

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 6396 of 2004 (J)

PETITIONER :

V.D.RADHAMMA,
MYLAKUNNEL HOUSE,
COLLECTORATE P.O. KOTTAYAM.
- RETIRED JUNIOR SUPERINTENDENT, MUNSIFF COURT, ETTUMANNOOR,
KOTTAYAM DISTRICT.

BY ADV. SRI.M.NARENDRAKUMAR

RESPONDENTS :

1. STATE OF KERALA, REP. BY THE SECRETARY,
DEPARTMENT OF LAW AND JUSTICE, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE MANAGING DIRECTOR,
KERALA STATE DEVELOPMENT CORPORATION FOR CHRISTIANS CONVERT
FROM SCHEDULED CASTS AND RECOMMEND COMMUNITIES LIMITED,
UNITY BUILDING, KOTTAYAM.
3. THE MUNSIFF, MUNSIFF COURT,
ETTUMANNOOR, KOTTAYAM DISTRICT.
4. THE ACCOUNTS OFFICER,
OFFICE OF THE ACCOUNTANT GENERAL (A&E),
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 : COPY OF THE GRATUITY PAYMENT ORDER CONCERNING TO THE PETITIONER ISSUED BY THE 4TH RESPONDENT DTD.16.6.2000.
- EXT.P2 : COPY OF THE APPLICATION DTD.11.12.2003 PRESENTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR ISSUANCE OF NON-LIABILITY CERTIFICATE.

RESPONDENTS' EXHIBITS :-

- EXT.R3-1 : LETTER DTD.28.1.2000.
- EXT.R3-2 : COPY OF THE EXPLANATION.
- EXT.R3-3 : COPY OF THE LETTER DTD.18.8.2000 DCRG NOT TO BE DISBURSED ADDRESSED TO MUNSIFF, ETTUMANOOR.
- EXT.R3-4 : COPY OF THE LIABILITY CERTIFICATE DTD.1.9.2000.
- EXT.R3-5 : COPY OF THE CERTIFICATE DTD.23.12.03 SHOWING THE DISCHARGE OF LIABILITIES FROM KSFE.
- EXT.R3-6 : COPY OF THE LETTER ADDRESSED TO THE DISTRICT JUDGE, KTYM DTD.3.1.04.
- EXT.R3-7 : COPY OF THE OFFICIAL MEMORANDUM DTD.22.1.04 FROM THE DISTRICT COURT, KOTTAYAM NO.A1-136/2004.
- EXT.R3-8 : COPY OF THE COMMUNICATION DTD.12.2.04 SHOWING THE AMOUNT DUE FROM PETITIONER.

True copy

P.A to Judge

ANIL K.NARENDHAN, J.

W.P.(C)No.6396 of 2004

Dated this the 29th day of July, 2015

JUDGMENT

The petitioner retired from service as Junior Superintendent in the Munsiff's Court, Ettumanoor on 31.3.2000 on attaining the age of superannuation. By Ext.P1 gratuity payment order dated 16.6.2000 issued by the 4th respondent the petitioner was sanctioned gratuity of ₹1,02,297/-. Going by the averments in the writ petition, the petitioner stood as surety to one P.M.Socreties, Kunnel, Muttambalam.P.O., Kottayam, to enable him to avail a loan of ₹90,000/- in the year 1996, from the 2nd respondent Corporation. When the principal debtor defaulted repayment, the petitioner made certain payments to the 2nd respondent Corporation before her retirement itself. But, after her retirement she is unable to make any payment in this regard. When retirement benefits were not disbursed even after a lapse of more than 4 years, the petitioner has approached this Court in this writ petition seeking a writ of mandamus commanding the 3rd respondent to issue Non-liability

Certificate so as to enable her to receive the DCRG. She has also sought for a writ of mandamus commanding the 3rd respondent to dispose of Ext.P2 application within a time limit that may be fixed by this Court, with notice to her as well as to the 2nd respondent Corporation.

2. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for respondents 1, 3 and 4. In spite of service of notice none appeared for the 2nd respondent Corporation.

3. The fact that the petitioner stood as a surety in relation to a loan transaction of one P.M.Socreties with the 2nd respondent Corporation is not in dispute. The petitioner has also not disputed the fact that, the principal debtor defaulted repayment and as a result of which, while the petitioner was continuing in service, she had to make certain payments. But, after retirement she is not in a position to make any payment to the 2nd respondent Corporation in this regard.

4. The petitioner retired from service on 31.3.2000, on attaining the age of superannuation and the DCRG payable to her was sanctioned by Ext.P1 gratuity payment order dated 16.6.2000

issued by the 4th respondent. As per Ext.P1 the gratuity amount payable to the petitioner comes to ₹1,02,297/-. Going by Ruling No.1 to Rule 3 of Part III Kerala Service Rules (hereinafter referred to as 'KSR'), amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with his consent in writing. But going by Note 3 to Rule 3 of Part III KSR, 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.

5. In the case on hand, the specific stand taken by the petitioner is that, though she retired from service as early as on 31.3.2000, no quantification of liability as contemplated under Note 3 to Part III KSR was made within a period of three years of her retirement. If that be so, any recovery from her DCRG is impermissible.

6. In the counter affidavit filed by the 3rd respondent it has been admitted that no disciplinary or departmental proceedings were pending against the petitioner as on the date of retirement. But the 3rd respondent would contend that, just before her date of retirement, the 3rd respondent received a letter dated 28.1.2000 from the 2nd respondent Corporation requesting him to recover ₹1,025/- from the salary of the petitioner and also to recover a further sum of ₹88,006/- from the DCRG payable to her. Ext.R3(1) is the copy of the letter of the 2nd respondent in this regard dated 28.1.2000. On the basis of Ext.R3(1) the 3rd respondent sought explanation from the petitioner, to which the petitioner submitted Ext.R3(3) reply stating that she has no objection in not disbursing the DCRG amount till a decision is taken on the liability due towards the 2nd respondent Corporation. It was thereafter, the 3rd respondent issued a liability certificate dated 1.9.2000, in which the liability of the petitioner is shown as ₹54,500/- towards KSFE, Kottayam Main Branch and further sum of ₹88,006/- towards the 2nd respondent Corporation. Later the petitioner produced Ext.R3(5) certificate before the 3rd respondent in order to show that she had already cleared the entire liability due towards KSFE.

7. Ext.R3(6) is a letter of the 3rd respondent addressed to the District Judge, Kottayam informing that the petitioner has already cleared the liability of ₹54,500/- due towards KSFE and that there is no communication from the 2nd respondent Corporation that she has cleared the liability of ₹88,006/- due towards it. By Ext.R3 (7) official memorandum dated 22.1.2004 the 3rd respondent was requested to make sure whether any communication had been received from the Corporation before the retirement of the petitioner. Pursuant to Ext.R3(7), the 3rd respondent forwarded a copy of Ext.R3(8) letter dated 12.2.2004 received from the 2nd respondent Corporation in this regard.

8. As far as the liabilities of the petitioner is concerned, her liability towards KSFE had already been cleared, which is evident from Ext.R3(5) certificate dated 23.12.2003 issued by the Branch Manager of that institution. Now what remains is her liability towards the 2nd respondent Corporation amounting ₹88,006/-. Going by the provisions under Ruling No.1 to Rule 3 of Part III KSR, amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-

retirement gratuity payable to him with his consent in writing. There is total dearth of material to indicate that the petitioner had given any such consent in writing in favour of the 2nd respondent Corporation, agreeing that any liability due towards the said Corporation can be recovered from the DCRG amount payable to her. Since there is no appearance for the 2nd respondent Corporation, in spite of receipt of notice from this Court, this Court is not in a position to decide the issue on merits. The petitioner would contend that, in the absence of any such consent, the liability due towards the 2nd respondent Corporation cannot be shown in the liability certificate issued to her, in order to withhold her DCRG, that also, after a lapse of more than 4 years from the date of her retirement.

9. In such circumstances, this Writ Petition is disposed of with the following directions:-

1. On receipt of a certified copy of this judgment the 3rd respondent shall issue notice to the petitioner and also to the 2nd respondent Corporation and thereafter, decide the question as to whether the petitioner has given any written consent in favour of the 2nd respondent

Corporation to enable them to recover the dues from the DCRG amount payable to the petitioner.

2. If no such consent is given by the petitioner in writing, the 3rd respondent shall issue non-liability certificate to the petitioner within a further period of two months, which shall be forwarded to the 4th respondent without any further delay.
3. On receipt of such non-liability certificate, the 4th respondent shall take necessary steps to disburse the terminal benefits payable to the petitioner within a period of three months from the date of receipt of such certificate.

The petitioner shall produce a copy of this judgment before the third and fourth respondents for compliance.

ANIL K.NARENDRA, JUDGE

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