

P.M.John vs State of Kerala

P.M.John vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1387403

Court : Kerala

Decided On : May-22-2023

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/20966/2011

Appellant : P.M.John

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 22ND DAY OF MAY 2023 / 1ST JYAISHTA, 1945 WP(C) NO. 20966 OF 2011 PETITIONER: P.M.JOHN HOUSING COMMISSIONER AND EX-OFFICIO SECRETARY, KERALA STATE HOUSING BOARD, (RETIRED), RESIDING AT D6-PILLA VEEDU NAGAR, KESAVADASAPURAM, THIRUVANANTHAPURAM. BY ADV SRI.JAMES KURIAN RESPONDENTS:

1 STATE OF KERALA REP.BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.695001 2 THE PRINCIPAL SECRETARY HOUSING (A) DEPARTMENT, STATE OF KERALA,,

SECRETARIAT, THIRUVANANTHAPURAM.695001 3 THE HOUSING
COMMISSIONER AND EX-OFFICIO SECRETARY, KERALA STATE
HOUSING BOARD,SHANTI NAGAR,
THIRUVANANTHAPURAM.695001 *4 UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF LABOUR AND
EMPLOYMENT, NEW DELHI. (ADDL.R4 IS IMPEADED AS PER
ORDER DATED 1.2.12 IN IA.NO.1385/12) BY ADVS.
SR.GOVERNMENT PLEADER SRI.C.N PRABHAKARAN SRI.GEORGE
BOBAN, SC, K.S.H.B. SRI.POOVAPPALLY M.RAMACHANDRAN
NAIR,SC.KSHB SRI.K.DENNY DEVASSY, SC, K.S.H.B. SRI.MANOJ
RAMASWAMY, SC, KERALA STATE HOUSING BOARD
SRI.T.K.SAJEEV,SC, KSHB THIS WRIT PETITION (CIVIL) HAVING
BEEN FINALLY HEARD ON

22.05.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: WP(C)20966-2011 :2:

JUDGMENT

The petitioner was holding the post of Housing

Commissioner and Ex-officio Secretary of the Kerala State Housing Board (for short, 'the Board') during the period from 04.12.1991 to 02.08.1996 and from 01.06.2001 to 30.06.2006. While the petitioner was working as the Secretary of the Board during the second spell and few days before his superannuation, he was placed under suspension by the Government in accordance with Rule 10 of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960, by Ext.P1

order dated 26.06.2006 in contemplation of a vigilance enquiry.

Against Ext.P1 order of suspension, the petitioner approached this Court in W.P.(C) No.16949/2006 and this Court, by Ext.P2

order dated 30.06.2006, stayed Ext.P1 and he rejoined service

on 30.06.2006 and retired on the same day. On the basis of the recommendation of the Director of Vigilance and Anti Corruption Bureau, the Government, by Ext.P3 dated WP(C)20966-2011 :3: 07.06.2011, decided to drop further action against the petitioner. Though the Government had, by order dated 23.05.2006, sanctioned full pension and Death Cum Retirement Gratuity (DCRG) to the petitioner, the DCRG was not released to him due to the pendency of vigilance enquiry.

2. The petitioner states that the amount of gratuity

payable to an employee under section 4(3) of the Payment of Gratuity Act, 1972 was enhanced to Rs.10,00,000/- (Ten lakhs) as per Amendment Act 15 of 2010 dated 17.05.2010 and the petitioner has put in 28 years and 4 months qualifying service under the Government. Accordingly, the petitioner has filed this writ petition for direction to the respondents to disburse the DCRG due to him as provided under section 4(3) of the Payment of Gratuity Act, 1972 as amended by Act 15 of 2010, with interest.

3. A counter affidavit has been filed on behalf of the Principal Secretary, Department of Housing, Government of Kerala, the 2nd respondent, stating that since the period of WP(C)20966-2011 :4:

suspension of the petitioner had to be regularised, there was delay in disbursing the DCRG and the DCRG of Rs.3,30,000/- was disbursed to him as per order dated 07.12.2011. It is further contended that the petitioner is not entitled to get the DCRG as per the amendment introduced to section 4(3) of the Payment of Gratuity Act since the petitioner was sanctioned DCRG prior to the said amendment vide order dated 23.05.2006.

4. The writ petition was admitted by this Court on

02.08.2011 and this Court, by order dated 03.11.2011, directed the 2nd respondent to disburse the admitted amount of DCRG to the petitioner within one month. From the counter affidavit, it is seen that the revised admitted DCRG of Rs.3,30,000/- was disbursed to the petitioner by order dated 07.12.2011.

5. The contention of the petitioner in this writ petition is

that he is entitled to DCRG as per section 4(3) of the Payment of Gratuity Act as amended by Act 15 of 2010 whereby the amount of gratuity payable to an employee has been enhanced WP(C)20966-2011 :5: to Rs.10,00,000/- and since the petitioner has put in more than 28 years of service, he is entitled for Rs.10,00,000/- as DCRG.

6. Section 2(e) of the Payment of Gratuity Act defines an employee and reads thus:-

2(e) : "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Thus, section 2(e) excludes persons who hold posts under the Central Government or a State Government. The petitioner was holding the post of Housing Commissioner and Ex-officio Secretary of the Board during the periods mentioned above. Section 4 of the Kerala State Housing Board Act, 1971 deals with the constitution of the Board and provides that the Board shall consist of a Chairman and other members referred to therein which includes Housing Commissioner to the

WP(C)20966-2011 :6:

Government, Ex-officio, who shall also be the Secretary of the Board. Thus, the Secretary of the Housing Board is holding post under the State Government. The Kerala State Housing Board (Employees Service) Regulations, 1984 applies only to officers and servants of the Board. The Kerala State Housing Board Employees' (Pension and other Retirement Benefits) Regulations, 1990 applies to employees

of the Board to whom the Kerala State Housing Board (Employees Service)

Regulations, 1984 applies. The petitioner, being a person holding the post of Housing Commissioner under the Government, was placed under suspension by the Government invoking the provisions under Rule 10 of the KCS (CC & A) Rules and the payment of pension is regulated by the provisions of the Kerala Service Rules. Since the petitioner was a person holding post under the Government, the Payment of Gratuity Act, 1972 excludes him from the provisions of the said Act and he cannot claim gratuity under section 4 of the Payment of Gratuity Act. However, since there was delay in disbursing

WP(C)20966-2011 :7: DCRG due to the petitioner, he is entitled to interest for the belated payment in the light of the decisions in State of Kerala and others v. M. Padmanabhan Nair [(1985) 1 SCC 429], State of U.P and others v. Dharendra Pal Singh [(2017) 1 SCC 49] and D.D. Tewari (dead) through legal representatives v. Uttar Haryana Bijli Vitran Nigam Limited and others [(2014) 8 SCC 894]. The ground raised in the counter affidavit for the delay in disbursement of DCRG is the pendency of vigilance enquiry which concluded with the recommendation to drop further action in the matter. Yet another ground raised is the time taken to regularise the period of suspension of four days, which was regularised by order dated 26.11.2011. The DCRG was released by order dated 07.12.2011, pursuant to interim order of this Court dated 03.11.2011. Therefore, the petitioner is entitled for interest on the DCRG amount of Rs.3,30,000/- at the rate of 6% per annum from respondents 1 and 2 for the

period from 30.06.2006 to 07.12.2011. This shall be paid WP(C)20966-2011 :8: within a period of two months from the date of production of a copy of this judgment. Writ petition is disposed of. Sd/- MURALI PURUSHOTHAMAN JUDGE
spc/ WP(C)20966-2011 :9: APPENDIX PETITIONER EXHIBITS EXHIBIT P1
COPY OF THE ORDER DATED 26.06.2006 SUSPENDING THE PETITIONER
EXHIBIT P2 COPY OF THE ORDER IN WRIT PETITION NO.16949/2006 DATED
30.06.2006 EXHIBIT P3 COPY OF THE COMMUNICATION DATED 07.06.2011
OF 2ND RESPONDENT EXHIBIT P4 COPY OF THE LETTER DATED
18.07.2006 ISSUED BY MINISTRY OF URBAN DEVELOPMENT EXHIBIT P5

COPY OF THE NON-LIABILITY CERTIFICATE ISSUED TO THE PETITIONER
BY THE HOUSING COMMISSIONER OFFICE ON 01.07.2006 EXHIBIT P6 COPY
OF THE NON-LIABILITY CERTIFICATE ISSUED BY THE KSHB EXHIBIT P7
COPY OF THE BOARDS DECISION EXHIBIT P8 COPY OF THE LETTER
SUBMITTED TO THE RESPONDENT

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com