

(2001) 10 KL CK 0067

High Court Of Kerala

Case No: W.A. No. 3265 of 2001

Jayarajan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Oct. 5, 2001**Acts Referred:**

- Central Civil Services (Pension) Rules, 1972 - Rule 9
- Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 - Rule 15

Citation: (2001) 3 ILR (Ker) 558**Hon'ble Judges:** K.S. Radhakrishnan, J; K. Balakrishnan Nair, J**Bench:** Division Bench**Advocate:** P.V.S. Nair, S.P. Aravindakshan Pillai and P.V.S. Sudheer, for the Appellant;

Judgement

K. Bakrishnan Nair, J.

The point raised in this Appeal is whether the disciplinary proceedings initiated against the appellant could be continued after his retirement from service under Rule 15 of the Kerala CIVIL SERVICES (Classification, Control and Appeal) Rules. The brief facts necessary for the disposal of the case are the following:-

2. The appellant while working as Sales Tax Inspector in the Salestax Check-post at Perumpazhuthoor was suspended from service in contemplation of disciplinary proceedings against him by order dated 6.9.1991. Later, Ext. P1 charge sheet dated 13.9.1991 was served on him. The allegations against him were that he was found asleep on the floor of the salestax checkpost unconsciously and in a fully drunken state during duty time on 5.8.1991 and again on 10.8.1991. During his slumber, the smugglers had a field day resulting in loss of revenue to the State. It was also alleged that he was in the habit of attending official duty in a fully drunken state. The appellant submitted Ext. P2 reply dated 14.11.1991 denying the allegations. The Board of Revenue by Ext. P3 order dated 20.3.1992 directed an enquiry to be held into the charges against him as it was not impressed by the delinquent's reply. The

alleged non-co-operation of the appellant aborted the efforts of the Enquiry Officer to conduct the enquiry, who in turn submitted a report to the Board or Revenue (Taxes) which is the disciplinary authority. The said authority after considering the various aspects of the case passed Ext. P5 order dated 15.7.1992 imposing a punishment of barring three increments with cumulative effect. The aggrieved appellant moved the Government by filing Ext. P6 appeal which was disposed of by Ext. P7 order. The Government modified the punishment as to one of barring two increments with cumulative effect.

3. The appellant challenged Exts. P5 and P7 orders by filing O.P.No.667/1994. The Government resisted the Original Petition by filing a detailed counter affidavit.

4. The learned single Judge who heard the Original Petition quashed Ext. P5 and P7 and issued the following directions:

"The proceedings pursuant to Ext. P3 should be continued and completed expeditiously. In case the enquiry officer appointed under Ext. P3 order is not available, the respondents will see that a new enquiry officer is appointed and the enquiry against the memo of charges issued as per Ext. P1 is completed within a period of six months from the date of production of a copy of this judgment. In case the petitioner does not co-operate with the enquiry, the enquiry officer will complete the enquiry ex parte and based on the report forwarded by the enquiry officer the proceedings in accordance with Rule 15 of the Rules will be concluded. Petitioner is directed to pay costs as already mentioned above to the tune of Rs. 2000/- which amount he shall pay to the Kerala High Court Legal Services Committee within a period of one month from today and produce a memo in that regard before the disciplinary authority. In case such a memo is not produced, the punishment imposed against the petitioner and as concluded by Ext. P7 will revive."

5. The appellant filed the above Writ Appeal aggrieved by the judgment to the extent it directs the continuance of enquiry under Rule 15. According to the appellant, since he has already retired from service, no further action could be taken against him for imposing a penalty under Rule 15. He challenges the direction to pay costs also.

6. The main contention urged before us is that the proceedings to impose a penalty under Rule 15 cannot be continued against him after his retirement from service. It is also submitted that the proceedings could not be continued under Rule 3 of Part III of Kerala Service Rules in the absence of any allegation of pecuniary loss to the Government. We are inclined to accept the contention of the appellant that after his retirement, it is not permissible to proceed against him under Rule 15 for the purpose of imposing a major penalty, but we are of the view that the proceedings can be continued against him under Rule 3 of Part III Kerala Service Rules. The contention of the appellant that the charges levelled against him do not disclose allegations of cause of monetary loss to the Government appears to be not correct.

The appellant who is to be a vigilant sentinel guarding the checkpoint was found lying unconscious in a drunken state. Therefore, at the relevant time the smugglers could have merrily carried on their activities unhindered by anyone. The same would definitely cause loss of revenue to the State. Therefore, the contention that his misconduct did not result in loss of revenue to the State cannot be accepted. Further, the power under Rule 3 for reducing pension can be exercised even in the absence of allegation of pecuniary loss to the Government. The relevant portion of Rule 3 reads as follows:

"3. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service; including service rendered upon re-employment after retirement."

A close scrutiny of the Rule would show that the Government reserve to themselves two rights:-

(1) the right to withhold or withdraw a pension or any part of it whether permanently or for short period;

(2) the right to order recovery from pension of the whole or any part of the pecuniary loss caused to the Government. These two rights are distinct and separate. The first right could be exercised even in the absence of any pecuniary loss to the Government. An identical rule has been interpreted by the Supreme Court in [Union of India and Others Vs. Shri B. Dev](#), . The relevant rule interpreted in the said decision was Rule 9 of the CCS (Pension) Rules. The relevant portion of the rule as follows:-

"9. Right of President to withhold or withdraw pension:- The President reserves to himself the right to withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that the Union Public Service Commissioner shall be consulted before orders are passed."

It can be seen that this Rule is identical to or Rule 3 in Part III Kerala Service Rules. Interpreting Rule 9 of the CCE (Pension) Rules, the Supreme Court in the said decision held as follows:-

"Rule 9 gives to the President the right of (1) withholding or withdrawing a pension or part thereof, (2) either permanently or for a specified period, and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the

Government. This power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to the Government that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable."

Therefore, the contention of the appellant is not sustainable. He relied on the decisions of this Court in *Xavier v. KSEB* (1979 KLT 80 (FB)), *Raghavan Pillai v. Travancore Devaswom Board* (1980 KLT 782) and *Dr. Vellayani Arjunan v. State of Kerala* (1988 (1) KLT SN Case No. 52). In view of the above said Supreme Court decision, the decisions of this Court cannot be taken as laying down the correct position of law.

7. In view of the above, we confirm the judgment of the learned single Judge with a slight modification. The proceedings against the appellant shall be continued against him under Rule 3 Part III Kerala Service Rules instead of Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules. In every other respects, the judgment under appeal is confirmed.

8. The Writ Appeal is disposed of as above. No costs.