(2022) 06 KL CK 0077

High Court Of Kerala

Case No: Writ Appeal No. 25 Of 2022

Kerala Health Research And Welfare Society		APPELLANT
	Vs	
George.K Chacko		RESPONDENT

Date of Decision: June 8, 2022

Hon'ble Judges: A.K.Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench: Division Bench

Advocate: M.Ajay

Final Decision: Dismissed

Judgement

Mohammed Nias.C.P., J.

1. The Kerala Health Research and Welfare Society and its officials are the appellants challenging the judgment dated 3.8.2020 of the learned single

Judge in WP(C)No.36394 of 2018, whereby the writ petition filed by the first respondent was allowed directing the appellants to pass fresh orders

regarding the claim of the first respondent against recovery of the amounts allegedly paid in excess.

2. The brief facts necessary for the disposal of the writ appeal are as follows:-

The first respondent/writ petitioner, who retired from the service of the first appellant on 28.2.2017 questioned the actions of the Managing Director of

the first appellant deducting an amount of Rs.1,00,757/- from the DCRG payable to the first respondent on the ground that the writ petitioner had been

paid amounts in excess of his pay during the years 1999 to 2013. The recovery was made on the basis of an order dated 22.11.2016 issued by the

Administrative Officer of the first appellant. The respondent disputed the claim of the writ petitioner.

3. The learned single Judge found that the petitioner is entitled to interest on the amount withheld from the DCRG and relegated the question of

whether the appellants are entitled to recover the alleged excess pay from the petitioner in the light of the judgment in State of Punjab v. Rafiq Masih

[2015(1) KLT 429]. The learned single Judge also quashed Ext.P1 order in so far as it directed recovery of pay drawn in excess from the petitioner

and Ext.P2 in so far as it did not sanction the disbursement of an amount of Rs.1,00,757/-. The appellants were directed to pass fresh orders regarding

the claim of the petitioners against recovery. It was made clear by the learned single Judge that the consideration by the appellants will be confined to

the question whether the petitioner's case comes within the situation envisaged in paragraph 12 of Rafiq Masih (supra) and that if the respondents find

that it comes within that, the withheld amounts shall be released along with an interest at the rate of 8% per annum from the date on which the

balance amount of Rs.7,66,726/- became payable to the petitioner till the date of payment. The appellants unsuccessfully carried a review against the

judgment of the learned single Judge. The judgment of the learned single Judge is under challenge in this appeal.

4. We have heard Sri. M.Ajay, the learned Standing Counsel for the appellants, Sri.M.Sreekumar, the learned counsel for the writ petitioner Ã¢â‚¬" first

respondent and Sri.Bijoy Chandran, the learned Government Pleader for the second respondent.

5. The facts in the case are telling. The writ petitioner entered the service as Driver on 01.07.1979 and was regularised in service by order dated

18.9.1996 and had got the first time bound higher grade with effect from 1.7.1996 and the second time bound higher grade with effect from 1.7.2004.

After 12 years, in the year 2016, the Senior Deputy Director of the Audit Department of the first respondent alleged irregularities in the fixation of pay

between 1999 and 2013 and consequently the Administrative Officer of the first appellant issued Ext.P1 on 22.11.2016 directing recovery of excess

pay alleged to have been drawn by the writ petitioner between 1999 to 2013. The petitioner had retired from service on 28.2.2017 and on 14.11.2017,

nine months after the retirement of the petitioner, a sum of Rs.1,00,757/- was deducted from the DCRG payable to the petitioner alleging excess

payment. It was those orders which were challenged along with a prayer for a declaration that the recovery effected from the DCRG as per Ext.P2 is

illegal and arbitrary. The writ petitioner also prayed for release of the amount withheld from the DCRG.

6. The learned counsel for the appellants argues that when the learned single Judge directed consideration of whether recovery could have been

effected against the writ petitioner going by the principles laid down in Rafiq Masih (supra), there could not have been any direction to pay interest for

the amounts withheld as the appellants are considering for the first time whether the recovery could be effected and in such circumstances they ought

not have been mulcted with liability to pay interest. It is also argued by the learned counsel that the writ petitioner's case all along was that there was

no error in the fixation of pay and as such the benefit of the decision in Rafiq Masih (supra) cannot be extended to the writ petitioner. It is seen that

pursuant to the directions in the impugned judgment the second appellant had issued the order upholding the claim of the writ petitioner and directed

release of an amount of Rs.1,00,757/- and it was paid to the first respondent on 2.12.2020.

7. The learned counsel also cites the judgment in Thomas Daniel v. State of Kerala and others (2022 SCC online SC 536). The learned counsel for the

appellants strenuously contended that the direction to pay interest is unwarranted in the facts of the case and that the appellants are not entitled to any

interest. It is seen that a review petition was filed on 5.3.2021 mainly contending that the entitlement of the first respondent to get interest, from a date

anterior to which his claim is crystallized, after a consideration of the issue by the appellants, is wrong. This Court by order dated 28.09.2021 dismissed

the review petition (RP No.352 of 2021) filed by the appellants specifically holding that it had clearly addressed two separate issues, viz., whether the

interest was payable if the gratuity is not released on time, which was found in the affirmative, and the second issue regarding the entitlement of the

appellants to recover the amounts in terms of the judgment in Rafiq Masih (supra) was relegated to the appellants since they did not have an occasion

to consider the said issue till then.

8. We find that the interest was payable the moment the DCRG became due and it really did not depend on the question whether the appellants are

entitled to recover the excess pay allegedly made by them. In this case the appellants clearly found that, in implementation of the judgment under

appeal, the writ petitioner was entitled to the withheld DCRG amount and therefore payment of interest was automatic as the appellants themselves

found that they do not have the right to recover the amounts paid. The rate of interest was specified in the judgment of the learned single Judge itself

and once the entitlement of the writ petitioner to get the withheld amount received was found by the appellants, there is no question of them not paying

the interest from the day it fell due. We also find that the instant case is one which is squarely covered by first three situations mentioned in paragraph

12 of Rafiq Masih (supra), namely, petitioner belonging to Class III Ã¢â‚¬" Class IV and the recovery sought was for a payment made for a period in

excess of five years before the order of recovery was proposed, which was made three months prior to his retirement and the formal order that

directed recovery was made nine months after his retirement. We do not find anything in support of the appellants in the judgment in Thomas Daniel

(supra). On the contrary, we are convinced that this is a fit case where between two parties, one is weaker, the issue has to be resolved bearing in

mind the concept of justice and equity assured to such citizens. In the circumstances, we hold that on facts as well as on law, the writ petitioner is

entitled to get interest for the period when the DCRG was withheld. Incidentally, we notice that the appellants being instrumentalities of the State, owe

an additional responsibility to be fair and just, in all its actions as they are enjoined under law to be so. We find no reason at all to interfere with the

judgment of the learned single Judge which had rightly allowed the relief sought in the writ petition.

The writ appeal fails and is accordingly dismissed.