

Baskaran Pillai Vs. Devaswom Commissioner

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Court : Kerala

Decided On : Jan-27-1997

Reported in : (1999)IIILLJ737Ker

Judge : C.S. Rajan, J.

Acts : Kerala Service Rules, 1960 - Rule 3

Appeal No. : O.P. No. 13500/1995

Appellant : Baskaran Pillai

Respondent : Devaswom Commissioner

Advocate for Def. : P.G. Parameswara Panickar and; P. Gopal, Adv.

Advocate for Pet/Ap. : K.R.B. Kaimal, Adv.

Disposition : Petition allowed

Judgement :

Rajan, J.

1. The petitioner was served with a memo of charges Ext. P-1 dated June 15, 1994. Later, by Ext. P-2 order dated September 8, 1994 he was suspended from service. Thereafter Ext. P-3 memo of charges dated January 18, 1995 was served on him. The petitioner filed the explanation. An enquiry was also conducted.

Thereafter, the petitioner retired from service on attaining the age of superannuation on May 31, 1995 Ext. P-5 evidences the above fact. Subsequently, Ext. P-6 dated August 24, 1995 was passed as the final order passed in the disciplinary proceedings. By Ext. P-6, the petitioner was compulsorily retired with effect from the date of his suspension.

2. Though the Original Petition was filed initially for disbursement of pensionary benefits and also for a direction to drop the disciplinary proceedings initiated against the petitioner on account of the fact that he retired after passing of Ext. P-6 order the petitioner has amended the Original Petition challenging Ext. P-6 order.

3. Ext. P-6 order is challenged solely on the basis of lack of competency on the part of the respondents to pass an order of compulsory retirement after the date of superannuation of the petitioner. When an employee retires from service, the master and servant relationship between the employer and employee ceases. Thereafter the master has no authority to suspend the employees or to take any disciplinary action. That is why in the Kerala Service Rules it was specifically provided in Part II R. 3 that any disciplinary/ departmental action taken while employee is in service can be continued after his date of superannuation. But the above proceedings can only culminate in an order by which recovery can be ordered from his pension. It cannot end in any punishment enumerated in the Kerala Civil Service (Classification, Control and Appeal) Rules, 1960.

4. A Full Bench of this Court had occasion to consider the right of an employer to take action against the employee who retired from service in *Xavier v. K.S.E. Board* 1979 KLT 80. In that case, an employee of the Kerala Electricity Board, who retired from the services of the Electricity Board was proceeded against for misconduct and this Court held that no disciplinary action can be taken and orders passed after the date of superannuation because he ceases to be an employee under the Electricity Board.

5. I do not think the above proposition has been either doubted or differed in any other decision of this Court or of the Supreme Court.

6. Learned Standing Counsel for the Devaswom Board submits that the petitioner, who is only a temple employee is not governed by the provisions contained in the Kerala Service Rules. The pensionary claims of the petitioner are governed by Ext. R1 (a). There is nothing to indicate either in Ext. R1 (a) or in any rules or orders that the Devaswom Board is competent to proceed against the petitioner even after his retirement. The learned counsel also relied on a decision of the Supreme Court in *Union of India v. Ajoy Kumar Patnaik* 1995 (6) SCC 442. The learned counsel relied on paragraph 10 of the above judgment which reads as follows :

' 10. Since the competent authorities at different levels had considered the material and ultimately had decided to compulsorily retire the respondent from service, it cannot be said that it is an arbitrary decision. It is true that pending the proceeding the respondent has already retired from service on attaining the age of superannuation, but that would not provide a ground to dispose of this matter without giving any finding on the action taken by the competent authority. Otherwise, in all cases, it would cause grave damage to public justice. The employee would get away with it due to pending proceedings. Therefore, it needs to be considered and decision rendered thereon whether the action taken by the Government or the competent authority is valid in law. In that perspective mere retirement of the officer by efflux of time pending proceedings would not be a ground to close the matter'.

A glance at the above ruling will go to show that is a case where an employee was compulsorily retired in public interest invoking Fundamental Rule 56 (j) which empowers the Government to order compulsory retirement of employees in public interest. When the matter was pending before various authorities by way of review etc. the petitioner therein attained the age of superannuation. In this background the Supreme Court said that the mere fact that the petitioner therein attained the age of superannuation would not provide a ground to dispose of the above matter without giving any finding on the action taken by the competent authority. According to the Supreme Court, it would cast great damage to public justice if the matter was not decided on merit.

7. The above decision does not militate against the proposition enunciated by this Court in the decision of the Full Bench referred to above. Therefore, I do not think the above decision will improve the case of the respondents.

8. Therefore, I quash Ext. P-6 order passed by the Devaswom Board ordering compulsory retirement of the petitioner with effect from the date of his suspension. The respondents are free to take any action against the petitioner if the law provides for that. Consequential orders with regard to regularisation of the period of suspension, calculation, quantification and disbursement of the benefits must be done by the Devaswom Board within three months from the date of receipt of a copy of this judgment.

Original Petition is allowed as indicated above.

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