

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.543/04

Thursday this the 18th day of November 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

Annamma Paul,
W/o. Late Balraj N,
[Sorting Assistant (BCR),
Head Record Office, RMS,
TV Division, Thiruvananthapuram (died)]
Residing at P&T Staff Quarters, No.C-9,
Kesavadasapuram, Pattom PO,
Thiruvananthapuram - 4.

Applicant

(By Advocate Mr.O.V.Radhakrishnan)

Versus

1. Senior Superintendent, RMS TV Division,
Thiruvananthapuram - 695 033.
2. Head Record Officer, RMS TV Division,
Thiruvananthapuram.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.
5. Special Deputy Tahsildar (RR),
KSFE Ltd., Regional Office,
Silver Jubilee Building, Statue,
Thiruvananthapuram.

Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC [R1-4] &
Mr.Nithin George [R5])

This application having been heard on 18th November 2004
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The moot question that arises in this application is
whether gratuity payable to the family of a deceased Government
servant is liable to be proceeded against under the Revenue
Recovery Act for realisation of an amount for which the deceased
Government servant was liable as a surety to the Kerala State

Financial Enterprises (KSFE for short). The factual background of the case is as follows :

2. The applicant's husband Balraj.N died in harness while holding the post of Sorting Assistant (BCR), Head Record Office, RMS, TV Division, Thiruvananthapuram on 3.5.2004. A sum of Rs.3,47,909/- was sanctioned for payment to the applicant as DCRG (Death cum Retirement Gratuity). However in the order sanctioning it (Annexure A-1) dated 6.7.2004 it was mentioned that an amount of Rs.54,311/- being the revenue recovery is to be recovered from the DCRG while effecting payment and remitted to the KSFE. This provision was made in Annexure A-1 order because of Annexure A-2 order dated 29.12.2003 of the Special Deputy Tahsildar (the 5th respondent) addressed to the Head Record Office, RMS TV Division, Thiruvananthapuram directing attachment of Rs.54,311/- and Annexure A-3 order of the same date prohibiting the releasing of the money to the applicant. The applicant aggrieved by the action on the part of the respondents in not releasing a sum of Rs.54,311/- has filed this application seeking to set aside Annexure A-1 to the extent it withholds a sum of Rs.54,311, for a declaration that Annexure A-2 and Annexure A-3 letters are ultra vires and issued without authority and for a direction to the respondents to disburse the entire sum of Rs.3,47,909/- to the applicant. It is alleged in the application that the gratuity amount payable to the applicant is not attachable and the entire action taken is without authority of law.

3. Respondents 1-4 in their reply statement seek to justify the impugned action on the ground that in view of what is

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contained in Circular dated 3.8.1982 of the Government of Kerala, Finance (S.L.) Department adjustment can be made from gratuity of Government dues and that the Hon'ble High Court of Kerala in its decision in 2001 (I) KLT 192 held that the gratuity can be recovered under the Kerala Revenue Recovery Act. Since the amount is due to the KSFE the action taken is fully justified, contend the respondents. The 5th respondent in its reply statement seeks to justify the action on the ground that the applicant's husband Balraj being surety to deceased Mohanan Nair, who defaulted payment, the amount is to be recovered from the gratuity payable on the service of the deceased Balraj.

4. The applicant has filed a rejoinder.

5. I have gone through the entire material on record. On the facts whether deceased Balraj was a surety and had he bound himself to pay the debt due to Mohanan Nair the applicant has not raised any contention so it has to be presumed that deceased Balraj as surety had agreed to pay to the KSFE the amount due from Mohanan Nair, the principal debtor, in case of default by him. The question is whether any amount due as a surety from deceased Balraj the gratuity payable to the applicant, the widow of Balraj, is liable to be recovered under the Kerala Revenue Recovery Act? Learned counsel of the applicant argued that the due not being a Government due but only an amount due to the KSFE, which is a company, the provisions of Revenue Recovery Act cannot be invoked. He further argued that the due being not a Government due Section 68 or Section 80 of the Kerala Revenue Recovery Act cannot be called in aid for its recovery. The counsel further argued that even if the due to the KSFE can be

recovered under the provisions of Kerala Revenue Recovery Act recovery can be made only subject to the provisions contained in Section 60 of the Code of Civil Procedure, 1908 which completely excludes gratuity from attachment.

6. Learned counsel for the respondents invited my attention to the ruling of the Kerala High Court in Joseph Vs. Deputy Tahsildar reported in 2001 (1) KLT 192 wherein it was held as follows :

4. What S.80 of Kerala Revenue Recovery Act provides is as follows :

"The salaries or allowances and debts due to a defaulter may be attached and realised or the recovery from him of any arrear of public revenue due on land, in the manner and to the extent provided for attachment and realisation of debts and salaries in the Code of Civil Procedure, 1908".

Thus this provision makes applicable the provision in S.60 of the Code of Civil Procedure, 1908 for the purpose of attachment of salaries, allowances and debt due to a defaulter. What is now under attachment is not the salary but the gratuity payable to the petitioner. Of course, as per clause (g) of the proviso to S.60 CPC "stipends and gratuities allowed to pensioners of the Government" shall not be liable for attachment or sale. This part of S.60 of CPC is not made applicable in terms of S.80 of the Revenue Recovery Act for attachment under the said Act. Only, that part of S.60 which covers attachment of "salaries or allowances and debts due to a defaulter" alone is made applicable as per S.80 of the Revenue Recovery Act. The restriction in the matter of attachment of salary or allowance or debt as provided in S.60 of the Code of Civil Procedure alone will thus apply to attachment under the Revenue Recovery Act. Consequently the gratuity is not exempt from attachment under the Revenue Recovery Act.

In such circumstances, no direction for payment can be issued when such an attachment order is in force for payment of the amount due from the petitioner.

OP fails and is dismissed.

and argued that the position that gratuity can be recovered under the provisions of Kerala Revenue Recovery Act is

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no more res integra.

7. I have considered the rival contentions. It is pertinent to consider certain provisions of CCS Pension Rules because it is the gratuity payable to the family of a deceased Central Government employee that is sought to be recovered under the provisions of Kerala Revenue Recovery Act in this case. Rule 50 (1) (b) of the CCS Pension Rules reads as follows :

"If a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (1) of Rule 51 at the rates given in the Table below.

Sub rule 2 of Rule 65 provides as follows :

The amount of gratuity as determined by the Accounts Officer under Clause (a) of sub-rule (1) shall be intimated to the Head of Office with the remarks that the amount of the gratuity may be drawn and disbursed by the Head of Office to the retired Government servant after adjusting the Government dues, if any, referred to in Rule 71.

8. Thus in sub-rule 2 of Rule 65 deduction or adjustment can be made from the gratuity only of Government dues, if any, referred to in Rule 71. Rule 71 of the CCS Pension Rules reads as follows :

1. It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

2. The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable.

3. The expression "Government dues" includes :-
(a). dues pertaining to Government accommodation including arrears of licence fee, if any;
(b). dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

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9. It is evident from sub rule 3 of Rule 71 that what is adjustable or deductible from the gratuity is only dues pertaining to Government accommodation including arrears of licence fee or dues other than pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961. The above quoted provisions of the CCS Pension Rules clearly shows that adjustment can be made of Government dues only in respect of the money dues to the Government as provided for in Rule 71. The amount for which revenue recovery has been resorted to in this case does not fall in any of the categories of the dues to the Government as enumerated in Rule 71 of the CCS Pension Rules. Now if the DCRG payable to a Central Government employee or to the family of the deceased Central Government employee is attachable inspite of the provisions contained in the CCS Pension Rules attachment and recovery can be justified. Section 60 of the Code of Civil Procedure, 1908 gives the list of properties liable to attachment and sale in execution of decree. By the proviso to Section 60 certain properties are excluded from attachment. Section 60 reads thus :-

60. Property liable to attachment and sale in execution of decree.

(1). The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgement debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgement debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :

(g). stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension. (Emphasis added)

10. It is evident from clause (g) of Proviso to Section 60 of Code of Civil Procedure that gratuity payable to pensioners is exempted from attachment and sale in execution of decree. In view of the above provisions in Section 60 of the Code of Civil Procedure the gratuity is not liable to be recovered under Section 80 of the Kerala Revenue Recovery Act.

11. Even assuming that the gratuity payable to Government servant is available for recovery of dues from him in the instant case the gratuity in question is not due to the deceased Balraj but is payable to his family under Rule 50 of the CCS Pension Rules. Therefore, under any circumstances, I am of the considered view that the prohibitory orders issued by the 5th respondent not to disburse a sum of Rs.54,311/- from the gratuity due to the applicant in this case having no support of law is unsustainable and the action on the part of the 1st respondent in not disbursing this amount to the applicant is also unsustainable.

12. In the result, the O.A. is allowed declaring that Annexure A-2 and Annexure A-3 orders are ultra vires and unenforceable setting aside the stipulation in Annexure A-1 that

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an amount of Rs.54,311/- is recoverable from the DCRG and directing the respondents to pay to the applicant the withheld amount of Rs.54,311/- also forthwith at any rate within a period of six weeks from the date of receipt of a copy of this order. No order as to costs.

(Dated the 18th day of November 2004)



A.V. HARIDASAN
VICE CHAIRMAN

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