

(2003) 03 KL CK 0121
In the High Court Of Kerala
Case No : O.P. No. 14342/95

Velayudhan Nair

APPELLANT

Vs

Secretary, Higher Education and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Kerala Service Rules, 1958 — Rule 3C

Citation : (2003) 03 KL CK 0121

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : R.K. Venu Nair, for the Appellant; D.P. Renu, Govt. Pleader, for the Respondent

Judgement

M. Ramachandran, J.—Petitioner had retired from Government service on superannuation on 31st May 1993. However, as per order dated 12th June 1995, he had been advised that an amount of Rs. 16,370 would be recovered from him being excess amount received due to erroneous fixation of pay. He points out that there was no reason for such deduction, and there was no notice issued to him about the over payment made. It is also submitted that there was no instance of over payment.

2. Petitioner refers to judgments passed by this Court in O.P. No. 6864 of 1993 and certain other cases, pointing out that when excess payment had been made, and the amounts are received by the persons concerned without noticing the same, it would have been illogical for the Government to turn round on a later occasion and insist for recovery. Reference was also made to a decision of this Court reported in Satyapalan v. Deputy Director of Education 1998 (1) KLT 399. The over payments were not permitted to be recovered on the basis of the above said principles.

3. Government Pleader on the other hand submits that it is a case where there was a wrong fixation and the Petitioner had drawn salary in excess of his entitlement. In fact over payments arose from a wrong fixation, consequent to

the grade promotions. It is submitted that the amounts had been recovered in fact from his D.C.R.G. and the Original Petition had therefore become infructuous. Reference was also made to Rule 3C of Chapter I, Part III of the Kerala Service Rules. The Rule reads as following:

3C Notwithstanding anything contained in these rules recovery of excess payments made to an officer by mistake within a period of four years before his retirement (and which are detected within a period of four years after retirement) may be made from his pension and other amounts due to him after retirement subject to the condition that such deduction if made from his pension shall be effected only in monthly instalments in whole rupees and that the amount of each instalment shall not exceed 10 per cent of the monthly pension admissible to him.

It is submitted that Government has the authority to recover excess payment made to an Officer by mistake. Two conditions are there, that is, the payments should have been made within a period of four years before his retirement and such mistake is detected at least within four years of his retirement.

4. In view of the specific provision, I do not think that it will be possible to follow the judgment that had been cited at the Bar, especially since there is no reference made to the rule. There is reliance only on general principles. However, if any part of the amount recovered from the Petitioner is hit by the limitation prescribed such portion of the amount is to be refunded to the Petitioner. The rest of the recovery will be in order. The matter is to be considered appropriately by the first Respondent and Petitioner may be advised of the results, within a period of three months from the date of receipt of a copy of this judgment.

The Original Petition is disposed of as above.