
(1973) 12 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 180 of 1972

K. Damodharan nair

APPELLANT

Vs

Director of Public Instruction

RESPONDENT

Date of Decision : 07-12-1973

Acts Referred:

Citation : (1974) KLJ 21 : (1974) KLJ 19

Hon'ble Judges : V.P. Gopalan Nambiyar, J; George Vadakkal, J

Bench : Division Bench

Advocate : V. Bhaskaran Nambiyar, C.R. Natarajan, M.K. Ananthakrishnan and R. Bhaskaran, for the Appellant;

Final Decision : Allowed

Judgement

1. This appeal is against the dismissal in limine, by a learned judge of this Court of O. P. 3278 of 1972. The petitioner-appellant was a teacher who had broken periods of service in aided schools, since 1934 and continuous service on and from, 4-6-1962. By Ext. P1 dated 3-1-1969 the District Educational Officer directed that he be continued in service till the attainment of sixty years of age. But contrary to this direction, by Ext. P-2 passed in January 1972, the Assistant Educational Officer directed that his services be terminated as he had completed fifty-five years of age. The reason for the letter's order, Ext. P-2 was that the Director of Public Instruction, by a letter referred to in Ext. P-2, a copy of which has been filed as Ext. P-3 drew attention to two rulings of this Court: one by a single judge, and the other by a Division Bench; and in the light of these, he felt that as a result of the Division Bench ruling, the petitioner had to step down on the attainment of fifty-five years of age. The learned judge in dismissing the writ petition in limine was of the view that the note to Chapter XXVII-A, R.8 had no application, as the appellant was not in service on 4-9-1957. R.8 and the note may conveniently be extracted:

8. The age of retirement on superannuation shall be 55 years.

Note In the case of those who were in the service of any aided school prior to 4-9-1957 the age of retirement on superannuation shall be 60 years subject to the condition that the service beyond the age of 55 years shall not qualify for pension and gratuity under these rules.

On the terms of the rule, it does not require that the appellant should have been in service on 4-9-1957. Service prior to 4-9-1957 is all that is insisted on, and that seems to be for the very good reason that the elementary education teachers in the Malabar area of this State, and those governed by the P. S. S. Scheme in the Travancore-Cochin area, were allowed to have their age of superannuation at sixty years. Whatever that be, a learned judge of this Court in *P. J. Elyamma v. The District Educational Officer* (1965 KLT. 1185) ruled that the service prior to 4-9-1957 need not be continuous service. The correctness of that ruling was doubted, and the matter came on before a Division Bench which dealt with the matter in *T. K. Sankara Warriar v. Secretary to Government, Education Department* (1972 KLT. 213). The Division Bench did not hold that the learned single judge's decision was not correct or did not lay down good law. It only held that on the facts before it the teacher who had prior service from 1929 to 1946, who resigned voluntarily thereafter, and reentered service only in July 1957, was not covered by the note. We need not consider whether such facts would or would not be covered by the note, as the question is not actually before us. We are satisfied that in the instant case, the petitioner had service prior to 4-9-1957 in an aided school, within the meaning of the rule and the note. That should qualify him to continue in service till attainment of sixty years of age. We therefore, allow this appeal, and direct that O. P. No. 3278 of 1972 will stand allowed and Ext. P-2 order of the Assistant Educational Officer will stand quashed. There will be no order as to costs.