
(2010) 07 KL CK 0061

High Court Of Kerala

Case No: Writ Petition (C) No. 36831 of 2007

State of Kerala

APPELLANT

Vs

Surendranathan Asari

RESPONDENT

Date of Decision: July 12, 2010

Acts Referred:

- All India Services (Death-Cum-Retirement Benefits) Rules, 1958 - Rule 6
- Constitution of India, 1950 - Article 309

Citation: (2010) 3 ILR (Ker) 491 : (2010) 3 KLT 747 : (2010) 6 SLR 318

Hon'ble Judges: Thottathil B. Radhakrishnan, J; P.S. Gopinathan, J

Bench: Division Bench

Advocate: K. Lakshmi Narayanan, Government Pleader, for the Appellant; P.V. Mohanan and C.S. Ajith Prakash, C.G.S.C., for the Respondent

Final Decision: Allowed

Judgement

Thottathil B. Radhakrishnan, J.

This Writ Petition filed by the State of Kerala against an order of the Central Administrative Tribunal raises a question involving the interpretation of Rule 6 of the All India Service (Death Cum Retirement Benefits) Rules, 1958, hereinafter referred to as the "DCRB Rules".

Factual matrix

2. The first respondent, who belonged to the Kerala cadre of the Indian Forest Service, superannuated from service on 30.9.2004. He moved the Tribunal for direction to release his retiral benefits including DCRB and pension from 1.10.2004, the date of retirement, by reckoning 38 years of his service as qualifying service. He pleaded that, though placed under suspension on 21.3.2001, disciplinary proceedings against him were dropped and he was readmitted to duty, treating the period of suspension as duty for all purposes. Accordingly, he claimed that no proceeding was pending against him at the time of

retirement and there is no ground to reduce or withhold any pension or gratuity, even in terms of Rule 6 of the DCRB Rules.

3. Initially, the writ petitioner-State of Kerala filed a preliminary statement before the Tribunal that there is a vigilance investigation pending against the applicant and that therefore, the entire terminal benefits could not be released, however that, he was granted provisional pension with effect from 1.10.2004. Later, a further affidavit was filed on behalf of the State Government following a report on behalf of the Vigilance and Anti-corruption Bureau, to the effect that the charge sheet and other records in relation to the criminal case were presented to the Court of the Enquiry Commissioner and Special Judge, Vigilance on 30.9.2004. Annexure RI was filed before the Tribunal as proof of acceptance of the charge sheet and other records in the Court of the Enquiry Commissioner and Special Judge on 30.9.2004, i.e., the date of superannuation of the officer.

Tribunal's Decision

4. As per the impugned order, the Tribunal held that no charge sheet was filed against the officer before the date of his retirement and therefore, he cannot be denied payment of pension, gratuity and other benefits. Accordingly, the Tribunal directed fixation and disbursement of all terminal benefits including pension and gratuity to the officer from 1.10.2004.

Contentions and arguments of rival parties

5. In support of the challenge, the learned Senior Government Pleader argued that since the final report (charge sheet) having been submitted on 30.9.2004 following the completion of investigation, the decision of the Tribunal is contrary to the terms of the provisions of Rule 6 of the DCRB Rules, including the explanation thereto. He says that provisions of the DCRB Rules are statutory and therefore, the impugned decision is without jurisdiction and contrary to law. It is pointed out that the receipt issued by the Manager of the Office of the Enquiry Commissioner and Special Judge, not having been disbelieved, it ought to have been held that the criminal proceeding against the officer is deemed to have been instituted by the submission of the final report (charge sheet) on the date of such submission, for the purpose of Rule 6 of the DCRB Rules.

6. Per contra, the learned Counsel for the officer pointed out that the seal of the criminal court on the final report (charge sheet) is affixed only on 5.10.2004 and the Special Judge of that criminal court had also certified on the final report (charge sheet) that "the charge sheet in V.C. 16/94/Hqrs. filed on 5.10.2004 has been taken on file as C.C.60/2004 on 26.11.2004". He accordingly argued that the final report (charge sheet) was laid before the criminal court only on 5.10.2004 in terms of law and that such certification by the criminal court conclusively proves that the charge sheet was filed only on 5.10.2004 and not on 30.9.2004 as contended by the State and therefore, the finding of the Tribunal to

that effect is unassailable.

Consideration by Court

7. On the aforesaid facts and arguments, the core issue arising for decision is as to whether the submission of the charge sheet and the records of the criminal case by the presentment to the appropriate criminal court is sufficient to attract Rule 6 of the DCRB Rules.

or, does such embargo operate only if the criminal court had taken the final report (charge sheet) to file by affixing its seal?

Contextually, what, if any, is the distinction between the concepts of "submission", "filing" and "taking cognizance", in relation to the final report (charge sheet) in criminal cases, in the context of Rule 6 of the DCRB Rules?

8. The relevant provisions of Rule 6 of the DCRB Rules read as follows:

6. Recovery from pension.--

6(1). The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that no such order shall be passed without consulting the Union Public Service Commission:

Provided further that:

such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

Explanation: For the purpose of this rule

a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

a judicial proceeding shall be deemed to be instituted:

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) *****

(Underlined & bolded to emphasise)

9. Appreciating the contents of Rule 6 of the DCRB Rules, the Tribunal rightly noted that the gratuity amount and the entire portion of pension are not payable to a government servant against whom a departmental or judicial proceeding is instituted, until the conclusion of such proceedings and; as a corollary, except in situations envisaged by that rule, the final retirement benefits cannot be withheld. It was also rightly noticed that in terms of the Explanation forming part of that Rule, criminal proceeding is deemed to have been instituted on the date on which a complaint is made or a charge sheet is submitted to the criminal court.

10. The DCRB Rules are statutory and have the support of the constitutional provisions, particularly Article 309 of the Constitution. They have therefore to be interpreted accordingly. The rule under consideration, namely, Rule 6 of the DCRB Rules authorises withholding of pension or gratuity, or both, in the event of a judicial proceeding. If such judicial proceeding is a criminal proceeding, the explanation to that Rule, enjoins that the said criminal judicial proceeding is deemed to be instituted on the date on which a complaint is made or a charge sheet is submitted, to the criminal court. This provision is part of the statutory rules and has to be interpreted and applied as it stands.

11. The fiction created by the use of the word "deemed" in the explanation to Rule 6 is to render the situations stated therein as constituting the institution of a judicial proceeding on the basis of which the effect of Rule 6 gets triggered. In so far as it relates to criminal proceedings, by virtue of that fiction, the making of the complaint or the submission of the charge sheet is to be treated as the incident from which Rule 6 begins to operate against an officer covered by that complaint or charge sheet. The Apex Court stated in [Boucher Pierre Andre Vs. Superintendent, Central Jail, Tihar, New Delhi and Another](#), that it is now well-settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusion. To say so, the Apex Court followed Lord Asquith saying in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 Appeal Cases 109, that if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. When the statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. The line of approach in *East End Dwellings Co. Ltd.* (supra) has been approved by the

Apex Court in a number of cases - [M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.](#), and [Commissioner of Income Tax, Delhi Vs. S. Teja Singh](#), . In the latter, the Apex Court pointed out that it is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. Again, in [Industrial Supplies Pvt. Ltd. and Another Vs. Union of India \(UOI\) and Others](#), , it was observed by the Apex Court that it is now axiomatic that when a legal fiction is incorporated in a statute, the court has to ascertain for what purpose the fiction is created and that after ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion, and still further that the court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. This principle was again reiterated by the Apex Court in Appukuttan v. Janaki Amma 1988 (1) KLT 512 (SC). While a fiction cannot be extended beyond its legitimate field, it must be allowed full operation within its intended sphere - See Ali v. Kunjannamma 1975 KLT 527. Therefore, when the statutory rules command that a particular state of affairs shall be deemed for the purpose of a rule, that fiction embodied in the expression has to be given full effect to, on the occurrence of any of the incidents stated therein.

12. In the context of Rule 6 of the DCRB Rules, the making of a complaint cannot be equated to the criminal court taking cognizance of that complaint. Similarly, the submission of a charge sheet is not the same as the court taking on to its file, the final report submitted on conclusion of the investigation and issuing process on its basis. The act of making a complaint is that of the complainant. The submission of a final report on conclusion of the investigation is the function of the investigating and processing agency. Taking cognizance on the basis of the final report or on the basis of a complaint and issuing process are definite and distinct judicial acts in terms of the statutory provisions contained in the Code of Criminal Procedure. The specific procedure to be adopted on the basis of a complaint and the proceedings to follow a final report placed on conclusion of an investigation are clearly laid down in the Code of Criminal Procedure. The distinctions in these matters have to be presumed to be within the knowledge of every rule making authority, exercising constitutional and statutory power to make a subordinate rule, governing the service conditions of government servants. In this view of the matter, when the DCRB Rules have specifically stated that, for the purpose of those Rules, a judicial proceeding [a criminal proceeding on the basis of a (final report) charge sheet] is to be deemed to have commenced when the charge sheet is submitted to the criminal court, that cannot be diluted by judicial interpretation to hold that those proceedings commence only when the criminal court "files" the final report; by the judicial officer or the appropriate staff of the court initialling and receiving the report and filing it, or the Court takes cognizance and issues process on the basis of that final report/charge sheet.

13. The Tribunal had before it, the affidavits of the Inspector of Police, Vigilance and Anti-corruption Bureau, who submitted the final report and the Manager of the Office of the Enquiry Commissioner and Special Judge. The uncontroverted materials in terms of

those affidavits were that the special investigation unit of the Vigilance and Anti-corruption Bureau had produced the charge sheet in VC. 16/94 in the office of the Enquiry Commissioner and Special Judge on 30.9.2004 and the Manager of that office, being the duly authorised person to receive the same, had given a receipt under his signature, with office seal, in token of having received the final report, The Manager had said that it took three days for him to verify the voluminous records submitted by the vigilance and the said work was carried out after the two holidays that immediately succeeded the production of the records by the vigilance and after such verification, he gave the charge sheet to the inward section of the office of the Enquiry Commissioner and Special Judge on 5.10.2004 and it is hence that the said date is shown on the records. This version, on facts, is not disbelieved by the Tribunal. The Tribunal therefore erred in law in assuming that the charge sheet could be treated to have been presented only on 5.10.2004, the date on which the inward section of the office of the Enquiry Commissioner and Special Judge recorded the receipt of the charge sheet after the Manager of that office completed scrutiny of the voluminous documents presented by the investigating officer. The consequential conclusion of the Tribunal that no charge . sheet was filed against the petitioner before his retirement and therefore he cannot be denied immediate payment of pension, gratuity and other benefits on a ground referable to Rule 6 of the DCRB Rules is unsustainable in law, having regard to the contents of that Rule.

14. For the aforesaid reasons, the impugned direction of the Tribunal does not stand and is liable to be set aside, being contrary to the statutory rules and therefore, having been issued in excess of jurisdiction.

In the result, this Writ Petition is allowed quashing Ext.P6 order. The parties are directed to bear their respective costs.