



2021/KER/8877

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 17TH DAY OF FEBRUARY 2021 / 28TH MAGHA, 1942

WA.No.1407 OF 2019

AGAINST THE JUDGMENT IN WP(C) NO.42482/2018(I) DATTED 03.04.2019  
OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 TRAVANCORE DEVASWOM BOARD  
REPRESENTED BY ITS SECRETARY, NANDANCODE,  
KOWDIAR P.O., THIRUVANANTHAPURAM-695 003.
- 2 DEVASWOM COMMISSIONER,  
TRAVANCORE DEVASWOM BOARD, NANDANCODE,  
KOWDIAR P.O., THIRUVANANTHAPURAM-695 003.
- 3 DEVASWOM ACCOUTS OFFICER,  
TRAVANCORE DEVASWOM BOARD, NANDANCODE,  
KOWDIAR P.O., THIRUVANANTHAPURAM-695 003.

BY ADV. SRI.C.K.PAVITHRAN, SC, TDB

RESPONDENT/PETITIONER:

D.SREEKUMAR  
SREVILASOM HOUSE, MEMANA,  
OACHIRA, KOLLAM-690 525.

R1 BY ADV. SRI.T.B.HOOD  
R1 BY ADV. SMT.M.ISHA  
R1 BY ADV. SRI.AMAL KASHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-02-2021, THE  
COURT ON 17-02-2021 DELIVERED THE FOLLOWING:

**(CR)****ALEXANDER THOMAS & T. R. RAVI, JJ.**

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W.A. No.1407 of 2019  
*[arising out of order dated 03.04.2019  
in W.P.(C) No.42482 of 2018]*  
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Dated this the 17<sup>th</sup> day of February, 2021

**JUDGMENT****ALEXANDER THOMAS, J.**

The respondents in W.P.(C) No.42482/2018, filed by the respondent herein (writ petitioner) have instituted the present intra court appeal under Section 5(i) of the Kerala High Court Act so as to impugn the judgment dated 03.04.2019 rendered by the learned Single Judge in W.P.(C) No.42482 of 2018.

2. Heard Sri.C.K. Pavithran, the learned Standing Counsel for the Travancore Devaswom Board appearing for the appellants/respondents in the writ petition (civil) and Sri.T.B. Hood, the learned Advocate appearing for the sole respondent in the writ appeal/the sole writ petitioner.

3. The writ petitioner had earlier served the appellant Travancore Devaswom Board and he had retired from service of the appellant Devaswom Board while holding the post of Sub Group Officer (Higher Grade) on 30.06.2015. Earlier while he was in



service, the Vigilance & Anti-Corruption Bureau, Special Investigation Unit, under the Directorate of Vigilance & Anti-Corruption Bureau, Thiruvananthapuram, had registered a Crime as Vigilance Case, VC.2/2002/SIU against him, in which the writ petitioner has been arrayed as the sole accused alleging commission of offences punishable under Secs.468, 471 and 201 of the IPC and Secs.15 read with Sec.13(1)(d) of the Prevention of Corruption Act.

4. Later, it appears that the Investigating Officer of the Vigilance & Anti-Corruption Bureau, Special Investigation Unit, Thiruvananthapuram, had completed the investigation in the said vigilance case and had submitted final report/charge sheet in VC.2/2002/SIU, and thereupon the competent criminal court concerned, viz., the court of the Enquiry Commissioner & Special Judge, Thiruvananthapuram, had taken cognizance of the offences alleged against the writ petitioner, which then led to the institution of Calendar Case, C.C. No.11/2011. Further, it appears that during the pendency of the investigation of the vigilance case, the writ petitioner was suspended from service and later he was reinstated to the service. It is thereafter that the writ petitioner had retired from service on 30.06.2015. Ext.P-1 is the pension payment order dated 22.12.2015, issued in favour of the writ petitioner by the appellant Travancore



Devaswom Board. Later, it appears that Ext.P-3 notice dated 05.01.2017 was issued by the appellant Board stating that since judicial proceedings within the meaning of Rule 3 Part-III Kerala Service Rules (KSR) was pending after the criminal court had taken cognizance on the final report/charge sheet filed by the vigilance police, the writ petitioner is entitled only for the benefit of provisional pension and not full pension, in view of the mandatory provisions contained in Rule 3A Part-III KSR and directions have already been issued as per Ext.P-3 that the excess pensionary amounts drawn by the writ petitioner on the basis of Ext.P-1, pension payment order will have to be refunded by him. Further it appears that the said direction in Ext.P-3 to the limited extent it involves refund and recovery of the excess pension amounts has already been stayed by this Court as per Ext.P-4 interim order dated 27.02.2017 in W.P.(C) No.5946/2017, filed by the writ petitioner. It is stated that the said writ petition (civil) is still pending consideration.

5. Later, Ext.P-5 proceedings dated 04.08.2017 has been issued by the appellant Board ordering that the admissible total DCRG (Death Cum Retirement Gratuity) amount payable to the writ petitioner consequent to his retirement is Rs.7,24,605/- and further it appears that the appellant Board authorities have no case that any



liabilities as envisaged in Note 2 & Note 3 of Rule 3 Part-III KSR have been fixed or proposed to be fixed as against the writ petitioner. Later, the trial in the abovesaid Calendar Case, C.C. No.11/2011 (arising out of the abovesaid VC.2/2002/SIU) had commenced and the criminal court concerned, viz., the court of Enquiry Commissioner, Thiruvananthapuram, has rendered Ext.P-6 judgment dated 24.10.2017 in C.C. No.11/2011 holding that the writ petitioner is guilty and convicted for the offences as per Sec.15 read with Sec.13(1)(d) of the Prevention of Corruption Act and that he is not guilty and is acquitted for the other offences those punishable under Secs.468, 471 and 201 of the Indian Penal Code. So the writ petitioner/accused had been ordered to be sentenced as per Ext.P-6 to undergo rigorous imprisonment for a period of 6 months and fine to the tune of Rs.10,000/- in default thereof to undergo rigorous imprisonment for one month under Sec.15 read with Sec.13(1)(d) of the Prevention of Corruption Act. It may be relevant to take note the adverse findings made by the criminal court against the writ petitioner as contained in paras.39 to 41 given on internal page 31 of Ext.P-6 judgment (see page No.59 of this paper book) which read as follows:-

**“39. Point No.5 & 6:-** An offence U/s.15 r/w S.13(1)(d) of the P.C. Act is proved against the accused and he is found guilty of



*the said offence.*

*40. The offences U/Ss.201, 468 and 471 IPC are not proved and he is not found guilty of the said offences.*

*41. The accused is a Government servant. He had adopted a corrupt method in causing endorsement in the Service register with a view to secure promotion. The act committed by the accused is intended to achieve under pecuniary advantage with profit motive. On consideration of the peculiar nature of the crime it is found undesirable to resort to the provisions of the Probation of Offenders Act. Hence it is proposed to hear the accused U/s.248(2) Cr.P.C. with respect to the quantum of the sentence.”*

6. Further it appears that the writ petitioner has preferred Crl. Appeal No.1044 of 2017 before this Court so as to challenge Ext.P-6 judgment of conviction and sentence for the abovesaid offences in question and this Court as per Ext.P-7 interim order dated 16.11.2017 on Crl.M.A. No.6685 of 2017 in Crl. Appeal No.1044 of 2017 has ordered that the execution of the impugned sentence consequent to Ext.P-6 judgment will stand suspended and that the writ petitioner shall be released on bail on his executing bond of the requisite amount and on furnishing two solvent sureties for the requisite amount, etc.

7. It is pointed out by both sides that Crl. Appeal No.104 of 2017, referred to in Ext.P-7 preferred by the writ petitioner to challenge Ext.P-6 judgment is still pending before this Court.

8. Since no further action has been taken by the appellant Board even after the termination of judicial proceedings pursuant to



Ext.P-6 judgment and even the DCRG amount, which was admitted and sanctioned as per Ext.P-5 order dated 04.08.2017 has not been disbursed to the writ petitioner, he has approached this Court by filing the instant writ petition, W.P.(C) No.42482 of 2018 with the following prayers (see page 22 of this paper book of this appeal):-

- “(i) Issue a writ of Mandamus or any other writ, order or direction commanding the respondents to sanction and disburse Death-Cum-Retirement-Gratuity amount and commuted value of pension within a time frame to be prescribed by this Hon'ble Court.*
- “(ii) Declare that the petitioner is entitled to get 12% interest per annum for the Death-Cum-Retirement-Gratuity amount from 01.07.2015 till the date of disbursement.*
- “(iii) Pass such other order or direction as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case.”*

9. After hearing both sides, the learned Single Judge has rendered the impugned judgment on 03.04.2019 in W.P.(C) No.42482 of 2018 ordering that the DCRG amount covered by Ext.P-5 order dated 04.08.2017 shall be released to him immediately within a period of 3 months from the date of receipt of a certified copy of the judgment and that in view of the provisions contained in Rule 3A Part-III KSR empowering withholding of not only full pension but also DCRG, he is not entitled for grant of interest on the delayed payment of DCRG and as regards the plea made by the writ petitioner for grant of commuted value of pension presumably on the basis of



sanction of full pension, the learned Single Judge has held that, that aspect of the matter will have to wait till the conclusion of the proceedings presumably as envisaged in the operative portion of Rule 3 Part-III KSR. It is this judgment of the learned Single Judge in the instant writ petition (civil) that is under challenge in this intra court appeal.

10. The main matter to be considered in this appeal are as regards to the applicability of the provisions contained in Rule 3 & Rule 3A, both contained in part III KSR, to the facts and circumstances of this case. It will be relevant to extract the contents of Rule 3 Part III KSR including Notes 1, 2 & 3 thereunder. Ruling No.1, Ruling No.2 and Ruling No.3 thereunder may not be very relevant to the facts of this case and hence are not extracted hereunder:

*“Rule 3. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement:*

*Provided that-*

*(a) such departmental 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;*

*[(c) no such judicial proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment, shall be instituted save with the sanction of the Government, in respect of cause of action which arose or an event which took place more than four years before such institution; and*

*(d) the Public Service Commission shall be consulted before final orders are passed.*

*Explanation.- For the purpose of this rule-*

*(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the employee or pensioner or if the employee has been placed under suspension from an earlier date, on such date; and*

*(b) a judicial proceeding shall be deemed to be instituted-*

*(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance is made; and*

*(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.*

*Note 1.- As soon as proceedings of the nature referred to in this rule are instituted the authority which institutes such proceedings should without delay intimate the fact to the Audit Officer. The amount of pension withheld under this rule should not ordinarily exceed one-third of the pension originally sanctioned. In fixing the amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.*

*Note 2. :- The word 'pension used in this rule does not include death-cum-retirement gratuity. Liabilities fixed against an employee [or 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.*

<i>RULLING NO.1</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>RULLING No.2</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>RULLING No.3</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx”</i>

11. The provision contained in Rule 3A Part III KSR provides as follows:

*“Rule 3A(a). Where any departmental or judicial proceeding is instituted under Rule 3 or where a departmental proceeding is continued under clause(a) of the proviso thereto, against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.*

*(b) Payment of provisional pension made under clause (a) shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.*

*Note:- The grant of pension under this rule shall not prejudice the operation of Rule 59 when final pension is sanctioned upon conclusion of the proceeding.”*

12. In the instant case, nobody has a case that any disciplinary proceedings or departmental proceedings was initiated against the writ petitioner by the appellant Board authorities at any time either before his retirement on 30-06-2015 or thereafter. Whereas, it is



common ground that prior to the retirement of the petitioner, a crime as Vigilance Case, VC No.2/2002/SIU/Tvm was registered by the Vigilance Police against the petitioner for the aforementioned offences including offences under the IPC and those under the Prevention of Corruption Act as given hereinabove. Later, the Vigilance Police authorities had completed the criminal investigation and have submitted the requisite final report/charge sheet/police report, as conceived in Sec.173 of the CrPC before the competent criminal Court viz, the Court of the Enquiry Commissioner & Special Judge, Thiruvananthapuram, in the year 2011 and based on the said police report, the criminal court has taken cognizance, which has led to the institution of Calendar Case, C.C No.11/2011 on the file of the said court. Hence it can be seen that based on the police report filed by the Vigilance Police in the year 2011, the competent criminal court has taken cognizance of the offences alleged against the petitioner and hence it is only to be held that “*judicial proceedings*” as understood in Rule 3 Part III KSR was pending against the petitioner since the year 2011 as on the date of filing of the police report in that case (on the basis of which, cognizance has been taken by the criminal court). So it can be seen that the judicial proceedings within the meaning of Rule 3 Part III KSR was pending against the petitioner



even prior to his retirement. Since judicial proceedings within the meaning of Rule 3 Part III KSR has been pending against the petitioner prior to his retirement, there is no necessity to examine whether sanction within the meaning of Rule 3 Part III KSR for institution of such judicial proceedings was obtained. Hence it may not be necessary to examine as to whether sanction of the Government/autonomous Statutory Board as the case may be, has been obtained in this case even though the allegations in this case are said to have occurred in the year 2002 and the police report on the basis of which cognizance has been taken, has been filed only in the year 2011. Since that is the position, Rule 3A Part III KSR will also come into operation. A Full Bench of this Court in the case in ***Chandran v. LSG Department*** [2020 (5) KLT 669 (F.B.)] = [2020 (5) KHC 273 (F.B)] has held that the provisions contained in Rule 3A cannot be pressed into service for withholding of the DCRG amounts of an incumbent/pensioner even if disciplinary proceedings or judicial proceedings within the meaning of the operative portion of Rule 3 Part III KSR are said to be instituted or pending.

13. Moreover, Note 1 of Rule 3 Part III KSR exclusively provides that the word 'pension' appearing in the operative portion of Rule 3 Part III KSR will not be inclusive of death-cum-retirement gratuity.



Due to these aspects, the Full Bench of this Court in **Chandran's** case (supra) [2020 (5) KLT 669 (F.B.)] has ordered in para No.22 of the decision that the second limb of Rule 3A Part III KSR to the extent it enables the withholding of DCRG, has been struck down as ultravires and illegal.

14. Sri.C.K.Pavithran, learned Standing Counsel for the Travancore Devaswom Board appearing for the writ appellants would submit that the operation and enforcement of judgment of the Full Bench of this Court in **Chandran's** case supra [judgment dated 08-09-2020 in O.P(KAT) No.78/2015, reported in 2020 (5) KLT 669 (FB)] has already been stayed by the Apex Court as per interim order dated 14-12-2020 in SLP (C) Nos.14881-14882/2020 and that therefore, this Court may not place any reliance on the dictum laid down by the said Full Bench judgment of this Court.

15. After hearing both sides we are of the view that, even without placing any reliance on the abovesaid Full Bench decision in **Chandran's** case supra, the petitioner is entitled for direction for release of the DCRG, which has already been ordered by the learned Single judge. Even if Rule 3A is assumed to take within its fold, the power to withhold the DCRG, it is to be borne in mind that the said provision contained in the second limb of Rule 3A is only a enabling



power and the authority concerned should consciously exercise its discretion and consider as to whether or not, an order should be quashed in the matter of withholding of the full pensionary benefits as well as the DCRG, consequent to the pendency of disciplinary proceedings or judicial proceedings as understood in the operative portion of Rule 3 Part III KSR. In the instant case, the petitioner had retired from service on 30-06-2015. The full pension was sanctioned in favour of the petitioner thereafter as per Ext.P1 order issued by the appellant Board. It is thereafter that the appellant board has passed Ext.P3 order by taking recourse to the provisions contained in Rule 3A Part 3 KSR ordering that, the petitioner is not entitled for full pension but only for provisional pension to the extent of 75% of the full pension. No order has been passed by the appellant Board either at Ext.P3 or before or after that taking a considered decision ordering to withhold the DCRG as well, by taking recourse to the power contained in the second limb of Rule 3A Part III KSR in the facts and circumstances of this case. So merely because there may be enabling provision contained in the second limb of Rule 3A, will not justify the withholding of the DCRG in the facts and circumstances of this case. Assuming that Rule 3A is fully intra vires and the second limb of Rule 3A Part III KSR is also to be fully effectuated, the said provision is only enabling power



and the competent authority concerned should consciously apply their mind and exercise its discretion whether or not an order should be passed so as to withhold not only the full pension and sanction of provisional pension but also to withhold the DCRG as well.

16. In the instant case, after authorising full pension in favour of the petitioner at Ext.P1 dated 22-12-2015, the appellant board has applied their mind and has consciously decided only to withhold the full pension and to sanction provisional pension @ 75% of the full pension. Though the appellant board had the option to order for withholding of not only full pension but also DCRG, they have not elected or to do so and consciously they had taken a decision to withhold only the full pension and not the DCRG. So therefore merely because there is a enabling power containing in the second limb of Rule 3A Part III KSR is no answer to say that the appellant board is entitled to even otherwise withhold the DCRG merely on account of the pendency or institution of the judicial proceedings as understood within the operative portion of the Rule 3 Part III KSR.

17. Hence, the right course of action that should have been taken by the appellant Board was then to assess as to whether any liabilities as understood in Note 2 of Rule 3 Part III KSR, which could have been identified and ascertained even without recourse to the



disciplinary proceedings or judicial proceedings as understood in the operative portion of Rule 3 Part III KSR are pending against the petitioner and if so, to take necessary action to identify such alleged liabilities and give reasonable opportunity of being heard to the petitioner/pensioner and take a decision as to whether any such liabilities could be fastened against the petitioner and then to quantify the same and intimate the same to the petitioner within the outer time limit of three years from the date of his retirement as granted in Note 3 of Rule 3 Part III KSR. In the instant case, the said statutory outer time limit as mandated in Note 3 of Rule 3 Part III KSR has expired on 30-06-2018 inasmuch as the petitioner has retired from service on 30-06-2015.

18. From a reading of Ext.P5 order dated 04-08-2017 it can be seen that the full gratuity amount has been sanctioned in favour of the petitioner and no liabilities as understood in Note 2 & Note 3 of Part III KSR are stated to be allegedly pending against the petitioner. By way of abundant caution, we had passed a specific direction on the previous occasion (03-02-2021) directing the appellant Board to file a statement through their Standing Counsel as to whether any such liabilities as understood within the meaning of Note 2 & Note 3 of Rule 3 Part III KSR has been alleged against the petitioner and if so,





whether it has been quantified and intimated to the petitioner after reasonable opportunity given to the petitioner and that too within the outer time limit of three years from the date of his retirement. Now the appellants have filed a statement dated 14-02-2021 through their learned Standing Counsel and it is stated in para No.3 on page No.2 of the said statement that no liability has been fixed against the respondent in the appeal/ writ petitioner before or after the retirement within the said statutory outer time limit of three years from the date of his retirement. However, it is stated in para No.4 of the said statement that on the basis of Ext.P6 judgment of the criminal court, misconduct is proved against the writ petitioner and that even if financial loss is not caused to the employer, the respondent herein/writ petitioner is liable to be proceeded for grave misconduct and a portion or whole of the pension could be withheld by finalising the proceedings under Rule 3 Part III KSR.

19. In the light of the abovesaid aspects we are of the view that even without placing any reliance on the dictum laid down by the Full Bench of this Court in **Chandran's** case supra [2020 (5) KLT 669 (F.B.)], the writ petitioner is entitled to get order for release of the full DCRG amount due to him. In the instant case, the writ petitioner has not challenged the impugned judgment to the extent it has ordered to



deny the interest due to him on the delayed payment of DCRG and therefore we need not get into that issue. Now in view of the pendency of the above criminal appeal it is stated before us that even the full DCRG amount has not so far been paid to the petitioner by the appellant Board so far. Since the learned Single Judge was fully right in ordering to forthwith release the full DCRG amount to the petitioner within three months and as there has been further delay in paying it, it is ordered that the appellant Board will immediately ensure that the full DCRG amount due to the petitioner is immediately paid to the writ petitioner without any further delay at any rate, within the outer time limit of six weeks from the date of receipt of a certified copy of the judgment. If thereafter the appellant Board does not pay the full DCRG amount to the petitioner within the said outer time limit of six weeks' as aforesaid, then the said DCRG amount will carry interest @ 7 % per annum from the date of expiry of the said six weeks' period upto the date of actual payment.

20. That apart, a copy of the interim order dated 14-12-2020 rendered by the Apex Court in SLP(C) Nos.14881-14882 of 2020 filed by the state authorities so as to impugn the abovesaid Full Bench Decision in **Chandran's** case supra [2020 (5) KLT 669 (F.B.)] has been made available to us for perusal along with a memo dated 03-02-2021 filed



by the learned Standing Counsel for the appellant Devaswom board and reading of the same would indicate that the order is as follows:

*“Issue notice.  
In the meantime, the operation of the impugned order passed by the  
High Court shall remain stayed.”*

21. So it can be seen that the stay order granted by the Apex Court in the above case confined to the limited extent as against the enforcement and implementation of the directions and orders passed by the Full Bench of this Court in the said judgment in **Chandran's** case supra. It is by now well established by series of rulings including that rendered by the Division Bench of this Court in **Abdu Rahiman v. District Collector, Malappuram** [(2009) 4 KLT 485] that wherein it has been held in para No.5 & 8 thereof that the learned Single Judge of the High Court should not have ignored the two decisions rendered by the Division Bench of the High Court on the ground that appeal has been filed against one of the said decisions of the Division Bench before the Apex Court and there was a stay against him and that even when a decision of Division Bench of the High Court is stayed by the Apex Court, the learned Single Judge is bound to follow the decision of the Division Bench, as it continues to be a binding precedent for them. The interim order of stay only relieves the parties concerned from the liability to obey and comply the directions in the



judgment under appeal. It has also been further held therein that when the court declares a law, many people will be regulating their affairs according to it and unless there is a compelling ground, a precedent should not be upset so lightly and in hierarchical system of courts as held by the Apex Court, there should be someone who should say the last word and when the last word is said, the same should be followed by everyone in the lower tiers and that in view of the abovesaid position the learned Single Judge in that case should have followed the decisions of the Division Bench cited therein, etc.

22. It may be pertinent to refer to para Nos.5 & 8 of the decision of the Division Bench of this Court in **Abdu Rahiman's** case supra [2009 (4) KLT 485] pp.489, 494-495, which read as follows:

*"5. The learned Attorney General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges - a proposition that learned counsel for the appellant did not dispute. The learned Attorney General drew our attention to the judgment of a Constitution Bench in Sub-Committee of Judicial Accountability v. Union of India ((1992) 4 SCC 97) where it has been said that 'no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench' (SCC p.98, para 5). The learned Attorney General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in Nityananda Kar (1991 Supp (2) SCC 576), was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of Nityananda Kar, could have referred the case to a Bench of five learned Judges.*

*8. In the light of the above authoritative pronouncements, the decision of the learned Single Judge in Ahamed Kutty (supra) rendered ignoring the decisions of the Division Bench in Abdul Samad (supra) and Moosakoya (supra) cannot be treated as a valid precedent. An intelligent lawyer can perceive some flaw in any decision and may canvass for reconsideration of it. But, the law has to be clear, specific and consistent. When this Court declares a law, many people will be regulating*



*their affairs according to it. Unless there are compelling grounds, a precedent should not be upset so lightly. In the hierarchical system of Courts, as held by the Apex Court, there should be someone who should say the last word and when the last word is said, the same should be followed by everyone in the lower tiers. In view of the above position, the learned Single Judge should have followed the decisions of the Division Bench in Abdul Samad (supra) and Moosakoya (supra). We agree with the unsatisfactory position of law prevailing because of the lacunae in the Statute which was designed to protect the environment. But, this Court can interpret only what is before it. We are fully aware of the fact that various loopholes can be picked up in the decisions of the Division Bench, because of the loopholes in the enactment. In this context, we notice the submission of the learned Advocate General that the State is conscious of the loopholes in the law and are taking expeditious steps to remedy the same. But, till the law is amended, we are of the view that the Division Bench has taken, in the aforementioned two decisions, a plausible view on the power of the District Collector to order confiscation and lack of power on the Judicial Magistrates to entertain applications for interim custody. The said declaration of law should prevail until it is unsettled by a Full Bench of this Court or by the Apex Court or by legislative intervention. The learned Single Judges are, therefore, bound to follow the decisions in Abdul Samad (supra) and Moosakoya (supra). We feel, it is not necessary to refer the matter to the Full Bench, as we agree with the legal position adumbrated in Abdul Samad (supra) and Moosakoya (supra)."*

23. That apart it is also to be noted that in certain cases the appellate court concerned, particularly the Apex Court may pass interim orders saying that the dictum laid down in the appeal may not be followed in other cases or the cases now be kept pending till the orders are passed by the Apex Court in the pending SLP Civil appeal concerned. In the instant case, no such directions have been given and what is ordered in the interim order dated 14-12-2020 is that the operation & enforcement of the impugned order/judgment passed by the High court in **Chandran's** case supra shall remain stayed.

24. Moreover, it has also been held by the Apex Court in decisions as in **Sree Chamundi Mopeds Ltd v. Church of South India Trust Association** [(1992) 3 SCC 1 para No.10] that inter alia, while



considering the effect of the interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and interim stay of operation of an order and quashment of the order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed and the stay of the operation of an order does not, however, lead to such a result and it only means that the order which has been stayed would not be operative from the date of date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. It has also been further held therein that the effect of quashment of an order will not be available in the case of an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending, etc. It may be pertinent to refer to the relevant portion of para No.10 of the decision rendered by the Three Judge Bench of the Apex Court in ***Sree Chamundi Mopeds Ltd's*** case supra [1992 (3) SCC 1] p.9-10, which reads as follows:

*“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an*



order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. [Section 22\(1\)](#) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”

25. In view of the abovesaid position, going by the doctrine of precedents, we, sitting as a Division Bench are bound to follow the dictum and *ratio decidendi* laid down by the Full Bench of this Court in **Chandran's** case supra [2020 5 KLT 669 (F.B)]. Hence it is only to be held that even if the appellant Board had consequently passed an order withholding the DCRG by taking recourse to the power conferred under second limb of Rule 3A Part III KSR and the same would have been ultra vires, in view of the *ratio decidendi* laid down



by the Full Bench of this Court in **Chandran's** case supra.

26. The next issue is to be considered as to whether the petitioner is entitled for full pensionary benefits including computation of pension as paid by him. As discussed hereinabove indisputably judicial proceedings within the meaning of Rule 3 Part III KSR has been instituted by the petitioner even prior to his retirement on account of the submission of the police report in the year 2011 pursuant to which, cognizance has been taken by the criminal court which led to the institution of the abovesaid Calendar Case in the year 2011. This has happened even prior to the retirement of the petitioner on 30-06-2015. Now with the pronouncement of the final judgment by the criminal court as per Ext.P6 on 24-10-2017, it is only to be held that the said judicial proceedings has now stand terminated as regards the adverse scenario faced by the petitioner on account of the withholding of full pensionary benefits.

27. True that, the appellant has preferred a criminal appeal as against his conviction and sentence as evident from Ext.P7 and the said criminal appeal is pending. The State has not filed any criminal appeal to challenge Ext.P6 judgment to the extent the petitioner has been acquitted of some of the offences therein. In view of the pronouncement of Ext.P6 judgment by the criminal court it is only to





be held that the judicial proceedings as understood in the operative portion of Rule 3 Part III KSR, which has been instituted since the year 2011 now stand terminated on and with effect from the pronouncement of Ext.P6 judgment dated 24-10-2017. Therefore now the appellant Board cannot sit quite any longer on the plea citing the judicial proceedings as the same stands terminated. Now the appellant Board, immediately after Ext.P6 judgment of conviction rendered on 24-10-2017 should have applied their mind and determined whether any adverse order for withholding pension of the petitioner in terms of the power contained in the operative portion of Rule 3 Part III KSR is to be finalised and if so, then the appellant Board should afford opportunity of being heard to the petitioner and should apply their mind as to whether a case of grave misconduct or negligence has been found against the petitioner on the basis of Ext.P6 judgment of conviction and then should have pass final orders finalising proceedings under Rule 3, one way or the other. It has also to be borne in mind in that context that even in appropriate cases the maximum extent of withholding of pension should not exceed 1/3<sup>rd</sup> of the pension originally sanctioned going by the mandate contained in Note 1 of Rule 3 Part III KSR.

28. We had requested to Sri.C.K.Pavithran, learned Standing



Counsel for the appellant Travancore Devaswom Board to get instructions in the matter and as indicated hereinabove, the appellant board has filed a statement dated 14-02-2021 in this appeal and it is stated in para No.4 thereof that in view of Ext.P6 judgment of the criminal court, misconduct is proved against the petitioner and that even if no pecuniary loss is caused to the Board, the respondent is liable to be proceeded for grave misconduct and a portion or whole of the pension could be deducted or withheld as authorised by Rule 3 Part III KSR, etc. In that context two more aspects should also be relevant. The provision contained in Rule 3 Part III KSR is primarily applicable to Government servants and therefore since the Government is the highest authority in the hierarchy, the competent authority is described as “Government” in Rule 3 Part III KSR, has to be understood in this context as competent authority of the Travancore Devasom Board. This is so as the provisions of KSR has been made applicable to regulate the conditions of services of employees of the Devaswom Board. Hence the word “Government” appearing in Rule 3 Part III KSR should be construed as the competent authority of the Travancore Devaswom Board. Further we are apprised that there are no provisions, which mandate consultation with the Kerala Public Service Commission as regards



the recruitment to posts and services under the Travancore Devaswom Board and the recruitment is now effectuated through the statutory body called Devaswom Recruitment Board constituted by separate enactment passed by the State Legislature viz, Kerala Devaswom Recruitment Board Act. Hence it is only to be held that the provision contained in Rule 3 Part III KSR about consultation with the Kerala Public Service Commission may not be relevant or appropriate in this case and final decision in terms of Rule 3 could be passed by the competent authority of the Travancore Devaswom Board without any such consultation with the Public Service Commission, etc. as any such consultation process is contextually inapplicable in the case of the Travancore Devaswom Board.

29. The learned Single Judge in the impugned judgment has not given any specific directions to ensure the early passing of final orders by the appellant Board in terms of Rule 3 Part III KSR on the basis of Ext.P6 judgment of conviction rendered by the criminal court and has only ordered that the petitioner may have to wait till final orders are passed in terms of Rule 3. In order to obviate any further delay, it is ordered that the competent authority of the Travancore Devaswom Board may consider if necessary after securing necessary legal advice as to whether a case of grave misconduct or negligence as



against the petitioner has been proved and found in Ext.P6 judgment, and the Board is *prima facie* satisfied they may issue show cause notice to the petitioner disclosing the basic factual aspects in that regard and calling upon the writ petitioner to give his written response thereof within a stipulated time. Such show cause notice may be immediately issued by the Board to the writ petitioner without much delay preferably within a period of one month from the date of receipt of a certified copy of this judgment and the petitioner may give reply to any such show cause notice within two weeks thereafter and thereafter the competent authority of the Devaswom Board may afford reasonable opportunity of being heard to the writ petitioner through his authorised representative or counsel if any, and then may take a considered decision as to whether a case of grave misconduct or negligence as understood in Rule 3 Part III KSR is proved or found against the petitioner on the basis of Ext.P6 judgment of conviction of the criminal court and if so, the reasons thereof may be stated and then take a considered decision as to whether any order should be passed in terms of Rule 3 Part III KSR in the matter of withholding of pension of the petitioner and if so, to what extent and also bearing in mind that the maximum withholding cannot exceed  $1/3^{\text{rd}}$  of the pension that could be sanctioned to the pensionary concerned. This



process should be duly completed by the Government authority of the Travancore Devaswom Board within the outer time limit of two months from the date of production of a certified copy of this judgment.

30. We make it clear that none of the observations herein above shall be construed even remotely as an expression of opinion on our part regarding the merits of the controversy in relation to the proceedings under Rule 3 Part III KSR and we have made the abovesaid orders and directions since the learned Single Judge has left the matter which might lead to the delaying of further proceedings and also in view of the specific stand taken by the appellant Devaswom Board in para No.4 of the Statement dated 14-02-2021 filed in this appeal. Needless to say, it is for the competent authority of the appellant Board to independently exercise its discretion in the matter and if necessary after taking appropriate legal advice.

31. Needless to say, in case the appellant Devaswom Board exercising their discretion independently and takes a decision in the matter of passing final orders under Rule 3 part III KSR and if any such order so passed is adverse to the petitioner on the basis of Ext.P6 judgment then, any such decision so taken any such orders



passed by the appellant Board, will be subject to the final outcome of Ext.P7 criminal appeal filed by the petitioner viz, Criminal Appeal No. 1044/2017 pending before this Court and in case the petitioner secures acquittal and Ext.P6 judgment is reversed or modified by the criminal appellate court, then necessarily the appellant Board will have to review the orders if any, adverse orders are passed under Rule 3 Part III KSR based on the findings of the criminal appellate court.

32. Accordingly, it is ordered that the impugned judgment dated 03-04-2019 rendered by the learned Single Judge in W.P(C) No.42482/2018 will stand modified as above.

With these observations and directions the above Writ Appeal will stand finally disposed of.

Sd/-  
**ALEXANDER THOMAS, JUDGE**

Sd/-  
**T.R.RAVI, JUDGE**