

(2002) 07 KL CK 0024
In the High Court Of Kerala
Case No : W.A. No. 1300 of 2002

Azhagiri

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Citation : (2003) 1 KLT 323

Hon'ble Judges : K. Thankappan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : H. Badaruddin, for the Appellant; P.K. Shakkeela, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This appeal is against the order dated 10.4.2002 in R.P. No. 177 of 2002 in O.P. No. 2689 of 2002. The appellant herein is the petitioner in the said Review Petition.

2. The appellant/petitioner entered service as Village Man in 1973. The post of Village Man is included in the Last Grade service. As per Rule 60(b) of Part I K.S.R., members of last grade service as on 7.4.1970 are entitled to continue in service till the age of 60 years. In the case of those who entered service after 7.4.1970, they are liable to be retired from service at the age of 55 years. Since the appellant entered service as Village Man only on 1973, that is, after 7.4.1970, he was liable to be retired from service at the age of 55 years and he actually retired from service on 31.1.2002 on attaining the age of 55 years. But, the appellant filed O.P. No. 2689 of 2002 claiming the benefit of continuing in service till he attains the age of 60 years. However, the learned Single Judge dismissed the Original Petition on 23.1.2002 holding that the appellant, being a person appointed in the last grade service after 7.4.1970, was not entitled to the benefit under Rule 60(b) of Part I K.S.R. and that he was liable to be retired from service on attaining the age of 55 years. Thereafter, the appellant filed R.P. No. 177 of 2002 which also has been dismissed by the learned Single Judge as per

the impugned order dated 10.4.2002. In the impugned order, the learned Single Judge has pointed out that even in the Review Petition, the appellant had not pleaded that he was in service on 7.4.1970. The learned Single Judge dismissed the Review Petition observing that it is an abuse of the process of the Court. Aggrieved by the said order, this appeal has been filed.

3. Learned counsel for the appellant admits that the appellant entered service only in 1973 and, therefore, as per Rule 60(b) of Part I K.S.R., he was not entitled to continue in service till the age of 60 years. But learned counsel submits that through the Review Petition, he sought permission to amend the Original Petition to challenge the stipulation that for the benefit under Rule 60(b) of Part I K.S.R., a member of the last grade service should be in service on 7.4.1970. In our view, after dismissal of the Original Petition, the appellant was not entitled to get the Original Petition amended by filing the Review Petition. Hence, the learned Single Judge was right in dismissing the Review Petition observing that it was an abuse of the process of the Court. Even otherwise, there is no merit in the contention of the appellant that the stipulation in Rule 60(b) of Part I K.S.R. that only members of the last grade service who were in service as on 7.4.1970 will be entitled to continue in service till the age of 60 years, is arbitrary and discriminatory. As per the rules then in force, those who were in the last grade service as on 7.4.1970 could continue in service till they attained the age of 60 years. It was with effect from 7.4.1970 that members of the last grade service were also brought on a par with other Government servants. Therefore, the date 7.4.1970 cannot be said to be irrelevant or arbitrary. There is a rationale behind fixing 7.4.1970 as the cut-off date for granting the benefit of continuing in service till the age of 60 years. When the rules were amended to make it mandatory for members of the last grade service to retire at the age of 55 years as in the case of other Government servants, the rule making authority deemed it fit and proper to exclude from the operation of the amended rule those who were already in service as on 7.4.1970 and who were entitled to the benefit of continuing in service till 60 years of age. Such differential treatment cannot be held to be arbitrary or discriminatory. It may also be mentioned that the same view was taken by this Court earlier in O.P. No. 7175 of 1999 (Jalaludheen v. State of Kerala 1999 (2) KLT 511 and O.P. No. 9417 of 1991).

4. In the above circumstances, the Writ Appeal is dismissed.