learned Counsel for the first respondent and learned Government Pleader however contended that such an interpretation will only aid the employee to defeat the purpose sought to be achieved by the provision. It was also argued that once liability of the member is admitted, it does not matter whether monthly deduction is made from the salary or a lumpsum is deducted from any other amounts to be paid to the employee on other counts. It was urged that a narrow interpretation given to the expression "salary" in Section 37 of the Act will only result in serious miscarriage of justice and hence deduction has to be ordered from DCRG also.

16. Learned single Judge held that a restricted meaning cannot be given to the term "salary" referred to in Section 37 of the Co-operative Societies Act. It was observed in the impugned judgment that though DCRG cannot be treated as "salary" in the strict sense, recovery from a lump sum payment of DCRG can be effected u/s 37 of the Act. The learned single Judge was of the view that recovery from month to month envisaged u/s 37 of the Act is to ensure that an employee is not put to disadvantage by wholesale appropriation of his earnings. But, it was found that recovery from a lump sum payment in any case would not put appellant to extra peril as the liability has to be discharged at some point of time.

17. It was also observed by learned single Judge that the underlying object will not be defeated if such an interpretation is given. It was held that "the provision in the statute can only be understood as an enabling provision for recovery of the dues. A strict interpretation that salary paid from month to month alone could have been recovered, basically will be erroneous if not absurd. It will tend also to nullify the terms of the agreement entered into between the petitioner and the Bank." Learned single Judge thus, expanded the meaning of "salary" contained in Section 37 of the Cooperative Societies Act to include DCRG also within the meaning of "salary".

18. But, it is the well-settled principle of interpretation of statute that when the language of the statute is plain and unambiguous, the court must give effect to it, whatever may be the consequence. In this context, a reference to certain decisions of the Supreme Court will be worthy. It is held in *Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others*, as follows:

"But, in an anxiety to advance beneficent purpose of legislation, court must not yield to the temptation of seeking ambiguity when there is none. When the language is plain and ambiguous, the court must give effect to whatever may be the consequence, for, in that case, the words of the statute speak of the intention of the legislature. When the language is explicit, its consequences are for the legislature and not for the court to consider"

19. In *The State of Kerala and Others Vs. Dr. S.G. Sarvothama Prabhu*, , the Supreme Court held thus:

"But, it cannot be lost sight of that the function of the court is to interpret law according to the interpretation of the legislature and apply to facts of the case before it. And the intention of the legislature has to be ascertained from the language of the statute. If the words are unambiguous, clear and explicit, there need be no recourse to any rules, of interpretation".

20. *Mohan Kumar Singhania v. Union of India* 1992 Supp 1 SCC 59 lays down the law on interpretation of statute thus:

"While interpreting a statute, the consideration of inconvenience and hardships should be avoided and when the language is clear and explicit and the words

used are plain and unambiguous, court is bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be"

21. In Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others, it was held:

"Where the meaning of the statute is clear and sensible, either with or without omitting the words or adding one, interpretation is improper, since the primary purpose of legislative intent is what the statute says to be so".

22. From the discussion made above, it is abundantly clear that when the language of the statute is clear and plain and it shows that the term "salary" used in the relevant provision refers to periodical and monthly recurring payment to be made to the employee while in service, it will not be permissible for the court to insert, interpolate or substitute any word or expression such as "DCRG" into the provisions, to expand the meaning of the term "salary". However noble and lofty the court's intention may be, such interpolations will amount to precedential legislation, which is not permitted by law. Courts can only interpret law consistent with the language of the statute, without adding to or deleting any expression from the statute. The court cannot broach its own intention onto the statute which the court thinks is right, but which the legislature did not intend, going by the plain language. In the above circumstances, we hold that the expression "salary" used in Section 37 of the Act will not include "DCRG".

23. Another contention was also raised by the respondents that a recovery of the co-operative dues can be made under Rule 3 of Part III, KSR. This is strongly assailed by appellant. It is true that as per the said provision Government has the right to withhold or withdraw a pension or any part of it, whether permanently or for a specified period. But the word "pension" used in this rule does not include death-cum-retirement gratuity, as expressly stated in the said provision itself. However, it is also laid down in the provision itself that the liabilities fixed against an employee or pensioner can be recovered from the death-cum-retirement gratuity payable to him. But, such recovery can be done only after giving the employee or pensioner concerned a reasonable opportunity to explain. No such opportunity was afforded in this case.

24. Ruling 1 under Rule 3 Part III, KSR also shows that the dues from a Government employee or pensioner to Co-operative Societies, even though such dues are not treated as Government dues, can be recovered from death-cum-retirement gratuity payable to him under certain circumstances. But such recovery can be made only with the consent of the employee concerned, in writing. Thus it is evident from a plain reading of the above provisions that the amount which is due to the cooperative, society from a government employee cannot be recovered from DCRG under Note 1 to Rule 3 of Part III of KSR, unless the government employee consents to such recovery in writing.

25. Consent of the employee is an essential factor to effect any recovery from

DCRG and such consent shall be in writing also. In the absence of any such consent in writing, no recovery can be effected from DCRG which is payable to the employee. But, no written consent was obtained from appellant to recover the dues from DCRG and hence, amount due to the first respondent-society cannot be recovered from appellant's DCRG under Note 1 to Rule 3 of Part III of KSR. What is agreed to in Ext. RI(b) is only recovery from "salary" and not from "DCRG".

26. In the above circumstances, the order impugned in this appeal is liable to be set aside. We do so. Ext.P8 and Ext. P9, to the extent to which those direct withholding of DCRG in respect of appellant's dues to first respondent-society are unsustainable and those are hereby quashed. The third respondent shall disburse DCRG to the appellant with 8% interest without any further delay. However, we make it clear that what we have considered in this appeal is only the legality of recovery of the appellant's dues to the society from DCRG, u/s 37 of the Act or under Rule 3 Part III, KSR.

Appeal is allowed.