
(2002) 06 KL CK 0066
In the High Court Of Kerala
Case No : OP No. 38193 of 2001

Dr. A. Razaludeen

APPELLANT

Vs

University of Kerala

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Kerala University Act, 1974 — Section 36

Citation : (2002) 2 KLJ 357

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : M. Balagovindan, for the Appellant; M.K. Chandramohandas and T.K. Ananda Padmanabhan, for the Respondent

Judgement

K. Balakrishnan Nair

1. The point to be decided in this Original Petition is whether the petitioner who is the Director, Department of Publications, University of Kerala is entitled to continue in service till the age of sixty years. The brief facts necessary for the disposal of the case are the following: The petitioner joined the Department of Publications of the Kerala University in 1988 as its Director. At the time of his joining the Department, the age of retirement of the Director was sixty years. This will be evident from Ext. P1 order of the University dated 19.9.1975 issued on the basis of the decision of the Syndicate dated 30-8-1975. Later, the Syndicate at its meeting held on 30-4-1991 decided that members of the staff of the Department of Publication etc. will have retire at the age of 55. Consequential order issued by the University is Ext. P2 dated 20-5-1991. In view of that order, the petitioner was bound to retire from service at the age of 55. Challenging Ext. P.2. one Mr. S.Krishna Iyer who was an Assistant Director of Department of Publications filed OP No. 6400/91 before this Court as evidenced by Ext. P3. This Court granted an interim order and on the strength of it, the petitioner in that Original Petition continued in service till the age of 60 years and retired.

It appears the said Original Petition was closed as infructuous. The petitioner submitted a representation before the University praying that he may be permitted to continue in service till the age of 60 years like his predecessor in office. The Syndicate of the University appointed a Committee to look into the grievance raised by the petitioner. The said Committee submitted Ext. P4 Report on 8-8-2001 in favour of the petitioner. The concluding part of Ext. P4 reads as follows:

On a perusal of the entire documents retaining to the issue and the statements made by the Finance Officer in the matter of having changed Audit Volumes and the manner in which the recovery of loan was effected in the case of Dr. Karim and Dr. Balachandran, we strongly feel that Dr. A. Razaludeen was discriminated against in various matters. Considering the fact that when the former Director Shri. C.J. Chacko and the former Assistant Director Shri. Krishna Iyer retired only at the age of sixty and the present Assistant Director and the Publication Officers (who were in service when the U.O. No. Ad. D5./1481/71 dated 19-9-1975 was in force) are to retire also at the age of sixty, as per the original records, the question as to how the entries relating to Dr. A. Razaludeen alone made different, leave room for serious doubts. Also, viewed against the fact that he was clearly discriminated against in the matter of restoring parity of scale, which he was previously enjoying, the above treatment assumes significance. The Committee is of unanimous view that the discrimination against Dr. A. Razaludeen should be ended.

2. The Syndicate of the University at its meeting on 23.10.2001 resolved to accept Ext. P4. report and fixed the retirement age of the petitioner as 60 years. The minutes of the meeting containing the decision is Ext. P5. The resolution in this regard reads as follows: -

The Syndicate considered and resolved to accept the report of the Committee constituted to study the retirement age and related matters of the Director, Department of Publications, University of Kerala (See the report at Appendix XXII).

With a view to avoid the discrimination against Dr. A. Razaludeen, Director, Department of Publications, the Syndicate resolved that the retirement age of the Director, Department of Publications be fixed as in the case of former Directors Shri C.J. Chacko who retired in the year 1986 and former Assistant Director Shri S. Krishna Iyer who retired in the year 1993.

Further resolved that tampering and disappearance of records in the case of Director of Publications be referred to the Vigilance Department for detailed enquiry.

3. While so, an Assistant Registrar of the University issued Ext. P7 communication to the petitioner stating that his date of retirement will be 31-1-2002 as his date of birth is 13-1-1947. Seriously aggrieved by Ext. P7. the petitioner has filed this Original Petition. The main contention of the petitioner is

that in view of Ext. P5 containing a conscious decision fixing his age of retirement as 60, he is entitled to continue till he completes the age of 60. This Court issued an interim direction on 31-1-2002 and on the strength of it, the petitioner is continuing in service.

4. The University filed a counter affidavit in the Original Petition stating that the retirement age of non-teaching staff is 55 and therefore the petitioner has to retire at the age of 55. Reliance is placed on Chapter IV of the Kerala University First Statutes, 1977. Statute 2 of Chapter IV of the First Statutes provides that the provisions of Kerala Service Rules etc. will be applicable to non-teaching staff of the retirement of the employees as 55. Therefore, by virtue of that provision, it is submitted that the petitioner's age of retirement has been statutorily fixed. So, it is submitted that Ext. P5 is ultravires of the powers of the Syndicate of the University. It is also admitted in the counter affidavit that Ext. P2 lowering the age of retirement of the Director of Publications has been quashed by this Court. The decision of the Single Bench has been affirmed by the Division Bench also. Pursuant to the said decision of this Court, the Senate meeting held on 31-3-2001 reconsidered the matter and granted academic status to the Department of Malayalam Lexicon. The said decision is produced as Ext. RI (a) along with the counter affidavit. But the said decision has no relevance in this case. The University has filed an additional counter affidavit on 11-4-2002. In the said counter affidavit, it is pointed out that the Syndicate is not competent to pass an order in the nature of Ext. P5. Reliance is placed on Section 36 of the Kerala University Act.

The University has also produced along with its counter affidavit a decision of the Syndicate held on 5-4-2002 as Ext. RI (b). The said Exhibit will show that the University resolved to take the stand before this Court that the age of retirement of all the staff of non-teaching departments is 55 years. The relevant portion of Ext. RI(b) reads as follows: "Resolved to take the stand before the Hon'ble High Court that the age of retirement of all the staff of the Non-teaching Departments is 55 years.

On the strength of this resolution, it is contended that the petitioner is bound to retire from service at the age of 55. I heard both sides. The counsel on either side reiterated their respective contentions. By operation of Rule 2 of Chapter IV of the Kerala University First Statutes 1977, Rule 60(a) Part I KSR will apply to non-teaching staff of the University. It means that every member of the non-teaching staff must retire at the age of 55. But, Rule 7 of Chapter I KSR enables the University to relax any of the provisions of the K.S.R. in appropriate case. The University having regard to various relevant facts thought that if the petitioner is made to retire at the age of 55, the same will be discriminatory and therefore, by Ext. P5. passed a resolution fixing his age of retirement as 60 years. The Syndicate is the principal executive authority of the University and it is competent to pass an order under Rule 7 of the Kerala Service Rules in appropriate cases. So, the resolution ext. P5 cannot be termed as contrary to the

Statutes or ultravires. Rule 7 of Part I KSR is also part of the Rules. Therefore, Ext. P5 resolution is authorised by the said Rule. It is true that a statutory body may resist the enforcement of the resolutions of its organs, if they are ultravires. But the said question does not arise in this case, as the power of the Syndicate to pass Ext. P5 can be traced to Rule 7 of Part I KSR. Ext. P5 is a resolution passed specifically in favour of the petitioner and on the basis of it, he has got a right to continue in service till the age of 60 years. The effect of the said resolution cannot be annulled by ext. P7 communication issued by the Assistant Registrar of the University. Ext. P5 resolution cannot be modified by Ext. RI (b) decision of the Syndicate to Support Ext. P7 before this Court, Therefore exhibit P7 is issued without authority and the same is quashed. It is declared that the decision taken by the university as evident from Ext. RI(b) to support ext. P7 before this Court, will not effect the right of the petitioner conferred on him by Ext. P5 resolution of the Syndicate. As things stand now, the petitioner is entitled to continue in service till the age of sixty. But this will not preclude the University to take action in accordance with law to reduce the age of retirement of the Director of Publication to 55 years.

The Original Petition is disposed of as above.