

(1998) 11 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 593 of 1998

Alavi

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Kerala Service Rules, 1958 — Rule 3, 60

Kerala State and Subordinate Services Rules, 1958 — Rule 9

Citation : (1998) 11 KL CK 0005

Hon'ble Judges : K. Narayana Kurup, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : K.R.B. Kaimal, for the Appellant; P.K. Ravikrishnan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan, J.—Heard Mr. K.R.B. Kaimal for the Petitioner-Appellant and Mr. P.K. Ravikrishnan, Government Pleader for the Respondents.

2. The Writ Appeal is directed against the judgment of C.S. Rajan, J. in O.P. 299 of 1997 dated 19th February 1998 dismissing the Original Petition filed by the Appellant to quash Ext. P-6 and for a mandamus directing the Respondents to retain him in service till he attains the age of 60 years in terms of Rule 60(b) Part I of the Kerala Service Rules (for short "the Rules"). The claim made by the Appellant in the O.P. was opposed by the State by filing a counter-affidavit. The learned Single Judge dismissed the Original Petition on the ground that the Appellant-Petitioner is not entitled to the benefit of Rule 60(b) Part I of the Rules since he was appointed provisionally by order dated 31st March 1970 under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules (for short "the K.S. and S.S.R."). The learned Judge, for dismissing the Original Petition, has followed the judgment of this Court in W.A. 1566 of 1996 wherein it was held that provisional appointees cannot claim the benefit under Rule 60(b) Part I of the Rules.

3. The Writ Appeal was admitted on 21st May 1998. Mr. Kaimal would submit that the Appellant was continuing in service as Masalchi in last grade service on a provisional basis as Ext. P-2 appointment order dated 7th November 1969. He was appointed as Peon, also in the last grade, as per Ext. P-4 order dated 24th July 1970. There upon, he got relieved from the post of Masalchi on 2nd August 1970 and joined duty as Peon on 3rd August 1970 without break or interruption. According to Mr. Kaimal, the Appellant, being a last grade employee and having been in service in the last grade on 7th April 1970, is entitled to continue in service till attaining the age of 60 years and that the denial of employment and the benefit of Rule 60(b) Part I of the Rules by the State Government on the ground that he had attained 55 years in March 1997 is illegal, unlawful and, therefore, he should also be extended the benefit of Rule 60(b) Part I of the Rules as well. Mr. Kaimal would further submit that Rule 60(b) Part I of the Rules only stipulates that last grade employees in service on 7th April 1970 and continuing in last grade service shall be retained till they attain the age of 60 years. The said Rule does not qualify "service". Hence, the only question is whether the employee was in the last grade service on 7th April 1970 and whether he continues in the last grade. Appellant was appointed as Masalchi in the last grade service on 7th November 1969 and later appointed as Peon on 24th July 1970. Therefore, the benefit of Rule 60(b) Part I is applicable to the Appellant.

4. Learned Government Pleader would submit that since the appointment of the Appellant was purely temporary under Rule 9 (a)(i) of the K.S. and S.S.R., the Appellant would not be entitled to the benefit of Rule 60(b) Part I of the Rules and, therefore, the Appellant is not eligible to get the benefits provided there under. This apart, the Appellant was not in the post on regular basis on 7th April 1970. In support of his contention, learned Government Pleader would rely on the Note to Rule 3 of Part I of the Rules. The said Note reads as follows:

These rules as a whole shall not apply to the persons appointed to the service of the Government temporarily under Rule 9 of Part II of the Kerala State and Subordinate Service Rules, 1958 except to the extent specified by the Government.

In this case, there is no dispute that the Appellant was appointed on provisional basis on various dates and his services were terminated as and when not required. He was originally appointed as a Peon in the Civil Supplies Department, which is a last grade service. He joined duty as a Peon in the Office of the District Supply Officer, Malappuram on 3rd August 1970 and since then he has been continuing in the said post. Since his date of birth is 10th March 1942, he was to retire from service on 31st March 1997. He was appointed on provisional basis through Employment Exchange on various dates. It is thus obvious from the said provisional service particulars of the Appellant that his appointments were on provisional basis and that too with intermittent breaks between each appointments. It was while working on provisional basis as Masalchi, the

Appellant was appointed as Peon as per Ext. P-4 on the advice of the Public Service Commission and pursuant to that order, he joined duty as Peon in the District Supply Office, Malappuram on 3rd August 1990. Therefore, it is evident that the Appellant was appointed in the last grade service as Peon and he commenced the regular service only on 3rd August 1990 and that the services rendered by the Appellant prior to his joining the last grade service on regular basis were only provisional and that too with intermittent breaks. In order to get the benefit provided under Rule 60(b) Part I of the Rules, the Appellant should have been in the last grade service on 7th April 1970. In the instant case, the Appellant was working as, Masalchi on 7th April 1970 only on provisional basis and not in regular service. We have already extracted the Note to Rule 3 of Part I of the Rules. The said Rules provides that the benefit of Rule 60(b) shall not apply to the persons appointed to the service of the Government temporarily under Rule 9(a)(i) of the K.S. and S.S.R.

5. Therefore, we are of the opinion that provisional appointments made through Employment Exchange cannot be reckoned for the purpose of granting benefits provided under Rule 60(b) of Part I of the Rules in view of the Note to Rule 3 Part I of the Rules. In the circumstances, we hold that the Appellant is not entitled to the benefit of Rule 60(b) and that the benefits available under the said Rule cannot at all be extended to him in view of the temporary nature of his service as on the relevant date. This apart, he was also not in regular service as on the crucial date, i.e., 7th April 1970.

For all the foregoing reasons, we dismiss the Writ Appeal. No costs.