

**Chacko Vs. K.S.E.B.**

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**SooperKanoon Citation :** [sooperkanoon.com/729385](http://sooperkanoon.com/729385)

**Court :** Kerala

**Decided On :** Nov-03-2004

**Reported in :** 2005(1)KLT867

**Judge :** K.K. Denesan, J.

**Acts :** Kerala Service Rules - Rules 3 and 59

**Appeal No. :** W.P.(C) No. 34470 of 2003

**Appellant :** Chacko

**Respondent :** K.S.E.B.

**Advocate for Def. :** Jose J. Matheikal, Adv.

**Advocate for Pet/Ap. :** K.R.B. Kaimal and; V. Madhusudhanan, Advs.

**Disposition :** Petition allowed

**Judgement :**

**K.K. Denesan, J.**

1. Petitioner while working as Assistant Engineer retired on 31.8.1999 from the Kerala State Electricity Board (for short, 'the Board'). Sanction was accorded by the W.P.(C) No. 34470 of 2003. Decided on 3rd November, 2004. respondents for payment of pension, D.C.R.G. and other terminal benefits due to the petitioner and

after obtaining the non liability certificate from the competent authority the entire amount sanctioned was paid to him.

2. While the petitioner was receiving his monthly pension on the basis of the orders thus passed by the Board, the pay scales of the Board employees were revised necessitating recomputation of the pensionary benefits. Accordingly, petitioner's pension as also Death-cum-Retirement Gratuity was revised and he was told that the arrears of D.C.R.G. due on that account would be disbursed to him in eight half yearly instalments. Petitioner was paid five instalments of arrears of D.C.R.G. as ordered by the Board. At that stage, there was a turn of events. The Board as per Ext.P2 dated 23.11.2001 informed the petitioner that during the period he was in charge of the Stores, it had sustained pecuniary loss of Rs.57,306/- and therefore, the loss thus sustained would be fixed as his personal liability. Since the petitioner did not respond, Ext.P2 was followed by a second notice. Thereafter, on 1.8.2003 the Deputy Chief Engineer passed the impugned order (Ext.P3) which reads as follows:

'The value of I.S.T.N. received from the Deputy Chief Engineer Electrical Circle Pala for the materials you have taken delivery Rs. 57,306/- and Rs. 76,796/- the amount claimed by M/s. Electricals and Hardware Industries in Munsiff Court, Ernakulam vide O.S- No. 649/02 as cost of the materials with interest @ 18% per annum will be your liability. Hence you are hereby informed that Rs. 1,34,102/- (Rupees One Lakh thirty four thousand one hundred and two only) will be treated as your liability and recovered from your future pensionary benefits.'

3. Therefore, what is seen from Ext.P3 is that as against the sum of Rs. 57,306/- shown in Ext.P2, the total amount fixed in the final order passed as liability against the petitioner, comes to Rs. 1,34,102/-. Shri Jose J. Matheikal, learned Standing Counsel appearing for the Board submits that as per the subsequent notice the balance amount was intimated to the petitioner and that, before passing Ext.P3 petitioner was given an opportunity to represent against that proposal also. This fact is not disputed by Sri. K.R.B. Kaimal appearing for the petitioner.

4. Be that as it may, the contention raised by the petitioner is that Ext.P3 is unsustainable because the said order was passed in purported exercise of the

power conferred under Rule 3 of Part III of Kerala Service Rules and if that is so, the recovery is beyond the outer limit of three years prescribed by that provision. Counsel for the petitioner submits that, the Board was in error in fixing the liability against the petitioner after the lapse of 3 years from the date of retirement.

5. Learned Standing Counsel for the Board submits that even assuming that Ext.P3 order was passed beyond the period of 3 years stipulated in Rule 3 of Part III, K.S.R., the said order can be sustained under Rule 59(b) of Part III, K.S.R. which empowers the Government or the Board, as the case may be, to make such reduction in the amount of pension as they think proper.

6. As per Rule 3 of Part III of K.S.R., Government or the Board, as the case may be, has the right to with-hold or withdraw pension or any part of it, whether permanently or for a specified period, and the right to order recovery from pension of the whole or part of any pecuniary loss caused to it, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. However, the right to withhold or withdraw pension is subject to the conditions and limitations prescribed in Rule 3 itself. Note 2 under the said Rule says that the word 'pension' used in that Rule does not include Death-cum-Retirement Gratuity and that liabilities fixed against an employee or pensioner can be recovered from the Death-cum-Retirement Gratuity payable to the petitioner without the departmental/judicial proceedings referred to in that Rule, but after giving the employee or pensioner concerned a reasonable opportunity to explain. Note 3 under Rule 3 says that 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 3 years on becoming pensioner. Though the normal rule is that the liability of the employee should be fixed before his retirement, Note 3 to Rule 3 permits final quantification of the liability and intimation thereof to the pensioner within a period of 3 years on the employee becoming pensioner. Beyond the period of 3 years, the bar of limitation in terms of Note 3 of Rule 3 of Part III, K.S.R. comes into operation.

7. Admittedly, the recovery ordered as per Ext.P3 is not the result of any judicial or departmental proceedings and the liability fixed as per Ext.P3 has been done after

the retirement of the petitioner. The date of retirement is 31.8.1999. Ext.P3 order was passed after 3 years and 11 months from the date of retirement of the petitioner. Therefore, learned counsel for the petitioner is right in contending that Ext.P3 order cannot be sustained in the light of Rule 3 of Part III, K.S.R. Hence the contention to be examined is whether Ext.P3 can be sustained under Rule 59(b) of Part III, K.S.R. Rule 59 together with Notes 1 and 2 of that Rule read as follows:

'59. Award of Full Pension.--

(a) The Full Pension admissible under this rule is not to be given as a matter of course or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the Government may make such reduction in the amounts as they think proper.

Note 1.- Government may review their orders if the affected employee makes a request within a period of three months from the date of the orders.

Note 2.- This rule does not operate to authorise a reduction of ordinary pension either to nothing or to a nominal amount.'

8. The power to with-hold pension and to recover from the pensionary benefits the pecuniary loss, if any, caused to the Government, conferred by Rule 3 of Part III, K.S.R. and the power to order reduction in pension in exercise of the power under Rule 59(b) of Part III, K.S.R. are distinct and those provisions come into operation under different circumstances. The object and purpose sought to be achieved by the aforesaid provisions is also not the same. Power to reduce pension in terms of Rule 59(b) of Part III, K.S.R. does not depend upon proof of any pecuniary loss caused by the employee. For invoking Rule 59(b), the relevant consideration is the quality of the service rendered by the employee. It may have bearing on the character and conduct of the employee while in service. The procedure for with-holding or withdrawing a pension or any part of it or for ordering the recovery from pension in order to compensate the pecuniary loss caused to Government is different from the procedure to be followed for passing an order in terms of Rule 59(b) of Part III, K.S.R. Viewed in that perspective, it is clear from Ext.P3 that

fixation of liability and recovery of Rs. 1,34,102/- from the future pensionary benefits of the petitioner was passed in purported exercise of Rule 3 of Part III, K.S.R. and not in terms of Rule 59(b) of the said Rules. There is absolutely no finding, not even a passing observation in Ext.P3 that the petitioner's service was unsatisfactory. Such a finding is condition precedent for invoking Rule 59(b) of Part III, K.S.R. The impugned recovery is directly correlated to the fixation of liability which in turn is based on the conclusion that the petitioner caused pecuniary loss of Rs. 1,34,102/-. Hence, I am not able to accept the contention of the learned counsel for the respondent-Board that the authority to issue Ext.P3 can be traced to Rule 59(b) of Part III, K.S.R.

9. In the result, Ext.P3 is quashed and the Writ Petition is allowed. There shall be a direction to the respondents to disburse the amount with-held by the respondents from the D.C.R.G. due to the petitioner, namely the last 3 instalments of D.C.R.G. This shall be done within one month from the date of receipt of a copy of this judgment.

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