

(2003) 07 KL CK 0056
In the High Court Of Kerala
Case No : O.P. No. 9633 of 2003

Surendran

APPELLANT

Vs

Mavelikkara Primary Co-operative A. and R.D. Bank Ltd.

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Kerala Service Rules, 1958 — Rule 124, 3

Citation : (2003) 3 KLT 156

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; John Joseph Vetticad, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—After 27 years of service, the petitioner had retired as Sub Registrar from Government on 30.6.2000. By Ext. P1 proceedings, the Accountant General had fixed the retirement benefits, including Death-cum-Retirement Gratuity (for short DCRG). The gratuity payment order has also been issued, but he had not been paid the DCRG so far. Finding that there is inordinate delay, the petitioner had filed O.P. No. 22285/02 and there was a direction for finalisation of the issue within a prescribed time. It was after this that Ext. P7 dated 28.01.2003 came to be issued by the District Registrar (General), Alappuzha addressing the first respondent - Co-operative Bank, a copy of which was endorsed to the petitioner.

2. Reference had been made therein to a letter issued by the Bank to the office of the District Registrar whereunder the Bank had requested that before issuing the No Liability Certificate to the petitioner steps may be taken to settle the accounts of the said person with the Bank. The District Registrar had required a report, since on the basis of the judgment he was obliged to expedite the matter. The letter also required that in case of clearance, certificate to that effect may be sent to them. Thereafter, the District Registrar had addressed the Sub Treasury

Officer, Mavelikkara advising them to withhold a part of the DCRG of the petitioner towards liabilities, which included an item of co-operative dues. An amount of Rs. 76,000/- was shown as due to the 1st respondent-Bank. The net result is that the petitioner had not so far been given the DCRG. Ext. P8 and the Liability Certificate issued by the District Registrar, a copy of which is marked as Ext. P9, are under challenge.

3. Sri. P. Ravindran, appearing for the petitioner, had put up the following contentions:

(i) Though there is provision for deduction from salary to meet the claims of a Cooperative Society in respect of a member, the District Registrar was not an employer of the Petitioner; nor the petitioner is an employee of the District Registrar for the purpose of Section 37 of the Co-operative Societies Act. There was no agreement also between the petitioner and the Society and he was not a member of the Society and therefore the direction is unauthorised.

(ii) Being a Government servant, the only method of deduction of any dues from the retirement benefits of an employee are the rules enumerated in Part III Rule 3 of the Kerala Service Rules. This postulated an enquiry to be held for liability to be quantified and in so far as this has not been done by the Government and since no amounts were due to the Government, the withholding of the DCRG was bad.

(iii) Since recovery could have been made only by means of procedure prescribed by the Kerala Service Rules, and since the Government was not authorised to make deductions in respect of any amounts due to a retired service other than the dues payable to him the impugned orders were liable to be set aside.

(iv) In so far as the Bank was having only a civil claim as against him, a short cut of deduction, without resorting to arbitration proceedings and ascertainment of dues was misconceived.

4. A counter-affidavit has been filed by the first respondent-Bank. Reference is made to a loan taken by one Anil Kumar in the year 1995 and the petitioner had entered into an agreement with the Bank as a surety in respect of the said loan of Rs. 45,000/-. It is stated that the petitioner had in addition furnished a Promissory Note. Another certificate also had been filed as "Certificate of Salary and nonliability" which had been issued by his drawing officer during the relevant time and there was an undertaking therein that on demand in case of default amounts will be withdrawn and remitted from the petitioner's salary. It is submitted that Sri. Anil Kumar had defaulted repayment of the loan amount and as on 31.5.2003 and amount of Rs. 80,000/- is payable. It is stated that the Bank had written to the petitioner requiring for payment, but there was no attempt to pay back the amount and it was in that context they had approached the District Registrar by letter dated 8.5.2000.

5. The first respondent had also made available Ext. R1(a), namely the

Promissory Note executed by the petitioner along with others dated 30.3.1995 and the Bond of the same date (Ext. R1(b)). Ext. R1(c) is the certificate issued by the drawing officer so as to undertake payments made u/s 37 of the Co-operative Societies Act. Ext. R1(e), a copy of the demand addressed to the District Registrar and the Panchayat Director, requesting for steps to be taken for payment of the sums due to the Bank before NOC is issued, had also been made available.

6. One aspect which was not highlighted in the counter affidavit has become evident from such documents produced by them. This is that the petitioner was a member of the Bank with No. 335. Sri. Ravindran submits that the averments made in the Original Petition has not been controverted, that the petitioner was not a member of the Bank. However, the records are clear to indicate about his membership. We have also to notice that since membership in the society was a necessary requirement for entering into transactions even as security by virtue of Rule 57, the contention of the petitioner that he was not a member is unacceptable. We have to proceed on the basis that the petitioner was a member of the Bank.

7. In the above background, the issues could be examined. The submission that the District Registrar and the petitioner was not having any employer-employee relationship for the purpose of Section 37 of the Act is not to be countenanced, as such a question really does not arise here. The petitioner had prepared the O.P. as if he is not a member of the Bank. u/s 37 of the Act, 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 of 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. Being a surety in respect of a loan transaction, the petitioner has equal liability as the principal debtor for repayment of the loan amount. The default is not disputed. When Ext. R1(c) is executed by the disbursing officer, this sufficiently satisfies the requirement of Section 37. The learned counsel had also referred my attention to Rule 52 of the Rules". The expression used is salary or wages. But contextually, a limited meaning to the expression would not be fair and will not subserve the intention of the rule makers. Salary is a expression to denote payment of remuneration, so as to highlight the position that it is not payable on hourly basis, or as a reward based on duration of working period. That need not fetter the scope of the provision, especially since the petitioner has not been subjected to any extra hardship. The petitioner cannot wriggle out the liability, especially since he is a member of the Bank. Therefore, the only question is whether the amounts could be deducted from the DCRG, since what is authorised is for deduction from the salary payable every month alone.

8. Salary is not defined in the Co-operative Societies Act. Learned counsel for the

petitioner attempted to draw a distinction between "salary" and "DCRG" as contained in Part III Rule 3 of the Kerala Service Rules. But, this does not appear to be relevant. Nor is the contention appealing, viz., that in so far as he was a government servant deductions have to be made in consonance with the principles laid down by Part III Rule 3 K.S.R. This is because Section 37 is couched in a language incorporating a non obstante clause. The expression is "notwithstanding anything contained in any law for the time being in force". An arrangement as postulated by the Section could be entered into and it is a recognised course of conduct. The Kerala Service Rules can therefore be ignored while deciding the relationship between the two parties. Therefore, the disabilities that might be usually attached for a deduction from the Government servant's salary, referred to in Part in Rule 3 K.S.R., has practically no relevance.

9. The Co-operative Societies Act does not define salary. Salary or wages, referred to in the section, can therefore be normally treated as terms denoting amounts which are due and payable to a person. Of course DCRG cannot be treated as salary, in the strict sense. Nor a restricted meaning given to the term "salary". Recovery from month to month is to ensure that an employee is not put to disadvantage by wholesale appropriation of his earnings. A recovery from a lump sum payment in any case would not put him to extra peril, as the liability has to be discharged at some point of time. The underlying object will not be defeated if we consider the purpose of the provisions. It can never be visualised as giving an advantage to a person to the detriment of the creditor.

10. Even before the retirement of the officer a letter had been addressed to the disbursing officer for arranging payment of the dues, but it has no avail. It cannot be postulated that only because the employees reaches the age of retirement, such rights of recovery are automatically lost to the Bank. This argument, if endorsed, would not subserve public interest. Legally and factually the petitioner is indebted to the Bank, of course as a surety, and he has a duty, to discharge such debt. Therefore, 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.

11. The petitioner has another case that the Bank had not taken steps for effecting recovery from the principal debtor and that he is being persecuted. However, this complaint cannot be examined at this juncture, as the petitioner cannot in law dispute about his liability. The Bank has exercised the option which is legally admissible to them.

12. In view of the wordings of Section 37, as referred to earlier, it need not be examined as to whether provisions of the Kerala Service Rules are offended. Of course the ruling below Rule 124 of Part III K.S.R. refers to a position that DCRG is not attachable by a court of Law. But, the principles cannot be imported because of two reasons. The first is that there is no attachment by a court of law

in the present case. Secondly, in view of Section 37, application of the rule itself will be out of place. As a matter of fact, in such cases, an adjudication as referred to in the Kerala Service Rules is not called for.

13. The Original Petition is devoid of merits. It is dismissed.