

**Jose Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jul-28-2006

**Reported in :** 2006(3)KLT913

**Judge :** Kurian Joseph, J.

**Acts :** Kerala Municipal Pensionable Employees Central Provident Fund Rules, 1981 - Rules 11(2), 14, 14(1), 14(3), 14(4), 15, 15(3), 15(4) and 30; Kerala Municipal Pensionable Employees Central Provident Fund Act - Sections 14(4); Kerala Aided Schools Employees' Provident Fund Rules, 1967 - Rule 14(4); General Provident Fund Rules, 1986

**Appeal No. :** O.P. No. 37084 of 2001

**Appellant :** Jose

**Respondent :** State of Kerala

**Advocate for Def. :** P.K. Shakeela, Government Pleader

**Advocate for Pet/Ap. :** N. Sugathan, Adv.

**Judgement :**

**Kurian Joseph, J.**

1. Whether a contributor to the provident fund under the Kerala Municipal Pensionable Employees Central Provident Fund Rules, 1981 is entitled to get interest beyond the period of 6th month after the same became payable is the question to be decided in this case.

2. Petitioner retired from service on 30-4-1998 while working as Assistant Executive Engineer under the Kunnamkulam Municipality. To the extent relevant and undisputed, the factual position is that, of the entitled amount of Rs. 2,07,575 in the PF account of the petitioner as on 30-4-1998, he was paid an amount of Rs. 1,89,437/- only on 13-6-2000 and the balance Rs. 18,138/- only on 5-8-2000. As per Ext.P8, the request of the petitioner for interest was turned down on the ground that under Section 14(4) of the Rules, the petitioner is entitled only to get interest for a period of six months. According to the petitioner, the parent legislation as far as the provident fund, is the General Provident Fund (Kerala) Rules which came into force on 1-4-1964, in whose pattern, rules for provident fund in other establishments were framed subject to minor modifications. However, subsequent amendments introduced in the General Provident Fund (Kerala) Rules regarding interest and other benefits have not been carried out in the Rules and hence the unjust discrimination.

3. Rule 15 of the General Provident Fund Rules dealing with interest reads as follows:

15. (1) Subject to the provisions of Sub-rule (5) below interest at such rate as may be fixed by the Government subject to a minimum of 4 per cent shall be annually credited by the Government to the account of each subscriber.

(2) Interest shall be credited with effect from the last day in each year in the following manner:

(i) On the amount at the credit of a subscriber on the last day of the preceding year, less any sums withdrawn during the current year - interest for twelve months;

(ii) On sums withdrawn during the current year - interest from the beginning of the current year up to the last day of the month preceding the month of withdrawal;

(ii) On all sums credit to subscriber's account after the last day of the preceding year interest from the date of deposit up to the end of the current year;

(iv) The total amount of interest shall be rounded to the nearest whole rupee (fifty paise or more counting as the next highest rupee):

Provided that when the amount standing at the credit of a subscriber has become payable, interest shall thereupon be credited under this sub-rule in respect only of the period from the beginning of the current year or from the date of deposit, as the case may be up to the date on which the amount standing at the credit of the subscriber became payable.

(3) In this rule, the date of deposit shall in the case of a recovery from emoluments, be deemed to be the first day of the month in which it is recovered and in the case of an amount remitted by the subscriber into the Treasury, shall be deemed to be the first day of the month of remittance, if it is remitted into the Treasury before the fifth day of that month, but if it is remitted on or after the fifth day of that month the first day of the next month:

Provided that where there has been a delay in the drawal of pay or leave salary and allowances of a subscriber and consequently the recovery of his subscription towards the Fund is delayed, the interest on such subscriptions shall be payable from the month in which the pay or leave salary of the subscriber was due under the rules, irrespective of the month in which it was actually drawn:

Provided further that where the emoluments of a month are drawn and disbursed in the same month itself, the date of deposit shall, in the case of recovery of his subscription be deemed to be the first day of the succeeding month.

This proviso come into force with effect from 1st September, 1967.

(4) In addition to any amount to be paid under rules on final withdrawal, interest thereon up to the end of the month preceding that in which the payment is made or up to the end of the sixth month after the month in which such amount became payable. which ever of these periods be less, shall be payable to the person to whom such amount is to be paid;

Provided that where the Account Officer has intimated to that person (or his agent) a date on which he is prepared to make payment, interest shall be payable only up to the end of the month preceding the date so intimated.

Note 1. If a subscriber holding a post in an officiating or temporary capacity exercise on the termination of his post the option allowed by Rule 30 of leaving in the Fund the amount accumulated to his credit, interest shall be allowed on that amount for not more than a year after the termination of employment. If the subscriber subsequently obtains re-employment under Government, deposits not withdrawn will commence again to bear interest from the date on which subscriptions are renewed.

Note 2. Payment of interest on the Fund balance beyond a period of six months up to a period of one year may be authorised by the Accounts Officer/Assistant Accountant General in charge of the Provident Fund Section and up to any period beyond one year may be authorised by the Deputy Accountant General/Senior Deputy Accountant General in charge of the Fund Group after they have personally satisfied that the delay in payment was occasioned by circumstances beyond the control of the subscriber or the person to whom such payment was to be made and in every such case, the administrative delay involved in the matter shall be fully investigated and action, if any required, taken.

(5) Interest shall not be credited to the account of a subscriber if he informs the Account Officer that he does not wish to receive it; but if he subsequently asks for interest, it shall be credited with effect from the first day of the year in which he asks for it, or if he had joined the Fund during the year from the date of his joining the fund.

Rule 14 of the Kerala Municipal Pensionable Employees Central Provident Fund Rules, 1981 reads as follows:

14. Interest:

(1) Subject to the provisions of Sub-rule (5) interest at such rate as may be fixed by the Government from time to time subject to a minimum of four per cent shall

be annually credited by the Director to the account of each subscriber.

(2) Interest shall be credited with effect from the last day in each year in the following manner:

(i) On the amount at the credit of a subscriber on the last day of the preceding year, less any sums withdrawn during the current year - interest for twelve months;

(ii) On sums withdrawn during the current year interest from the beginning of the current year up to the last day of the month preceding the month of withdrawal;

(iii) On all sums credited to subscriber's account after the last day of the preceding year -interest from the date of deposit up to the end of the current year;

(iv) The total amount of interest shall be rounded to the nearest whole rupee; fifty paise or more counting as the next higher rupee;

Provided that when the amount standing at the credit of a subscriber has become payable, interest shall thereupon be credited under this sub-rule in respect only of the period from the beginning of the current year or from the date of deposit, as the case may, upto the date on which the amount standing to the credit of the subscriber became payable.

(3) In this rule the date of deposit shall in the case of a recovery from emoluments be deemed to be the first day of the month in which it is recovered and in the case of an amount remitted under Rule 11(2) shall be deemed to be the first day of the month of remittance, if it is remitted before the fifth day of the next month.

(4) In addition to any amount to be paid under these rules on final withdrawal, interest thereupon upto the end of the month preceding that in which the payment is made or upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, shall be payable to the person to whom such amount is to be paid.

(5) Interest shall not be credited to the account of a subscriber if he informs the Director that he does not wish to receive it; but if he subsequently asks for interest, it shall be credited with effect from the first day of the year in which he asks for it or

if he had joined the fund during the year from the date of his joining the fund.

4. It needs no close scrutiny to note that the words and expression in both the Rules are literally the same except that two provisos under Rule 15(3) of the General Provident Fund rules and the proviso and the notes under Rule 15(4) of the General Rules are left out under the Municipal Employees Rules. Except for that it is verbatim reproduction. The relevant provision is Note 2 under the General rules as far as the instant case is concerned, which is left out in the Municipal Provident Fund Rules. Is it a casus omissus

5. Buvier's Law dictionary defines casus omissus as follows:

When a statute or an instrument in writing undertakes to foresee and provide for certain contingencies and through mistakes, or some other cause, a case remains to be provided for, it is stated to be a casus omissus.... When there has been a casus omissus in a statute the subject is ruled by the common law.

It is now settled law that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. State of Kerala v. M. Padmanabhan Nair : (1985)ILLJ530SC . In Union of India v. Ujagar : (1997)ILLJ981SC also the Supreme Court made it Clear that in case there is Delay due to administrative lapses on the part of the Government, the pensioner is entitled to get interest. What is stated on delay in the disbursement of pension should apply in the case of delayed disbursement of provident fund, if not with more force, since the provident fund is the contribution only of the pensioner. In that view only, note 2 under Rule 15(4) of the general Rules was introduced as per G.O.(p) 426/86/Fin. Dated 12-6-1986, authorising payment of interest for the period beyond six months of the amount becoming due. Unfortunately, nay owing to failure on the part of the rule making authorities in taking timely action to introduce such amendments in the Municipal Rules, such a provision is lacking in the Municipal Rules for authorising payment of interest for the delay beyond the period of six months. Provident Fund is intended to provide for the welfare and financial security of the contributor-

employee. The moment the contribution is terminated, the person concerned becomes entitled to get the amount with the accrued interest. If there is delay, the custodian cannot morally and legally claim the unjust enrichment accruing on the contribution by way of interest on the amount contributed and lying in the credit of the employee. There is no dispute that under Rule 14(4) of the Municipal Rules as well as under Rule 15(4) of the General Provident Fund Rules, safeguard is provided for protecting the interest of the employee by granting interest for a period of six months from the date when it became due or till the actual date of payment whichever is earlier. In case there is any omission on the part of the rule making authority to provide for the logical consequence of the interest accruing on the amount contributed by the employee beyond the period of six months, the same obviously has to be treated as an omission. There is no apparent reason why the rule making authority should not have introduced a note under the Municipal Rules, as has been done in the year 1986 in the General Provident Fund Rules.

6. Lord Denning in *Seaford Court Estates Ltd. v. Asher* (1994) 2 All ER 155 observed as follows:

When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A Judge should ask himself the question how, if the makers of the Act and themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

In *Magor and St. Mellons Rural District Council v. Newport Corporation* (1950) 2 All ER 1226) Lord Denning observed as follows:

We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.

In *Lucy v. W.T. Henleys Telegraph Works Co. Ltd.* (1969) 3 All ER 456, Lord Denning used stronger expressions:

Faced with glaring injustice, the Judges are, it is said, impotent incapable and sterile. Not so with us in This court. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the Judges can and should use their good sense to remedy it by reading words in, if necessary, so as to do what Parliament would have done had they had the situation in mind.

It is true that these observations were subject matter of severe criticism at the hands of the House of Lords in many subsequent cases holding the attempt to be a naked Usurpation of the legislative function under the thin disguise of interpretation. But it appears, our Supreme Court has cited with approval the pungent expressions of Lord Denning in several cases and has followed the spirit and sense behind the approach. To quote Justice G.P. Singh from the Principles of Statutory Interpretation:

It does not seem, however, reasonable to infer that LORD DENNING was intending to lay down a rule permitting usurpation of legislative function by courts and it is more proper to infer that he was emphasising in somewhat unconventional manner that when object or policy of a statute can be ascertained, imprecision in its language should not be readily allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy. The Denning approach allows a gap to be filled in somewhat more freely. Thus the difference, if at all, is regarding the extent of the limited creative role which the Judges can play. In other words, the difference is as to how much one can infer by necessary implication to fill in a prima facie gap.

*M.Pentiah v. Muddala Veeramallapa* : [1961]2SCR295 the celebrated *Bangalore Water Supply v. A.Rajappa* : (1978)ILLJ349SC , *State of Bihar v. Bihar Distillery Ltd.* : AIR 1997 SC1511 etc. are some of the cases where the principle has been approved by the Apex Court.

7. In this context it is also significant that in an identically worded set of rules, the question of denial of interest beyond six months, in the case of an aided school

teacher came up for consideration before This court leading to the decision in Subraya Bhat v. State of Kerala 1999 (2) KLT 362. That is also a case where the request of the teacher for interest on provident fund beyond six months of disbursement was turned down on the ground that the provision for payment of interest is only upto six months under Rule 14(4) of the Kerala Aided Schools Employees' Provident Fund Rules, 1967. This court held as follows:

The necessity for prompt payment of the retirement dues to the Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate. What applies to a Government servant would equally apply to persons like the petitioner, who served in an aided school. Similarly, directions of the Apex Court issued to the authorities with regard to disbursal of gratuity and pension amounts could safely be extended to the amounts due to a subscriber of the Provident Fund on closure of the account. Imposing a restriction in Rule 14(4) to the effect that interest will be payable only for the period as stipulated in Rule 14(4) is arbitrary, irrational and unreasonable taking away the valuable property rights of persons like the petitioner. Consequently, Rule 14(3) of the said rules, in so far as it restricts the payment of interest on the final withdrawal amount upto the end of the month preceding that in which the payment is made upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, has to be struck down. It has to necessarily follow that the liability of the Government to pay interest on the withdrawal amount would continue to extend till the actual date of payment. In the result, Rule 14 (4) of the Kerala Aided Schools Employees' Provident Fund Rules, in so far as it restricts the payment of interest on the final withdrawal amount upto the end of the month preceding that in which the payment is made or upto the end of the sixth month after the month in which such amount became payable, whichever of these periods be less, is hereby struck down. The petitioner, in the instant case, will be entitled for interest on the final withdrawal Provident Fund amount from the day when it became payable under the rules till the date of actual payment at the rate as fixed by the Government under Rule 14(1) of the said Rules.

Thus it has to be noted that the rule limiting the interest to a period of six months has already been struck down in that case. It was declared that what applies to a Government servant should apply to persons like the petitioner therein who was an aided school teacher. Petitioner herein is an Assistant Executive Engineer covered by an identical set of Rules - Kerala Municipal Pensionable Employees Central Provident Fund Rules, 1981. It is also seen that This court had directed the Government to look into the matter and take appropriate action to avoid similar situations of unjust consequences. Apparently nothing has been done so far.

8. In the facts and circumstances of the case and in the background of a similar situation dealt with by This court as early as in 1999 and yet the rule making authority still lethargic and indifferent, it is declared that the provision under Rule 14(4) of the Kerala Municipal Pensionable Employees Central Provident Fund Rules, 1981 limiting the interest to a period of six months from the date the amount became due is only a casus omissus. Note 2 under the proviso to Rule 15(4) of the General Provident Fund (Kerala) Rules shall be treated to be part of Rule 14(4) of the Kerala Municipal Pensionable Employees Central Provident Fund Rules, 1981 being only a casus omissus. Accordingly the petitioner shall be entitled to the interest on his provident fund disbursed beyond the period of six months of the due date till the actual date of payment, at the rate notified by the Government at the relevant time under the General Provident Fund (Kerala) Rules. Ext.P8 is consequently quashed with a direction to disburse the eligible benefits in the light of the declaration as above within a period of three months from the date of production of a copy of the judgment.