(1998) 11 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 1188 of 1993

Thankam		APPELLANT
	Vs	
State of Kerala and Others		RESPONDENT

Date of Decision: Nov. 9, 1998

Citation: (1999) 1 KLJ 100

Hon'ble Judges: K.A. Abdul Gafoor, J

Bench: Single Bench

Advocate: N.P. Samuel, for the Appellant; Jayasankar, Govt. Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.

The petitioner retired from service on 3-3-90. Death cum retirement gratuity due to him was not released. Ext. P6 is a non-liability certificate dated 4-1-92. It shows that an amount of Rs. 4730.99 was fixed as liability of the petitioner. An amount of Rs. 50,325/- was due to the petitioner as DCRG as seen from Ext, P1 order dated 10-5-90. That was not paid because of the non-issuance of non-liability certificate. After Ext. P6 was issued, the petitioner could encash the amount less the amount mentioned in Ext. P6, only on 10-2-92. So there was illegal withholding of a huge amount from the petitioner, the petitioner submits. So he is entitled to interest, the petitioner claims. Later the liability shown in Ext. P6 was reduced to Rs. 2698.61 as per Ext. P11. The difference between the amount mentioned in Ext. P6 and Ext. P11 was paid. Even the fixation of liability in Ext. P11 is illegal, the petitioner contends. Therefore the petitioner has approached this Court challenging Ext. P11 and seeking a direction for payment of the amount withheld as per Ext. P11 and seeking interest at the rate of 18% on Rs. 45,594/- from 16-5-90 to 10-2-92. Note 3 under Rule 3 Part III KSR provides that the liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years of becoming a pensioner. The liabilities of a pensioner should be quantified and intimated to him. This note thus fixed a time limit for fixation of liability. As per note 2 under the same Rule the liability can be recovered from the DCRG payable to him without any departmental or judicial proceedings, but after giving the employee or pensioner as the case may be, a reasonable opportunity to explain. Note 2 thus prescribes a procedure for fixation of he liability. At the same time Ruling No1 under Rule 116 of Part III KSR provides that "If, the Habilities could not be finalised but could be estimated at the time of retirement, pension and death-cum-retirement gratuity will be released after accepting a surety bond or cash deposit or after withholding from the death-cum-retirement gratuity the estimated amount of the outstanding dues plus 25% thereof". The finalisation of the Habilities in respect of the petitioner is as per Ext. P11. Before Ext. P6 non-liability certificate was issued no notice was issued to the petitioner. Obviously because it is not a final order. It was only an estimated amount. Such estimated amount ought to have been assessed immediately after retirement of the petitioner and balance amount ought to have been released to the petitioner. That has not been done by the respondents. Even the estimate came far later than his retirement and Habilities could not be estimated at the time of retirement. There was no disciplinary proceedings against him. Thus his case is covered by Ruling No. 3 under Rule 116 Part III KSR. He was a District Educational Officer having charge of cash and stores. In such case full amount of death-cum-retirement gratuity could be withhold so far as the petitioner is concerned. But the maximum period of such withholding shall be as contained in Ruling No. 5 under the said rule, which provides that in all cases where the Habilities could not be assessed and fixed before the retirement of govt. employees, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement of the government employee concerned and that in case the liability could not be assessed and adjusted within one year, the amount withheld from the death-cum-retirement gratuity will be released. Therefore the entire amount of DCRG which could be withheld in terms of ruling No. 3 shall be released at the latest on completion of period of one year from the date of retirement. DCRG was authorised by the Accountant General only as per Ext. P1 order dated 10-5-90. Thus the petitioner was entitled to get the entire amount sanctioned to him with effect from 1-4-91 onwards. But he was paid the amount less the liability only on 10-2-92. During the period from 1-4-91 to 10-2-92, the amount of Rs. 50,325/ - due to the petitioner was illegally withheld and it is contrary to the provisions contained in Ruling No. 5 under Rule 116 of Part III KSR. Therefore the petitioner is really entitled to interest on the said amount during the said period. The petitioner claims 18% interest. But taking into account the time when the amount was due, 8% interest will be sufficient to meet the ends of justice. So there shall be a direction to pay the petitioner interest at that rate on Rs. 50,325/-, for the period from 1-4-91 to 10-2-92.

2. At the same time the fixation of final liability as per Ext. P11 is within the period mentioned in Note 3 Rule 3 part III KSR. That order was passed after affording an opportunity of being heard to the petitioner as required in note 2 under the same rule. Therefore all the formalities and fairness as required by the rule had been shown. There is no arbitrariness in passing Ext. P11. When the authority has after hearing the petitioner assessed a liability as contained in Ext. P11, it cannot be said to be arbitrary. Accordingly

Ext. P11 is upheld. When Ext. P11 is upheld the petitioner had caused a liability of Rs. 2698.61/-. Such liability has been caused by the petitioner while he was in service. Naturally the petitioner will be liable to repay the same with interest to Govt. When the petitioner has caused loss, the interest due to Govt. shall be at least at 12%. It is the money of the public, so the interest rate shall be always higher. Accordingly 12% interest on the amount fixed as per Ext. P11 shall be worked out from the date of causing such liability and shall be recovered from the interest due to the petitioner. The balance if any shall be paid to the petitioner within four months from today.

O.P. is disposed of.