

(1978) 04 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 3411 of 1976 F

Fr. Peter Uralil

APPELLANT

Vs

Director of Collegiate Education and Others

RESPONDENT

Date of Decision : 03-04-1978

Acts Referred:

Kerala University Act, 1974 — Section 83
Kerala University Rules — Rule 3, 4

Citation : (1978) 04 KL CK 0010

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Advocate : George Varghese Kannanthanam and P.C. Joseph, for the Appellant;
M. Mathai, Government Pleader for 1st Respondent and K.P. Radhakrishna
Menon, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

T. Chandrasekhara Menon, J.—The Petitioner who is the Principal of an aided college, affiliated to the Kerala University, has come to this Court with this writ petition challenging the direction given by the Director of Collegiate Education, Kerala, that he has to retire with effect from 1st April 1976.

2. The facts of the case in short are these:

The Petitioner is a catholic priest working under the jurisdiction of the Bishop of Kottayam. He had passed his B.A. (Hon.) in Economics with a first class in 1952. He passed his B.Ed. in 1955. On 11th May 1955 he was appointed as a Lecturer in Economics in the B.C.M. College, Kottayam, which belongs to the Kottayam Catholic Diocese under the Bishop. This appointment was duly approved by the University. In June, 1956 as per the Management's direction the Petitioner was transferred as Headmaster in a High School under the same Management. There is no indication that his services in the college were in any way terminated. On 1st July 1958 the Petitioner was transferred from the High School and appointed as Lecturer in the B.C.M. College again. This too was approved by the University

of Kerala.

3. A second time the Petitioner was appointed as Headmaster of a High School under the same Management and transferred from the post of Lecturer. This was in April, 1960. He continued as Headmaster till June, 1962. From June 1962 till May, 1964 he was on extraordinary leave to render service to the diocese in other fields as directed by the Bishop,

4. From 1st May, 1964 as ordered by the Management the Petitioner was reverted to the college service. He was appointed as Principal of St. Stephen's College, Uzhavoor on 1st May 1964 and continued as such till June, 1968. Thereafter he worked in the same college upto 31st March 1974 as Professor of Economics. On that day he was appointed as Principal of St. Dominic's College, Kanjirappally. As the two colleges were under different management his service was lend to the Management of St. Dominic's College retaining his lien in the St. Stephen's College, Uzhavoor.

5. The date of birth of the Petitioner is 27th October 1920 and thus he has completed 55 years in October 1975. In regard to age of superannuation of teachers who entered service prior to 1st April 1958 Rule 4 of Chapter I of the first statutes promulgated by the Government u/s 83 of the Kerala University Act, 1974 provides as follows:

4. Age of superannuation, etc., of the teachers who entered service before 1st April 1958

(a) Teachers of private colleges who have entered service prior to 1st April 1958 shall have the right to retire at the age of sixty and be governed Dy the provisions of Chapter III or to opt for the provisions contained in Chapter II. "Those who have entered service prior to 1st April 1958 and who have completed 55 years on the date of commencement of these statutes but who "opt for the age of retirement at 55, shall retire only with effect from the date on which they exercise their option. Those who have entered service on or after 1st April 1958 and completed 55 years at the commencement of these statutes shall retire on 1st April 1976 forenoon.

(b) If they opt for Chapter II their service beyond the 55th year of age shall not count for pension, gratuity, etc., and their contributory provident fund contribution shall to the extent mentioned in statute 47 and gratuity may be credited to the account of the Government with effect from the date of commencement of these statutes.

(2) An option under Clause (1) shall be preferred in the form prescribed in Appendix IV within a period of three months from the commencement of these statutes or within such further time not exceeding three months, as the vice-chancellor may specify in this behalf. The option shall be sent to the Director of Collegiate Education.

(3) An option once exercised shall be final.

(4) The teachers who have not exercised any option within the prescribed period shall be deemed to have opted to be governed by the provisions contained in Chapter II.

6. Rule 3 of Chapter I of the First Statutes provides, "save as otherwise provided in these statutes, the age of compulsory retirement on superannuation shall be 55 years." However, taking advantage of Rule 4 of Chapter I of the Statute, the Petitioner has opted for the age of retirement at 60 years.

7. The Collegiate Educational Authorities have taken the view that the Petitioner is not so entitled to opt and this resulted in the direction impugned in the O.P. The State has also taken the same view. In the counter-affidavit filed on behalf of the State it is pointed that the policy of the Government is to give option only to those private college teachers who have entered service in a private college in the State prior to 1st April 1958 and continuing as such at the commencement of the Statutes. The rule concerned, viz., Rule 4 extracted earlier, is capable of interpretation only in that manner. The intermittent service of the Petitioner before and after 1st April 1958 and his being a Lecturer at the commencement of the Statutes cannot help him to get the benefit of the rule.

8. The question for the court's consideration in the case is whether on a correct interpretation of Rule 4 of Chapter I of the First Statutes, option can be exercised by those teachers who entered service before 1st April 1958, and who was in service when the Statutes came into force, but this service during the period was not a continuous one. Does the expression "have entered service" in Rule 4 mean entry into service which was continuing till that date (the date on which the Statutes came into force) without break.

9. No doubt the expression is in the Present Perfect Tense. Present Perfect is sometimes used to denote an action beginning at sometime in the past and continuing upto the present moment; as (1) I have known him for a long time, and (2) We have lived here for ten years; two illustrations given in Wren and Martin's High School English Grammar. But in the case of the verb "entry", one cannot think of a continuity of that action. There the action of entry into service is complete the moment the person enters service. Present Perfect can also be used for actions which occur further back in the past but which action has a strong connection with the present (see page 105-A Practical English Grammar, 2nd Edition by A.J. Thomson and A.V. Martinet).

10 As is pointed out in F.T. Wood's "A Remedial English Grammar for Foreign Students", page 87:

The perfect tense (made up from the past participle of a verb preceded by the present tense of the auxiliary have: I have eaten, they have gone) is the tense that is used when we wish to express the idea that some activity that took place in the past, or a situation that originated in the past, is connected in some way with the present. It may be the recent past that is referred to (I have just finished my dinner), a more distant past, or an indeterminate past (I have lived

in the East). The nearness or remoteness of the time is not material, for the perfect tense merely states the position at the present moment.

For example A had entered service in 1958.- He is in service at present. His service might not be continuous in the sense that there was no break of service. He might have taken extraordinary leave which might imply break in service. Or he might have been deputed for other work by his superior authorities. Even in such cases it could be very well said that he has entered service in 1958.

11. I think this appears to be a reasonable construction of Rule 4 of Chapter I of the First Statutes. Therefore, I see no reason why the Petitioner should be denied the right to take advantage of Rule 4 and his option to be in service till he attains sixty years should be rejected.

12. I certainly see the force of the argument advanced by the learned Government Pleader Sri Mathai that the application of Rule 4 to a person who might have first joined service prior to 1st April 1958, but who left the service immediately afterwards, but again joined service just a month prior to the coming into force of the First Statutes would be making mockery of the intention of the framers of the rule. I am not saying that the rule would apply in a case where there is a total termination of the previous service commenced before 1st April 1958 and then a fresh entry into service after that date. In such cases it could very well be said that the entry into service was after 1st April 1958. It is the re-entry into service that will have to be taken into account.

13. The present case is entirely a different one. It is impossible to say that in the circumstances there was a termination of the previous service, of the Petitioner. The Petitioner who is also a priest under the control of the Diocese managing the college, after joining service as a Lecturer, worked for sometime on direction by the Management as Headmaster of a High School belonging to the Diocese and for sometime he was deputed for other work, the Petitioner taking extraordinary leave for the time from college service. These allegations of the Petitioner are not denied in the counter-affidavit filed on behalf of the State. In such circumstances it would be inequitable to deny the Petitioner to take advantage of Rule 4 of Chapter I of the First Statutes.

14. Therefore, I quash Ext. P-1 in so far as it directs the Petitioner's retirement from service with effect from 1st April 1958, and declare that the Petitioner is entitled to continue in service till he completes 60 years of age.

O.P. is allowed to the extent indicated above. There will be no order as to costs.