(1997) 11 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No. 12280 of 1997

T.M. Poulose APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 168, 170, 173, 173(2)
Prevention of Corruption Act, 1988 — Section 2(c), 6

Citation : (1998) 1 KLJ 114

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : B. Raman Pillai, for the Appellant; C.K. Pavithran), for the Respondent

Judgement

C.S. Rajan, J.—The petitioner retired from service on 31.8.1996 as Superintending Engineer in the Irrigation Department. As per Ext.P1 order dated 21.1.1997 the third respondent admitted the pensionary claims of the petitioner including DCRG, family pension and commuted value of pension. By Ext.P2 dated 74.9.1996, the Superintending Engineer submitted to the second respondent the Non Liability Certificate in respect of the petitioner for the periods from 15.5.93 to 1.9.94. 1.9.94 to 28.3.95 and from 5.4.95 to 18.9.95. By Ext.P3 the Superintending Engineer submitted to the second respondent the Non Liability Certificate for the period from 19.9.95 to 31.8.96. Thereafter by Ext.P4 dated 15.4.97 the second respondent sanctioned only a provisional pension being 75% of the full pension. This was on the basis of Rule 3A(a) of Part III of the K.S.R. Ext.P4 also stated that six cases are pending finalisation against the petitioner in the Vigilance branch of the Department. Therefore the petitioner has filed this Original Petition to grant all the retirement benefits pursuant to Exts.P1 to P3. Statements have been filed on behalf of the second respondent and the Directorate of Vigilance and Anti-corruption Bureau, Thiruvananthapuram. The statements show that the Director of Vigilance Investigation has registered a criminal case against the petitioner along with others in the Vigilance Police

Station, Ernakulam as per Crime Case No. 5/96 u/s 13(2) read with section 13(1) (c) and (d) of Police Act. The case is under investigation. The statements further show that although the case has been registered during September, 1996, its investigation is still in the preliminary stage due to huge quantum of work to be undertaken towards its completion.

2. Sri. S. Subash Chandh, learned counsel appearing for the petitioner submits that there is no judicial proceeding or departmental proceeding pending against the petitioner on the date of his retirement and therefore the provisions contained in Rule 3A(a) are not applicable in the case of the petitioner. Therefore it is necessary to refer to the relevant provisions contained in Part III of the K.S.R. According to Rule 3 the Government reserve the right of withholding or withdrawing a pension or any part of it, and the right of ordering the recovery from a pension of any pecuniary loss caused to the Government, if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service. According to the proviso, such departmental proceeding, if instituted while the employee was in service shall be deemed to be a proceeding under this Rule and shall be continued and concluded by the authority after his retirement. The Explanation to the above rule prescribes when and how the departmental and judicial proceedings are instituted. The above explanation is re-produced hereunder:

Explanation:--For the purpose of this rule--

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the employee or pensioner or if the employee has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted--

(i) in the case of a criminal proceeding on the date on which the complaint or report of police officer on which the Magistrate takes cognizance is made; and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

Rule 3A(a) on which the respondents rely on reads as follows:

3-A(a). Where any departmental or of judicial proceeding is instituted under Rule 3 or where a departmental proceeding is continued under clause (a) of the proviso thereto, against an employee who has retired on attaining the age of compulsory retirement or otherwise he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension but no gratuity or death-cumretirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

3. In this case there is no departmental proceeding. There is only a judicial proceeding. As per Explanation (b) a judicial proceeding shall be deemed to be instituted on the date on which the complaint or report of police officer on which the Magistrate takes cognizance is made. Thus the argument of the learned counsel for the petitioner is that there must be a complaint or report of police officer basing on which the Magistrate is to take cognizance. Then only the judicial proceeding shall be deemed to be instituted. According to the learned counsel for the petitioner, such complaint of report of police officer has not been filed before the Magistrate in this case. To drive home the above argument, Sri. Subash, learned counsel for the petitioner, has taken me to the various provisions contained in the Code of Criminal procedure. Chapter XII of the Code of Criminal Procedure contemplates four kinds of reports at four different stages of the police investigation. The first is a preliminary report u/s 157 from the Station House Officer to the Magistrate. The second is u/s 168 from a subordinate police officer to the Station House Officer. The third is the report in writing sent by a police officer in forwarding the accused u/s 170 which will amount to a report on which a Magistrate can take cognizance. The 4th and the final report is the report u/s 173.

4. Section 190 deals with the cognizance of offences by Magistrate. The Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitutes such offence (b) upon a police report of such facts and (c) upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed. Therefore it is argued by the learned counsel that the case is only at the investigation stage and there is no final police report within the meaning of Section 173. Though the Magistrate is fully competent to take cognizance of an offence on the basis of a complaint, the First Information Report is not and cannot be treated as a complaint. There is no other complaint either from the Police or from any other person in this case.

5. A useful discussion about the distinction between ''a case'' and ''an offence'' within the meaning of section 173 is available in the ruling reported in Vijayaraghavan & Ors. v. C.B.I. (1984 KLT 522), by Justice Bhat (as he then was), which is as follows:

10. The expression ''case'' used in the provisions under examination has to be understood in the general sense and not in a narrow or techinical way. The words ''offence'' and ''case'' are not synonymous, though an offence always leads to a case and a case would always involve an offence or offences. An occurrence or transaction may involve commission of only one offence; or it may involve several offences. When a police officer receives information about the commission of a cognizable offence, and records the same, he is said to register a case, sometimes called a crime case. ''Case'' understood in this general sense means that the case before the police officer arising from the information placed

before him regarding an occurrence in which an offence or offences are committed. ''Case'' relates to the transaction of which information is given and not merely one of the offences committed during the course of the transaction.

6. A Division Bench of this Court in the ruling reported in S.M. Furtado v. C.B.I. and Ors., (1996) 1 KLJ 710 has held that a Magistrate can take cognizance of an offence only on filing of a report u/s 173(2) of the Code of Criminal Procedure.

7. What is the crucial date to be considered with reference to cognizance of an offence? Is it the date on which the First Information Report was placed before Court or is it the date on which. The final report u/s 173(2) was laid? The above question has been answered by Justice Padmanabhan in the ruling reported in Parameswaran & Ors. v. State of Kerala (1989 (1) K.L.T.35) as follows: When faced with such a hurdle, the counsel said that the crucial date to be considered with reference to cognizance is the date on which the first information report was placed before court and not the date on which the final report under S. 173(2) was laid. I fear that the counsel is labouring under a misapprehension. At the stage of F.I.R. the police officers acts only on information. What he is then doing is only to start investigation. The report is sent to court only as enjoined by S. 157 Cr.P.C. It is only an intimation to court. At that stage, no decision is taken regarding the offence and the accused is not placed for trial. Investigation is the province of the police and court cannot interfere. It is the right and duty of the police officer to collect materials during investigation and decide whether an offence is disclosed and the accused has to be placed for trial before court or whether a refer report has to be filed. The question of taking cognizance arises only when the final report under S. 173(2) is laid. That is the police report mentioned in S. 190(1)(b) of the Code on the basis of which the court can take cognizance of an offence and it is clear from S. 2(c) also. At that stage alone the accused is placed before court for trial and the question of taking cognizance of the offence will arise. Therefore, as against the first accused, no sanction is required under S. 6 of the Prevention of Corruption Act. Against the second accused, there is Ext.P24 sanction. The validity of Ext.P24 is not under challenge.

There is no case for the respondents that the words ''complaint'', ''report of police officer'' and ''cognizance'' have got a different meaning from those contained in the Code of Criminal Procedure. No argument was also advanced that these words have been used in a general sense and not with reference to their meanings attributed in the Code. Thus it is obvious that a judicial proceeding can commence under the Explanation referred to above only when a Magistrate takes cognizance of the offence either on a complaint or a report of a Police Officer. Since the First Information Report is not a complaint, there is no question of a Magistrate taking cognizance of the offence when he receives the F.I.R. The report of the Police Officer can be submitted to the Magistrate only after the investigation is over. In this case the investigation is only in the initial stage. Therefore, according to me, no judicial proceeding can be deemed to be instituted in this case.

There is one more reason to adopt such a reasoning in the cases relating to pensioners. At the fag end of the career of an officer, a criminal case may be registered against him. The investigation usually takes a long time as can be seen from the statement of the Vigilance Department. The investigation is still in a preliminary stage due to huge quantum of work to be undertaken towards its completion, though it started more than a year ago. In such cases the pensioners have to wait indefinitely for getting their pensionary benefits because of the long drawn investigation by the officers of the Vigilance Department. Such a state of affairs will cause great prejudice to the pensioners and sometimes they may not be able to enjoy the fruits of their pensionary benefits in this world itself. Therefore such an interpretation in favour of the respondents must be avoided, if possible. Therefore the petitioner is entitled to get all the pensionary benefits admitted as per Ext.P1. The amounts covered by Ext.P1 must be paid to the petitioner within three months from the date of receipt of a copy of this judgment. Since I do not find that there is any inordinate or culpable delay in payment of the pensionary benefits, the claim for interest is declined.

Original Petition is disposed of as above.