

(1993) 11 KL CK 0033

High Court Of Kerala

Case No: O.P. No. 10997 of 1993

P. Karunakaran Pillai

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: Nov. 24, 1993

Acts Referred:

- Kerala Service Rules, 1958 - Rule 3

Citation: (1994) 2 ILR (Ker) 101 : (1994) 2 LLJ 431

Hon'ble Judges: G.H. Guttal, J

Bench: Single Bench

Advocate: V.N. Achutha Kurup, for the Appellant; G. Krishna Kumari, Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

G.H. Guttal, J.

The question in this petition under Article 226 of the Constitution of India is whether the Government of Kerala has, under Rule 3 of Chapter I of Part III, Kerala Service Rules, the authority to withhold the pensionary benefits payable to the petitioner on the sole ground that a criminal case of misappropriation of public money is pending against him.

2. The petitioner retired on February 28, 1991 as the Principal, Extension Training Centre, Kottarakkara. In 1981-82 he was entrusted with a sum of Rs. 1,95,000/- for the purpose of purchasing Charkas. He is alleged to have misappropriated this amount and other sums of money. The event occurred in 1981-82. A Criminal Case No. 4 of 1987 of the Vigilance Police Station, Quilon is pending against him. As a result of this, the Respondents, the State of Kerata and the Commissioner of Rural Development, granted him only anticipatory pension of Rs. 829/- per month and denied the full pension of Rs. 1,1067-per month, death-cum-retirement gratuity of Rs. 35,680/- and the commuted value of pension of Rs. 60,572/-.

3. Rule 3 under which the Respondents have purported to act occurs in Part III which is titled "PENSION". Under Rule 3 the Government reserve to itself two rights:

- (i) The right of withholding or withdrawing of pension or any part of it, and
- (ii) The right of ordering the recovery from pension the whole or part of pecuniary loss caused to the Government.

These two rights of the Government are subject to two conditions:

- (a) In the departmental proceedings the pensioner must be found guilty of misconduct or negligence during the period of service, or
- (b) In a judicial proceeding such pensioner is found guilty of grave misconduct or negligence during the period of his service.

4. In this case, there is no question of departmental proceeding. The proceeding which is pending and which is the reason for withholding the pension is the judicial criminal proceeding which commenced in 1987. The Explanation to Rule 3 explains when the departmental or judicial proceeding shall be deemed to have been instituted. The judicial proceeding shall be deemed to be instituted, in the case of a criminal proceeding, on the date on which the complaint or report of the police on which the Magistrate takes cognizance, is made. In this case, admittedly, the case commenced on May 16, 1987.

5. After laying down that the loss caused to the Government may be recovered from the pension, Note 2 to Rule 3 lays down that the word "pension" does not include death-cum-retirement gratuity and that the liability "fixed" against an employee can be recovered from death-cum-retirement gratuity payable to him without reference to the judicial proceedings referred to in the Rule. However, a reasonable opportunity to explain must be given to the employee/pensioner.

6. In order that the Government exercises its power to withhold or withdraw a pension or it recovers the liabilities from the death-cum- retirement gratuity under Note 2 of Rule 3, the loss caused to the Government which is the basis of the liability has to be determined. According to the Respondents, until the criminal court determines whether the Petitioner misappropriated the amount, the decision to recover the amount from the Petitioner's pension cannot be taken. Since the liability of the employee cannot be fixed without the verdict of the criminal court, the pension had to be withheld till then. Is this position and attitude adopted by the Government valid and tenable? I will endeavour an answer to this question in the following paragraphs.

7. The Case No. 4/87 is still pending. While the Government undoubtedly has a right to recover the misappropriated amount, it does not mean that the pension and gratuity should be withheld indefinitely or for an unreasonably long period. The State employed the petitioner. The petitioner served the State till the pensionable

age. The State also runs the machinery for prosecuting the criminals. The right to speedy trial has been recognised by International Law Covenant on Civil and Political Rights (U.N. Document Article 14(3)(e) and has been judicially recognised in India. The Constitution of India or other laws do not specifically create such a right. But the right to a reasonably expeditious speedy trial is "an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India" [Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna,.](#)

8. If the State cannot ensure speedy trial of the Petitioner for an offence which is the cause of the deprivation of the pension and gratuity, is it just to withhold the payment of pension for an indefinite period? The right to withhold pension under Rule 3 presupposes a corresponding obligation to secure a verdict within a reasonable time or resort to departmental proceedings to ensure quick determination of the liability. The investigation into the crime commenced in 1982, almost ten years before the Petitioner retired. The case is pending for the last five years. If the investigating machinery took five years to investigate and the judicial machinery took five years to try the case, there is no reason why the Petitioner should be punished by denying him the pension. The Government's authority to recover the loss caused by the Petitioner, is unquestioned. But, this right has to be exercised within a reasonable time and in a reasonable manner. A retired employee cannot be told that a case is pending for ten long years and that he must wait for his pension until the case is disposed off. Again the case will not end with the verdict of the trial court. There is the appellate court. The appeal being continuation of the trial, the State may still deny the amount to the petitioner until the appeal is disposed off.

9. No doubt the machinery to enforce the right to speedy trial is far too inadequate to terminate trials within reasonable time. This does not absolve the State of its obligation to pay the pension within reasonable time. What effort has the Respondents made to have the trial expedited so that it could pay the pension within reasonable time? None has been made. In such cases the authorities should take steps to have the employee tried quickly and determine his liability. The employee has a right to expect that his liability is determined soon and pension paid. He cannot be compelled to wait for a decade to receive what is rightfully due to him.

10. The notorious delays in disposal of criminal cases cannot be an excuse for State's failure to determine the liability of a pensioner. The State is not precluded from holding an enquiry to determine such liability. Indeed under Note 2 of Rule 3 liability can be fixed and recovered from the death-cum-retirement gratuity without departmental or judicial proceedings after giving an opportunity to the employee. The essence of Rule 3 of Part III of the Kerala Service Rules is that the pecuniary loss caused to the Government by the misconduct of its employee is determined and the

amount of loss recovered. The rule does not mean that the Government should wait indefinitely for the verdict of the trial. It can hold an enquiry and fix the liability. The rule does not preclude such a course.

11. I therefore allow this petition and direct the Respondents herein to determine and pay to the petitioner all his pensionary benefits after taking into account the petitioner's claim for increments due to him during the period of his suspension. The Respondents are at liberty to determine the petitioner's liability in accordance with the rules without waiting for the verdict in the criminal trial.

12. The petitioner shall be paid the amount found due to him on or before January 31, 1994. During this period the Respondents may determine the Petitioner's liability if they are so advised. In any event, the order has to be complied with before January 31, 1994.

In view of unjustified delay caused in the circumstances of the case, I order that the Respondents shall pay to the petitioner, interest on the amount found due to him. The interest shall be at 15% per annum from April 1, 1991 till payment.