

(1971) 10 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 3378 of 1969

V. Sivasankaran Nair

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 28-10-1971

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 11(1),
23, 24

Citation : (1971) KLJ 817

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, V.S. Moothathu, N.R.K. Nair and T.K.M. Unnithan, for the Appellant;

Final Decision : Dismissed

Judgement

M.U. Isaac, J.—The petitioner retired from the State Government Service as a Tahsildar on 4-8-1967. While he was in service., the District Collector, Ernakulam, the third respondent, framed two charges against him. One was dated 30-6-1966 for delaying land acquisition proceedings. The other was dated 29-12-1965 for utilising the services of a suspended Village Assistant. The petitioner was found guilty of the charges. For the former charge, he was imposed by the order Ex. R-3 dated 13-4-1967 the penalty of withholding increments of his salary for two years with cumulative effect. For the latter charge, he was imposed by the order Ex. R-4 dated 7-6-1967 the penalty of withholding increments for six months without cumulative effect. It was then realised that by virtue of the fact that he retired from service on 4-8-1967, the above punishments could not be enforced. Thereupon, the 3rd respondent issued a notice, Ex. P-1 dated 10-2-1969, to the petitioner requiring him to show cause why an amount of Rs. 2850/- being the monetary value equivalent to the amount of increments ordered to be withheld as per Exs. R-3 and R-4, should not be recovered in lump from the arrears of pay and allowances due to him. The petitioner sent a reply Ex. P-2 dated 6-3-69, stating that he did not receive the orders imposing the aforesaid penalties, and

that under Rule 11(1) (iv) (b) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, the amount demanded as per Ex. P-2 was not recoverable, from him. The third respondent, by his order Ex. P-3 dated 30-3-1969 rejected the petitioner's objections, and directed the recovery of the sum of Rs. 2850/- from the petitioner. The petitioner wrote to the 3rd respondent by his letter Ex. P-4 dated 10-6-1969 requesting the 3rd respondent to furnish to the petitioner copies of the punishment orders, reiterating his stand that he had not received them. The third respondent replied stating that the petitioner may apply for attested copies of the said orders. He did not do so ; but he filed this writ petition to quash Exs. P-1, P-3, R-3 and R-4, to direct the third respondent to furnish the petitioner with copies of Exs. R-3 and R-4, to direct the 2nd respondent, the Board of Revenue, to give the petitioner an opportunity to file appeals from Exs. R-3 and R-4 and to prohibit the respondents, the first respondent being the State of Kerala, from taking any steps for the realisation of the amounts as per Exs. P-1 and P-3. Ex. P-1 is only a show cause notice, which had ended in the final order Ex. P-3. There is, therefore, no meaning in seeking any relief in respect of this notice. The Counter-affidavit filed on behalf of the first respondent states that copies of Exs. R-3 and R-4 were delivered in the office of the petitioner on 19-4-1967 and 14-6-1967 respectively and acknowledgement of the office tapal clerk was obtained in the local delivery book of the Collectorate in token of having received the orders. The petitioner must have received copies of the orders in due course. There is no reason to think otherwise. The petitioner admits that he got a communication dated 11-8-1967 from the Personal Assistant to the District Collector, informing him that Ex. R-3 would be deemed to have been received by him; but he states that immediately after receipt of the above communication, he wrote to the third respondent that he did not receive Ex. R-3 or R-4. The counter affidavit denies having received any such letter from the petitioner. The petitioner has not produced the communication dated 11-8-1967; and therefore it cannot be known under what circumstances it was sent. He has not also produced a copy of the letter alleged to have been sent by him to the Collector. He knew at least on 11-8-1967 that orders have been passed against him imposing penalties. Then, if he did not receive copies of those orders, as now alleged by him he would have at least applied for their copies and taken steps to file appeals from them. He thought of that only after the impugned order Ex. P-3 dated 6-3-1969 was passed. I have no doubt that the contention that he did not receive copies of the orders, Exs. R-3 and R-4 is untrue. The petitioner is not, therefore, entitled to the second relief he has asked for in this writ petition. The third relief sought against the second respondent is anticipatory and is without any basis. That also has to be rejected.

2. Then the only question for consideration is whether the order, Ex. P-3, calling upon the petitioner to pay Rs. 2850/- as monetary value of the increments withheld as per Exs. R-3 and R-4 is valid under law. Sub-rule (1) of Rule 11 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960,

enumerates the penalties that can be imposed on a Government servant found guilty of any misconduct. I am concerned in this case only with the penalties mentioned in clauses (iii) and (iv) of Sub-Rule (1). The punishment provided in clause (iii) is "withholding of increments or promotion". Clause (iv) reads as follows:

(iv) (a) Recovery from pay of the whole or part of any pecuniary loss caused to a State Government or the Central Government or to a local authority by negligence or breach of orders;

(b) recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to.

Explanation: In case of stoppage of increment with cumulative effect the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered.

Exs. R-3 and R-4 are penalties imposed under clause (iii); and they have become final. The main contention of the petitioner is that after such a penalty has been imposed, and it has become final, there is no question of imposing any further or any alternative penalty. He contends that the penalties mentioned in clause (iv) are independent and different from the one mentioned in clause (iii), and that the disciplinary authority has no power to alter the penalty imposed under one clause into a penalty under another clause. On behalf of the respondents, it is submitted that the penalty provided in sub-clause (b) of clause (iv) is not an independent penalty; but it is one that can be imposed as an alternative to the penalty provided in clause (iii), if imposition of such an alternative punishment becomes necessary. On a careful reading of clauses (iii) and (iv) of sub-rule (1) of Rule 11, it appears to me that what is provided in sub-clause (b) of clause (iv) is not a penalty by itself. It is a provision to enforce the penalty of withholding increments ordered under clause (iii), when the said penalty as such cannot be given effect to. Sub-clause (b) of clause (iv) speaks of "the amount of increments ordered to be withheld". Such an order can be passed only under clause (iii). It is, therefore, clear that sub-clause (b) of clause (iv) relates to the penalty imposed under clause (iii); and it provides that, if the said penalty cannot be enforced, the monetary value equivalent to the amount of increments ordered to be withheld may be recovered from the guilty government servant. The juxtaposition of sub-clause (b) under clause (iv) causes some amount of confusion. This sub-clause should have come under clause (iii), which provides for withholding of increments.

3. The contention that an order under sub-clause (b) of clause (iv) cannot be passed as an alternative penalty, after an order under clause (iii) has been passed and it has become final, cannot be sustained, even if what is provided by sub-clause (b) is an independent and different penalty. As already stated, sub-clause (b) relates to the penalty of withholding of increments under clause (iii);

and it has application to the said penalty. Sub-clause (b) provides in express terms for the variation of the penalty imposed under clause (iii).

4. Counsel for the petitioner contended that the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, have no application to a retired government servant, unless expressly provided to the contrary. He also invited my attention to Rules 23 and 24 which relate to appeals, wherein an express provision is made to the effect that in the said rules, the expression "member of service" includes a person who has ceased to be a member of that service. Such a provision has placed the matter beyond controversy; and the absence of a similar provision in other rules does not imply that they would not apply to a person who has ceased to be a government servant. Every rule has to be interpreted on its own language and other relevant considerations.

5. In support of his contention that no disciplinary action can be taken against a Government servant after his retirement, counsel for the petitioner cited the decision of the Supreme Court in *State of Punjab Vs. Khemi Ram*, . In that case, the Court said:

There can be no doubt that if disciplinary action is sought to be taken against a government servant, it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein.

6. The question whether a Government servant, against whom a disciplinary enquiry is pending, can be compelled to work under the Government till the completion of the pending enquiry, even after he resigns from the service and refuses to work under the Government, is not a matter which the Court has considered in the above decision. At any rate, the above decision does not help the petitioner. In the instant case, the disciplinary enquiry was completed and penalties under clause (iii) of Rule 11(1) were imposed on the petitioner before he retired from service. At the time the said penalties were awarded, the age of retirement was 58 years; but it was subsequently reduced to 55 years. Therefore, the penalties imposed on him could not be given effect to. Such a case directly attracts the application of sub-clause (b) of clause (iv) of Rule 11(1); and the impugned order is admittedly one passed under the said sub-clause. The contentions raised by the petitioner's counsel cannot, therefore, succeed.

7. The petitioner's counsel also submitted that the amount ordered to be paid as per Ex. P-3 is in excess of what can legitimately be recovered under sub-clause (b) of clause (iv) of Rule 11(1). If the petitioner continued in service till the age of 58, the amount shown in Ex. P-3 would have been recovered from him. The Explanation to sub-clause (b) provides that in the case of stoppage of increment with cumulative effect, the monetary value of the increments ordered to be withheld may be limited to three times the amount of increments withheld. That

is all what has been done by Ex. P-3. I do not find any merit in this contention. In the result, this writ petition is dismissed. There will be no order as to costs.