(1993) 06 KL CK 0031

In the High Court Of Kerala

Case No : O.P. No. 13498 of 1991-F

V.K. Narayanan Unni APPELLANT

Vs

The Bar Council of Kerala and Another RESPONDENT

Date of Decision : 11-06-1993

Acts Referred:
Kerala Advocates Welfare Funds Act, 1981 — Section 16, 16(1), 16(5A)

Citation : AIR 1994 Ker 24

Hon'ble Judges : P. Krishnamoorthy, J

Bench : Single Bench

Advocate : C.P. Damodaran NayarD. Krishna Prasad and P. Shrihari, for the Appellant; Siby Mathew and T.P.K. Nambiar, for the Respondent

Final Decision : Allowed

Judgement

P. Krishnamoorthy, J.—The question involved in this Original Petition is regarding the amount due to the petitioner who was an advocate from the Welfare Fund.

2. The petitioner enrolled as an advocate on 19-1-1942. He had been practising at Palghat and was a member of the Palghat District Bar Association till 31-3-1991. When the Kerala Advocates'' Welfare Fund Act, 1980 (hereinafter referred to as ''the Act'') came into force, on his application he was admitted to the Fund and he continued as a member of the same till 31-3-1990 when he was removed from the rolls of the Bar Council on his request for retirement on account of poor health. Ext. P1 is the communication received by the petitioner from the Bar Council intimating the fact regarding removal of his name from the State Roll of Advocates with effect from 31-3-90. Along with his application for removal of his name from the rolls he had also applied on 12-1-1990 for payment of the amounts due to him from the Advocates'' Welfare Fund constituted under the Act. The 2nd respondent, the Kerala Advocates Welfare Fund Trustee Committee, Ernakulam by order dated 8-7-1990, produced as Ext. P2, sanctioned an amount of Rs. 17,000/- less Rs. 100/- to the petitioner. Petitioner objected to the aforesaid proceedings sanctioning Rs. 17,000/- against

his claim of Rs. 34,000/-and he filed an appeal before the 1st respondent-Bar Council of Kerala u/s 21 of the Act. Ext. P5 is the copy of the Memorandum of, Appeal. The 1st respondent-Bar Council by Ext. P6 order dated 18-8-1991 dismissed the appeal. Petitioner is challenging Ext. P6 as also the order of the 2nd respondent sanctioning him only an amount of Rs. 17,000/- towards his welfare fund dues as against his claim of Rs. 34,000/-.

3. The facts of the case are not in dispute. The petitioner was enrolled as an advocate on 19-1-1942 and he was removed from the rolls of the Bar Council with effect from 31-3-1990 on his request on account of cessation of practice due to ill-health. The Act was passed for the constitution of a Welfare Fund for payment of retirement benefits to advocates in the State of Kerala. The Act came into force on 5th April, 1981. As the facts are not in dispute, I am not elaborately dealing with the provisions of the Act but only with the relevant provisions of the Act. Provision is made in the Act as to how an advocate can become a member of the Fund and the benefits accruing to him on cessation of practice and in certain other contingencies. It is admitted that the petitioner is a member of the Fund and that he is entitled to the amount due on cessation of practice. Section 16 of the Act provides that a member of the Fund shall, on cessation of practice, be entitled to receive from out of the Fund an amount at the rate specified in the Schedule. As stated earlier, the Act came into force on 5-4-1981 and Section 16(4) of the Act provides that for calculating the period of completed years of practice for the purpose of payment under the Act every four years of practice at the Bar, if any, before the admission of a member to the Fund shall be computed as one year of practice and added on to the number of years of practice after such admission. If calculated on that basis it is an admitted fact that the petitioner has got 17 years of practice for the purpose of the Act. The dispute in this case arises because the Schedule mentioned in Section 16(1) of the Act was substituted in 1989 by Act 21 of 1989, among other amendments, with effect from 6-5-1989. As per the original Schedule a person having 17 years of standing will be entitled to an amount of Rs. I7,000/- from the Fund on cessation of practice. This Schedule was substituted by another Schedule with effect from 6-5-1989 under which an advocate having 17 years of standing will be entitled to an amount of Rs. 34,000/-. The contention of counsel for the petitioner is that he retired from practice only with effect from 31-3-1990 and that he is entitled to retirement benefits on the basis of the new Schedule substituted with effect from 6-5-1989, as his retirement was after the coming into force of the new Schedule. The respondents took the view that the substitution of the Schedule cannot have retrospective operation and that the petitioner will be entitled to only Rs. 1,000/- per year of standing as per the original Schedule till 6-5-1989 and for the years of practice subsequent to that date at the rate of Rs. 2,000/-. The question to be considered is as to whether the view taken by the respondents is correct or not.

4. Section 16(1) of the Act reads as follows:--

"A member of the Fund shall, on cessation of practice, be entitled to receive from out of the Fund an amount at the rate specified in the Schedule."

It is clear that the entitlement to receive the amount in accordance with the Schedule arises only on cessation of practice. The original Schedule was substituted and a new Schedule came into force with effect from 6-5-1989. The cause of action for the petitioner to receive the retirement benefits under the Act will arise only on cessation of practice and the petitioner retired from the profession only on 31-3-1990. If that be so, u/s 16(1) of the Act the petitioner is entitled to the amount that is mentioned in the substituted Schedule and not under the old Schedule which was replaced in 1989.

5. It was contended by the respondents that the Amending Act 22 of 1989 has no retrospective effect and that the petitioner will not be entitled to the benefit of the new Schedule for the period of practice before 16-5-1989. I am not inclined to agree with this contention. It is true that the new Schedule came into force only on 6-5-1989. But the cessation of practice which is the material time for entitlement to the amount from the Fund, so far as the petitioner is concerned, happened only on 31-3-1990. The entitlement of the petitioner has to be determined as on 31-3-1990 which will be governed by the new Schedule substituted by the 1989 Amending Act. By that alone it cannot be said that the Amending Act has retrospective operation. The mere fact that a part of the requisite for the application of the Section is to be drawn from a moment of time prior to the passing of the Act is no ground for saying that it will have retrospective operation. In Kapur Chand Jain Vs. B.S. Grewal and Others, it was observed (at page 1493):--

"No doubt a statute must be applied prospectively. But a statute is not applied retrospectively because a part of the requisite for its action is drawn from a moment of time prior to its passing. Clause (ii) of Section 9(1) makes a particular conduct the ground for an application for eviction. The necessary condition for the application of Section 9(1)(ii) may commence even before the Act came into force and past conduct, which is as relevant for the clause as conduct after the coming into force of the Act, cannot be overlooked."

The same principle was adopted by the Supreme Court in Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co., and Punjab University Vs. Subash Chander and Another, From the above observations of the Supreme Court it is clear that for applying the substituted Schedule, the practice which the petitioner had before 6-5-1989 can also be taken into account. Petitioner is entitled to an amount under the new Schedule, fixing the period of standing as an advocate as 17 years. In that view of the matter, the respondents were not right in limiting the claim of the petitioner to Rs. 17,000/- and I hold that the petitioner is entitled to Rs. 34,000/- as provided for in the substituted Schedule.

6. The 1st respondent relied on the provisions contained in Sub-section (5-A) of Section 16 inserted by the 1989 Act. Sub-section (5A) reads as follows :--

"Notwithstanding anything contained in this Act, where an applicant for membership in the Fund dies before he is admitted as a member of the Fund, his nominee or legal heir, as the case may be, shall be eligible to get an amount at the rate of one thousand rupees per year of practice for the period commencing from the 5th day of April, 1981 and ending with the 5th day of May, 1989 and thereafter at the rate of two thousand rupees per year of practice, provided the deceased was otherwise eligible to be admitteed as a member of the Fund, but for his death."

Sec. 16(5A) cannot have any application so far as the case of the petitioner is concerned. That sub-section deals with the case of the death of an applicant before he is admitted as a member of the Fund. Sub-section (5A) clearly provides that in such cases the applicant will be eligible to get an amount at the rate of Rs. 1000/- per year of practice for the period commencing from 5th day of April, 1981 and ending with the 5th day of May, 1989 and thereafter at the rate of Rs. 2,000/-per year of practice. There is no such provision made in the amended Schedule. That also is an indication that the substituted Schedule is applicable to all persons who become entitled to amounts under the Act after the new Schedule came into force. In that view of the matter also, the petitioner is entitled to the relief which he has claimed.

7. In the result, I allow this Original Petition, quash Exts. P2 and P6 orders passed by the respondents and direct the respondents to disburse an amount of Rs. 34,000/- less Rs. 100/- to the petitioner in the place of Rs. 17,000/- towards the dues from the Fund. If the original amount of Rs. 17,000/- less Rs. 100/- is already paid to the petitioner, the balance amount shall be disbursed to him forthwith. In the facts and circumstances of the case I am not inclined to grant any interest to the petitioner as claimed in the original petition. There will be no order as to costs.

