

Sugathan Vs. CochIn Devaswom Board

Sugathan Vs. CochIn Devaswom Board

SooperKanoon Citation : sooperkanoon.com/727997

Court : Kerala

Decided On : Aug-03-2004

Reported in : [2005(104)FLR1032]; 2005(1)KLT46

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

Acts : Service Rules - Rule 3, 11(5) and 116(5)

Appeal No. : W.P. No. 5568 of 2004

Appellant : Sugathan

Respondent : CochIn Devaswom Board

Advocate for Def. : M. Ramesh Chander, Adv.

Advocate for Pet/Ap. : Govind K. Bharathan,; Manu Mohan and; R.V. Sujit Kumar

Judgement :

K.S. Radhakrishnan, J.

1. Can a portion of the death-cum-retirement gratuity be withheld after retirement without initiating any disciplinary proceedings while in service, is the question that has come up for consideration in this case.

2. Petitioner retired from the service of the Cochin Devaswom Board as Devaswom Assistant Commissioner on 31.1.2003. An amount of Rs. 1,67,937/-

was sanctioned to him towards death-cum-retirement gratuity, but was not disbursed for want of non liability certificate. Cochin Devaswom Board by its proceedings dated 15.4.2004 provisionally fixed Rs. 30,603/- as the liability of the petitioner. Sanction was accorded by the Devaswom Board, vide order dated 14.6.2004 to disburse the death-cum-retirement gratuity withholding an amount of Rs. 30,603/-. Petitioner is aggrieved by the said order and has approached this Court seeking a direction to the Devaswom Board to issue non liability certificate and to disburse the entire amount of death-cum-retirement gratuity with interest.

3. Devaswom Board has filed a statement on 1.3.2004 stating that without finalising the liability, balance amount of death-cum-retirement gratuity cannot be disbursed. Reply affidavit has been filed by the petitioner contending that the Board has no legal right to withhold the death-cum retirement gratuity since no departmental proceeding was initiated against him before retirement and no liability was fixed. Counsel took us through the various provisions of the Kerala Service Rules and also referred to the decisions of this Court in Director of Health Service v. Paul, 1992 (1) KLT 313, Sreedharan Pillai v. State of Kerala, 1997 ILR (2) Ker. 468, and Gopinathan Nair v. State of Kerala, 1992 (1) KLT 859. Counsel appearing for the Board referred to Rule 3(b) of Chapter 1 of Part III Kerala Service Rules and contended that even after retirement departmental proceeding can be initiated against an employee. Reference was also made to the decision in Sosamma v. L.P. School, Parpacode, 2001 (2) KLT SN 30, Jayarajan v. State of Kerala, 2001 (3) KLT 929, and Clement Lopez v. State of Kerala, 1998 (2) KLT SN 62. Counsel for the petitioner took us through the entire facts of the case and contended that the attempt to withhold part of the death-cum- retirement gratuity amount is mala fide and only to wreck vengeance on the petitioner.

4. We are in this case concerned only with the question whether the Board has the right to withhold portion of the death-cum-retirement gratuity in a case where no departmental proceeding was initiated while the petitioner was in service. The rule which is applicable to consider the question is Rule 3, Chapter 1 of Part III KSR. Relevant portion of the same is extracted below:

Provided that--

(a) such department proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service;

(b) such departmental proceeding, if not instituted while the employee was in service whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government.

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service.xxx xxx xxx

Note 2:- The word 'pension' used in this rule does not include death-cum-retirement gratuity. Liabilities fixed against an employee (for pensioner) can be recovered from the death- cum-retirement gratuity payable to him without the departmental/judicial proceedings referred to in this rule, but after giving the employee (or pensioner) concerned a reasonable opportunity to explain.

Note 3:-The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him.

Contention raised by counsel for the petitioner Sri. Govindh K. Bharathan is that if at all the Board has got the power to initiate proceedings under Rule 3(b) after retirement, the Board can only withhold pension and not death-cum-retirement gratuity. Counsel submitted that the word 'pension' would exclude death-cum-retirement gratuity.

5. Counsel appearing for the Devaswom Board Sri. M. Ramesh Chander placed reliance on the latter part of Rule 2 and contended that the liability could be fixed against a pensioner and can be recovered from the death-cum-retirement gratuity payable to him without initiating departmental proceedings, but giving an opportunity to explain. Counsel also referred to Ruling 5 under Rule 116 of Part III KSR and submitted that where the liabilities could not be assessed and fixed before retirement of the Government employee, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement. In case liability could not be assessed, amount withheld from the death-cum-retirement would be released. Counsel also made reference to Sub-rules (1) and (5) of Rule 116. For easy reference, we may extract Rule 116(5)and(6).

5. In all cases where the liabilities could not be assessed and fixed before retirement of the Government employees, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement of the Government employee concerned. If in any case, the liability could not be assessed and adjusted within one year, the amount withheld from the death-cum-retirement gratuity or the surety bond or cash deposit accepted under paragraph (1) or (3) above will be released. Disciplinary action shall be taken against the employees responsible for the failure to assess and adjust the liabilities within the prescribed period.

6. If in any case the amount withheld from the death-cum-retirement gratuity or the cash deposit, or the surety bond taken from the employee has been released on the expiry of one year after the date of retirement without the liabilities being finalised and adjusted, or it is not adequate to cover the liabilities finally fixed, action will be taken against him under Rule 3 of Part III, Kerala Service Rules to make up the loss by withholding, withdrawing or effecting recoveries from the pension sanctioned. If action under Rule 3 ibid is not possible due to the expiry of the time limit prescribed for such action, or due to any other reason, the retired employee will be proceeded against a Civil Court for recovering the pecuniary loss caused to Government.

6. The question therefore to be considered is whether the Board has got power to withhold portion of the death-cum-retirement gratuity without initiating any departmental proceedings before the date of retirement. Rule 3 deals with withholding or withdrawing a pension. The word 'pension' has been used in Rule 3 so as to exclude death-cum-retirement gratuity. All the same, Note 2 however says, liability fixed against an employee or pensioner can be recovered from the death-cum-retirement gratuity payable to him without departmental/disciplinary proceedings referred to in Rule 3, but after giving the employee or pensioner concerned a reasonable opportunity to explain. Departmental/disciplinary proceeding mentioned in Note 2 is departmental/ disciplinary proceeding referred to in Rule 3. Departmental proceeding could be initiated under Rule 3.(b) even after retirement but only with the sanction of the Government, in this case the Devaswom Board. Further condition to be satisfied is that the departmental proceeding shall not be in respect of any event which took place more than four years before such institution. Note 2 used the expression 'pensioner' which shows that the departmental proceeding can be initiated against pensioner also under Rule 3(b). Note 2 also says that death-cum-retirement gratuity can also be recovered from the liability fixed against a pensioner, but only after giving the pensioner a reasonable opportunity to explain. Note 3 further stipulates that liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him.

7. We may point out so far as this case is concerned, the liability is yet to be fixed. Therefore Note 2 to Rule 3 would not apply. So also Rule 3(b). The provision that applies to this case is Rule 116(5), which says that where liabilities could not be assessed and fixed before retirement, efforts should be made to assess and adjust the recoverable dues within a period of one year from the date of retirement. On failure, the amount withheld from the death-cum-retirement gratuity will be released. Liability can also be fixed against pensioner and such liability can be recovered from the death-cum- retirement gratuity payable to him without departmental/judicial proceeding but only after giving the employee (pensioner) concerned a reasonable opportunity to explain. Therefore, for withholding or

withdrawing death-cum-retirement gratuity no departmental proceeding as contemplated under Rule 3(b) is necessary. Liability can also be fixed against the petitioner and amount can be recovered from the death-cum retirement gratuity only subject to the condition that the person concerned should be given a reasonable opportunity to explain. The liability against the pensioner can also be quantified after retirement, but not beyond three years after becoming a pensioner. If the liability could not be assessed and fixed before retirement, it should be assessed and adjusted from the recoverable dues within a period of one year from the date of retirement. If the liability could not be assessed and adjusted within one year, the death-cum-retirement gratuity has to be released. We may point out, so far as this case is concerned the employee retired from service on 31.1.2003. The liability could not be assessed and adjusted from the death-cum-retirement gratuity within one year from the date of retirement. Hence the petitioner is entitled to get the entire amount of death-cum-retirement gratuity. The provision also enables the Government to take disciplinary action against the employee who is responsible for the failure to assess and adjust the liability within the prescribed period of one year. On failure to comply with the provision of Sub-rule (5) of Rule 116, statute enables the authority to take action against the pensioner under Rule 3 of Part III to make up the loss by withdrawing, upholding or effecting recoveries from the pension sanctioned. If action under Rule 3 is not possible within the limit prescribed in Rule 3 Part III or due to any other reason, the retired employee can be proceeded against in a Civil Court for the recovery of pecuniary loss caused to Government and in this case the Devaswom Board. Cochin Devaswom Board could not assess and adjust the liability towards the recoverable dues within one year from the date of retirement of the petitioner. Hence the Board is bound to release the balance amount. The balance amount due would be paid to the petitioner within a period of two weeks from the date of receipt of a copy of this judgment. The Board is however free to assess the liability and recover the same in accordance with law.