(1988) 02 KL CK 0055

In the High Court Of Kerala

Case No : O.P. No. 190 of 1985-U

C.V. Abraham APPELLANT

Vs

The Accountant General and Others RESPONDENT

Date of Decision : 11-02-1988

Acts Referred:
Kerala Service Rules, 1960 — Rule 43, 43B, 43B(1), 60, 7A(2)

Citation : (1988) 02 KL CK 0055

Hon'ble Judges : K. John Mathew, J

Bench : Single Bench

Advocate : K.K. Dinesan and A.B. Moly, for the Appellant; Govt. Pleader, for the Respondent

Judgement

John Mathew, J.—The Petitioner retired as Headmaster of the Mappila L.P. School, Puthucode on 30th April 1984. He attained the age of 55 years on 20th July 1983 and would have normally retired on the last day of July 1983 under Rule 60(a) of Part I Kerala Service Rules. However under Rule 60(c) he was allowed to continue in service till the last day of the month in which the academic year ended. Rule 60(c) is as follows:

The teaching staff of all educational institutions (including Principals of Colleges) who complete the age of 55 years during the course of an academic year shall continue in service till the last day of the month in which the academic year ends. They shall be entitled to the benefits of increments and promotion which fall due, before the last day of the month in which they attain the age of 55 years. But they shall not be eligible for increment or promotion during the period of their service beyond such date." (The remaining part of the Rule is omitted as unnecessary for this case).

2. By Ext. P-1, order dated 18th July 1983 the Petitioner was promoted as Headmaster in the scale of pay Rs. 470-830 and posted in G.L.P. School, Mully. Subsequently he was reposted to G.M.L.P. School, Puthucode, by Ext. P-2 order, dated 3rd August 1983. He joined duty as Headmaster in that school on 6th

August 1983 and retired from that school as Headmaster. On promotion as Headmaster his pay was refixed with effect from 6th August 1983 at the rate of Rs. 750 in the time scale Rs. 470-830. When he retired from service his basic pay was Rs. 750. On that basis he claimed monthly pension of Rs. 373 and D.C.R. Gratuity of Rs. 11,625. That application was duly forwarded to the 1st Respondent, namely the Accountant General, Kerala, for according sanction. Originally, as per Ext. P-3 only a pension of Rs. 333 per month with effect from 1st May 1984 and a gratuity of Rs. 9,982 were admitted. The Petitioner pointed out by Ext. P-4 representation that his service in the aided private school was not taken into account in fixing the pension and other benefits.

3. In the counter affidavit filed on behalf of the 1st Respondent it is stated that his previous service was also taken into account and pensionary benefits were revised and revised pension and D.C.R. gratuity were authorised on 27th December 1985. Therefore the only remaining grievance is regarding the benefits emanating from the Petitioner''s promotion as Headmaster. In Ext. P-3 order the ground stated for holding that pensionary claims can be calculated taking the pay only at Rs. 713 with effect from 1st September 1982, was that the Petitioner was promoted as Headmaster with effect from 6th August 1983 only.

4. Under Rule 60(c), teaching staff of all educational institutions who are allowed to continue in service till the last day of the month in which the academic year ends, are entitled to the benefits of increments and promotion which fall due before the last day of the month in which they attain the age of 55 years. Therefore the question is whether promotion of the Petitioner fell due before the last day of July, 1983, during which month he attained 55 years. Ext. P-1 order was dated 18th July 1983. By that order the Petitioner along with others was promoted as Headmaster and that order was directed to take place immediately. The word ''due'' means payable immediately or on demand-see Webster''s II New Riverside University Dictionary, page 408. It can only mean that the officer must have been eligible for promotion and not whether he actually took charge in the promoted post. The Petitioner''s eligibility for promotion as Headmaster had crystalised into a concrete right before he attained the age of 55 and also before the last day of the month in which he attained the age of 55 years. Only because of certain administrative delay he could join duty in the higher post during the next month. That is not material or relevant in considering whether he should be given the benefit of the promotion.

5. The question can be tested in another manner also. Suppose his increment fell due before he attained the age of 55 years and was actually paid to him only after the last day of the month in which he attained the age of 55 years. In that case it cannot be said that he is not entitled to the benefits of his increment for that ground alone.

6. Originally the words in Section 60(c) relating to the benefit of increment and promotion were as follows:

They shall be entitled to the benefit of increments if it falls due before the actual date on which they attained the age of 55 years. But they shall not be eligible for promotion to another post during the period of such extension.

The present words were substituted for the above words by G.O. (P) 109/62/Fin., dated 8th March 1982 published in the gazette dated 27th March 1982. The explanatory note to the amendment was as follows:

The teaching staff of all Educational Institutions (Including Principals of Colleges) who completed the age of 55 years during the course of an academic year shall be in service till the last date of the month in which the academic year ends under Rule 60(c) Part I, Kerala Service Rules subject to the conditions stipulated therein and they shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years with no eligibility for promotion to another post during the period of such extension. The Accountant General has suggested that it is not correct to deny the teaching staff the increments/promotion arising between the date of their attainment of the 55th year of age and the last day of the month in which they attain the age of 55 years. Government have examined this question and decided that the increments/promotions etc. arising to the teaching staff between their attainment of 55th year of age and the last day of the month in which they attain such age can be granted to them. Hence the above amendment.

In the explanatory note the words used are ''eligibility for promotion'' as well as ''promotion arising''. These words are indicative of the interpretation that the words ''fall due'' will only mean that the date on which the Petitioner was actually entitled to get the promotion.

7. This Court in James Thomas v. The Chief Justice, High Court of Kerala 1977 KLT 622 (F.B.) held that promotions should be made vis-a-vis the date of occurrence of the vacancy and not of the date of making the appointment. This was followed in the judgments of this Court reported in Meenakshy v. State of Kerala 1981 KLT 173 and Varghese v. State of Kerala 1981 KLT 458 (F.B.). I may usefully extract a passage from Meenakshy v. State of Kerala 1981 KLT 173.

The indication in Rule 7A(2) of Chapter XIV A of the K.E.R. is also that the Manager must fill up vacancies without delay. The only restriction is that except in the case of posts of Headmasters, posts that fall vacant on the closing date should not be filled up till the reopening. So, at any rate, in this case, the vacancy in question which arose on 31st March 1977 ought to have been filled up in the first week of June 1977. The Petitioner was qualified at the time of the occurrence of the vacancy. The Kerala Education Act and the rules do not give any discretion to the Manager to delay the promotions to deprive the Petitioner of her rights for promotion. As per Rule 43B(1)(i) the right to preference for promotion is to the teacher qualified for promotion at the time when the vacancy arose. Simply because such an indication is not there in Rule 43B(1)(iii) it cannot be said that qualification on the date of occurrence of the vacancy is not to be taken into account for promotion under Rule 43B(1)(iii). There is no reason to believe that the Government wanted to lay down different principles for promotions under Sub-clauses (i) and (iii). Hence I hold that for promotions under Rule 43B(1)(iii) also only a lower grade teacher qualified for promotion when the vacancy arose has got preference.

By this judgment this Court suggested to remove the anomaly in Rule 43B in order to enable effective implementation of the reasonable restrictions imposed by the Act and the K.E.R. It was subsequent to this that note-2 was added to Rule 43 or Chapter XIV A clarifying that promotion under the rule shall be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy.

8. Under the circumstances I hold that Petitioner''s promotion fell due before he attained the age of 55 years and therefore he was entitled to all the benefits of the promotion as Headmaster. Accordingly, the order evidenced by Ext. P-3 is quashed in so far as it relates to the denial of pensionary benefits. The 1st Respondent is directed to revise the Petitioner''s rates of pension, D.C.R. gratuity and family pension holding that he is entitled to those benefits of promotion from Ext. P-1 date itself, and to pay him all arrears. This should be done within four months of receipt of a copy of this judgment.

