

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 2973 of 2006 (D)

PETITIONERS :

1. STATE OF KERALA, REP. BY ITS
SECRETARY TO GOVERNMENT, HEALTH AND FAMILY
WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.
3. THE DISTRICT MEDICAL OFFICER OF HEALTH,
CIVIL STATION, KOLLAM.
4. THE DISTRICT T.B.OFFICER,
DISTRICT T.B.CENTRE, KOLLAM.

BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

RESPONDENTS :

1. K.M.SANTHAMMA TREATMENT ORGANISOR (RETIRED),
THRIVENI, MUNDAKKAL EAST
KOLLAM.
2. THE KERALA LOK AYUKTHA, REPRESENTED BY
ITS REGISTRAR, THIRUVANANTHAPURAM.

R1 BY ADVS. SRI.P.NANDAKUMAR
SRI.S.VIJAYAN
SRI.M.RAHUL
SMT.SREEJA VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 2973 of 2006 (D)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT BEFORE THE HONOURABLE LOKAYUKTA WITH EXHIBITS

EXT.P2 : COPY OF THE STATEMENT OF FACTS FILED ON BEHALF OF THE RESPONDENT IN LOKAYUKTA

EXT.P3 : COPY OF THE GOVERNMENT ORDER DATED 4.3.2005

EXT.P4 : COPY OF THE ORDER DT.10.1.05 IN COMPLAINT NO.493/04 OF THE RESPONDENT LOKAYUKTA

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.2973 of 2006

Dated this the 5th day of March, 2015

J U D G M E N T

The petitioners, representing the State of Kerala, have filed this writ petition challenging Ext.P4 order of the Lok Ayukta dated 10.01.2005 directing them to reckon the service of the 1st respondent from 22.06.1967 to 06.12.1972 for computation of pension and other pensionary benefits and to pay to her, her DCRG without claiming any amount by way of liability towards excess payment. The short facts of the case are the following.

2. The petitioner was selected and advised by the Public Service Commission as a T.B Health Visitor in the Health Department of the 1st petitioner. After undergoing training, since there was no vacancy available, she was sent on deputation to the Union Territory of Pondicherry. Thus, she worked under the Pondicherry administration from 22.06.1967 to 06.12.1972. On 07.12.1972, she joined the State Health service. Thereafter, she requested the Government to restore her seniority reckoning her service rendered under the Pondicherry administration also. The 2nd petitioner, Director of Health Services ordered payment of her regular scale of pay from 14.11.1969, the date of joining in service of her immediate junior. According to the 1st respondent, her service ought to have been reckoned with effect from 22.06.1967 onwards. Therefore, she had submitted complaints for reckoning her service from the said

date.

3. While in service, she had availed leave for a total period of five years. The leave was sanctioned on health grounds. However, she was later on directed to appear for a second medical opinion. It is alleged that, instead of appearing for such second medical opinion, she had cancelled the unavailed portion of her leave and had rejoined service. Thereupon, orders were issued rejecting her application for leave and directing that the period be treated as Leave Without Allowances. The 1st respondent retired from service as a Treatment Organiser on 31.03.2000. Thereafter, she approached the Lok Ayukta with a complaint seeking directions for payment of her gratuity, for taking into account her period of service under the Pondicherry administration from 22.06.1967 onwards for the purpose of her pension and other retirement benefits and, for treating her period of absence on Leave Without Allowances as leave on medical grounds.

4. The complaint of the 1st respondent was contested by the petitioners. After considering the matter, by Ext.P4 order, the Lok Ayukta disallowed the claim of the 1st respondent for treating her period of absence on Leave Without Allowances as leave on medical grounds. However, the Lok Ayukta directed that her DCRG be paid without withholding any amounts from it and also to reckon her service from 22.06.1967 for the purpose of pension and other

retirement benefits. The petitioners are aggrieved by Ext.P4 order.

5. According to the learned Government Pleader, the Lok Ayukta lacked jurisdiction to consider the complaint filed by the 1st respondent. Secondly, it is contended that the 1st respondent had been paid excess amount consequent to a wrong fixation of her pay by the 4th petitioner. A pay revision had also been implemented wrongly in her case, resulting in payment of excess amount to her. The amounts have been objected to in audit. Therefore, the payments made on the basis of wrong fixation of pay is necessary to be recovered from the 1st respondent. The same can only be recovered from her DCRG, it is contended. According to the learned Government Pleader, it is within the rights of the State to recover the excess payment from the 1st respondent. It is also contended that, the 1st respondent had sought for medical leave for a period of five years. Though the leave was initially sanctioned, when the 1st respondent was directed to appear for a second medical opinion, she cancelled her leave and joined duty. The said period according to the learned Government Pleader can only be treated as Leave Without Allowances.

6. Adv.Sri.P.Nandakumar appears for the 1st respondent. According to the learned counsel, the claim of the 1st respondent to treat her period of leave as leave on medical grounds has been disallowed by the Lok Ayukta in Ext.P4. The said order has become

final. According to the learned counsel, the Lok Ayukta had the jurisdiction to consider the complaint and to pass the impugned order. It is pointed out by the learned counsel that, this Court has held in a number of decisions that, payments made consequent to wrong fixation of pay are not liable to be recovered. In the present case, the amount payable as DCRG to the 1st respondent is only ₹ 81,674/- whereas, the amount sought to be recovered as ₹ 2,00,449/-. Though the 1st respondent has retired on 31.03.2000, till date no proceedings have been issued fixing any liability on her or issuing her with a liability certificate. Therefore, in view of Note 3 to Rule 3 of Part III KSR any action to recover amounts from the DCRG payable to the 1st respondent is impermissible. Reliance is placed on a Division Bench decision of this Court also to support the said contention. According to the counsel, Ext.P4 is perfectly legal and does not call for any interference at the hands of this Court.

7. Heard. The first contention of the learned Government Pleader is that, the Lok Ayukta lacked jurisdiction to entertain the complaint of the 1st respondent. Section 8 of the Kerala Lok Ayukta Act, 1999 specifies the matters with respect to which no investigation by the Lok Ayukta is permissible. The said provision provides as follows :

“8. Matters not subject to investigation.- (1)

Except as hereinafter provided, the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this

Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule .

(2) The Lok Ayukta or an Upa-Lok Ayukta shall not investigate,-

- (a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lok Ayukta or an Upa-Lok Ayukta, as the case may be;
- (b) any action in respect of a matter which has been referred to inquiry under the Commissions of inquiry Act, 1952 (Central Act 60 of 1952);
- (c) Any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that a complaint referred to in clause (c) may be entertained by the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, after the expiry of the period referred to in the said clause, if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in that clause.

(3) in the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lok Ayukta or an Upa-Lok Ayukta to question any administrative action involving the exercise of a discretion, except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima-facie be regarded as having been improperly exercised.”

Sub Section 1 of the above provision provides that no investigation

shall be conducted under this Act, if such action relates to any matter specified in the Second Schedule. A perusal of the Second Schedule shows that, action taken in respect of the appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants are excluded. Actions relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of services are included, as coming within the jurisdiction of the Lok Ayukta. Since the claim involved in the present case relates to gratuity and retirement benefits, the complaint of the petitioner was perfectly maintainable before the Lok Ayukta. Consequently, the Lok Ayukta had the jurisdiction to consider the complaint and to issue Ext.P4 order.

8. Though the learned Government Pleader has placed reliance on the decision of this Court in ***State of Kerala v. Bernard [2002 (3) KLT 254]*** & ***State of Kerala v. Leela [2009 (3) KLT SN 41] (Case No.42)*** in support of his contention that the Lok Ayukta lacked jurisdiction to entertain the complaint, the said decisions have no application in view of the clear wordings of Section 8 read with Schedule 2 of the Act, referred to above.

9. The other contention advanced by the learned Government Pleader is that, the payments made wrongly are liable to be recovered from the employee. Reliance is placed on the decision of

a Division Bench of this Court in ***Santhakumari v. State of Kerala [2005 (4) KLT 649]***. In the said case, it has been held that, if an employee has received any payment contrary to a statutory provision, the said amount can be recovered provided, there is no statutory bar against the recovery thereof. Reliance has also been placed by the learned Government Pleader on ***Krishnakumar, S.P. v. Guruvayoor Devaswam Board [ILR 2007 (1) Kerala 699]***, where another Division Bench of this Court has held that irregular payments are liable to be recovered by the Government. It is to be examined whether the said decisions have any application to the facts and circumstances of the present case.

10. It is worth noticing that, in the first place, pursuant to Ext.P4 order of the Lok Ayukta, the 1st respondent has issued Ext.P3 Government order dated 04.03.2005 reckoning the services of the 1st respondent from 22.06.1967 to 06.12.1972 for the purpose of computation of her pension and other pensionary benefits. According to Ext.P3, the service of the petitioner during the said period has already been regularised. The said order has been complied with as early as on 04.03.2005. Therefore, no interference with the said aspect of the matter is either called for or is expedient, at this length of time.

11. The only other question that remains is whether reduction of the gratuity amount payable to the 1st respondent alleging that an

amount of ₹2,00,449/- is liable to be recovered from her, is justified or not. It is not in dispute that, no liability has been fixed on the 1st respondent till date. No liability certificate has admittedly been issued to her as provided by Note 3 to Rule 3 of Part III KSR. As per the said note, the liability of an employee should be quantified either before or after retirement and intimated to him if possible before retirement or within a period of three years after retirement.

Note 3 reads as follows :

“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.”

Since no liability certificate had been issued to the 1st respondent till date, the bar under the above provision applies. Since there is a statutory bar against recovery of the amount from the 1st respondent, the dictum in **2005 (4) KLT 619 (supra)** cannot apply to the facts of the present case. The scope of the above provision has been considered by a Division Bench of this Court in the recent decision, **Kerala State Electricity Board, Tvm and Another v. K.Kesavan [2014 (3) KHC 167 (DB)]**. After considering the impact of Note 3 to Rule 3 of Part III KSR, it has been held that, after the expiry of the period of three years of retirement, no liability

could be recovered from a retired employee, except in accordance with Ruling No.6 of Rule 116 of Part III KSR.

12. The above being the position of law, it is held that the relief granted in Ext.P4 is fully justified in the facts and circumstances of the case. The order does not call for any interference as sought for by the petitioners.

This writ petition fails and is accordingly dismissed.

Sd/-

K.SURENDRA MOHAN, JUDGE.

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