
(1998) 02 KAR CK 0034
In the Karnataka High Court
Case No : Writ Petition No. 1922 of 1990

Kallavva

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

Constitution of India, 1950 — Article 148, 309 (5)
Karnataka Municipalities (Conditions of Service) Rules, 1972 — Rule 48
Mysore Panchayats and Taluk Boards Employees (Recruitment and Conditions of Service) Rules, 1962 — Rule 15

Citation : (1998) ILR (Kar) 2497 : (1999) 3 KarLJ 564

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri T.N. Raghupathy, for the Appellant; Sri B. Veerappa, High Court Government Pleader, for the Respondent

Judgement

1. Pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant is the view of the Supreme Court. Since this right is frustrated and her claim is rejected by the State Government by their impugned order dated 11-10-1989, a retired old lady, who has abundant richness in her poverty is before this Court questioning the correctness or otherwise of the aforesaid order.

2. Brief reference may be made to the circumstances leading up to passing of the impugned order referred to above in order to appreciate the circumstances under which the impugned order came to be made as well as ground of attack levelled against the said order.

3. Petitioner was initially appointed as a scavenger in the Town Panchayat, Chikodi. In the service registers her date of birth is noted as 27-4-1913. She ought to have retired from service on 27-4-1968, on attaining the age of superannuation but her services came to be continued by the Town Panchayat.

On 17-2-1973, the Town Panchayat, Chikodi had been converted to Town Municipal Council, Chikodi. The services of the petitioner was also transferred to the said Municipal Council and the council continued the services of the petitioner as Poura Karmika and she was retired only on 31-10-1978. There seems to have arisen some controversy about the eligibility of the petitioner for pensionary benefits, Representations made by her and the recommendations of the authorities of the district for sanctioning pensionary benefits remained undecided in the State Government for nearly 10 years and it was ultimately rejected by the State Government by their order dated 11-10- 1989. Disturbed by these events petitioner is before this Court inter alia seeking the following reliefs:

(a) To quash the communication/order of the State Government in No. HUD: 62: MLR: 88, dated 11-10-1989.

(b) To direct the respondents to pay to the petitioner superannuation pension as per law and all arrears up-to-date.

(c) To quash communication dated 27-2-1990 issued by second respondent and the order made by the first respondent dated 22-3-1990.

4. The relevant rules which require to be noticed for the purpose of this case is Rule 15 of the Mysore Panchayats and Taluk Boards Employees (Recruitment and Conditions of Service) Rules, 1962. The said rule speaks of retirement of panchayat or a Taluk Board employee. The rule is as under:

"Rule 15. Retirement from service,-- No employee of a panchayat or a taluk board shall be retained in the service after he has attained the age of 55 years:

Provided that nothing contained in this rule shall apply to the re-employment, in public interest, with the previous sanction of the Deputy Commissioner in the case of panchayat, or the Divisional Commissioner, in the case of a Taluk Board for a period not exceeding one year at a time, of persons who have retired from service under the Panchayat or Taluk Board, as the case may be or under the Central or State Government or of any local authority".

5. 1962 Rules are statutory in character. Rules mandate that the employee of a Panchayat or Taluk Board shall positively retire after attaining the age of superannuation. Proviso is an exception to the main rule. It authorises the re-employment of the retired person in public interest for a period not exceeding one year at a time to Panchayats and Taluk Boards. The Panchayat can reemploy a retired employee with the previous sanction of the Deputy Commissioner.

6. In the instant case, petitioner ought to have retired from the services of Town Panchayath, Chikodi on 27-4-1968, but her services were continued by the Panchayath till the Panchayat was converted into Town Municipal Council. Obviously, the Panchayat must have re-employed her in the public interest. The Deputy Commissioner of the District whose prior sanction was required to continue her services does not take exception to her continuance in service. In fact, he recommends her case for sanction of pensionary benefits. By this act, it

can safely be said that the panchayat had continued the services of the petitioner from year to year with the sanction of the Deputy Commissioner as is required under Rule 15 of the Rules, 1962.

7. The Town Panchayat, Chikodi was converted into Town Municipal Council on 17-2-1973. Her services came to be handed over to the Municipal Council. The definition of an employee under the Karnataka Municipalities (Conditions of Service) Rules, 1972, as amended by Rules 1987 includes person absorbed in the service of Municipal Council. Rules 1972 provide for compulsory retirement of an employee working in Town Municipal Council. The said rule finds a place under Chapter VI of the rules. The same reads as under:

"48. Date of compulsory retirement: (1) the date of compulsory retirement of an employee is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Municipal Council for a period of one year and if the employee is physically fit he may be re-employed for a period of one year, with sanction of Government. Such re-employment shall not exceed five years in total".

8. An analysis of the said rule makes it explicitly clear that an employee of the Municipality shall retire on the date when he attains the age of 55 years and he may be continued in service for a period of one more year with the sanction of the Municipal Council, if the employee is physically fit. He may be re-employed for one more year with the sanction of the Government and at any rate such re-employment shall not exceed 5 years in total. A strict construction has to be given to these statutory rules since they are framed in exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution. A close look at the petitioner's case does not fit into these rules. But Sri T.N. Raghupathy, learned Counsel for the petitioner submits that after the petitioner's service was absorbed in the Town Municipal Council, the petitioner worked for several years, but even it is curtailed to one year from the date of absorption of her service, the Town Municipal Council could extend the same without the previous permission of the State Government. The submission of the learned Counsel is very attractive but in my view, has no substance in view of the clear language employed in Rule 48 of the Rules, for the reason the day on which her services were absorbed, she had attained the age of 55 years and her services could not have been continued one more year by the Town Municipal Council without previous sanction of the State Government. Continuation of her services beyond the period prescribed is contrary to Rule 48 of the Rules and the said rule will not come to the aid of the petitioner. But State Government realising that some of the municipalities had retained the services of the employees even beyond the age of superannuation, even though the old rules mandated that the employee will be retired from service on attaining the age of 55 years, have issued Government Order in No. HUD 454 MLR 79, dated 5th November, 1979 regularising the services rendered by the Municipal employee beyond 55 years treating it as extension service. It is useful to extract the said

Government Order. It reads as under:

"3. The employees whose services were continued beyond the age of fifty-five years and who retired subsequently may be grouped into the following categories:

(i) Those who were continued in service under the old rules and who have attained the age of 55 years before the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972 came into force from 22-5-1972.

(ii) Those who were continued in service beyond fifty-five years by granting extension of service under Rule 48 of the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972.

(iii) Those who were continued beyond the age of fifty-five years in good faith.

4. The question as to whether such service continuous beyond fifty-five years, have to be treated as re-employee or extension of service was earlier examined and orders regularising such service as re-employment were issued in G.O. No. HUD 454 MLR 79, dated 5th November, 1979,

5. It is brought to the notice of Government that treating the service beyond fifty-five years as re-employment in the case of the type mentioned above will cause hardship to the retired employees while settling their pension claims, and therefore the matter is reconsidered.

ORDER No. HUD 139 MLR 79, dated 24th December, 1981

After careful consideration of all aspects Government in supersession of the orders issued in G.O. No. HUD 454 MLR 79, dated 5th November, 1979 are pleased to regularise the service rendered beyond fifty five years by the municipal employees, referred to in para 3 of the preamble as EXTENSION of service",

9. A close reading of the order reproduced above gives an indication that the State Government taking into consideration the plight of some of the Municipal employees whose services were continued beyond the age of superannuation i.e., upto 65 years have regularised their services by treating it as an extension of service. If that is the correct interpretation that could be placed on the Government Order, then, in my view, services of this petitioner is also notionally regularised by the State Government since after 1973, she became an employee of the Municipal Council, Chikodi and the said Municipal Council continued her services beyond 55 years in good faith. Once her unauthorised continuation in service is regularised by the State Government, she would be entitled for pensionary benefits after her retirement from service. With this thinking, the Chief Officer of the Municipal Council had sought clarification from the local Audit Circle, Belgaum, who in turn informs the Chief Officer of the Municipal Council that petitioner could not have been continued in service beyond 55 years and for having continued her service upto 31-10-1978, the Municipal Council requires to

take permission from the State Government. Therefore, if pensionary benefits have to be granted to the petitioner, sanction should be obtained from the State Government. This letter is dated 6-8-1988.

10. On a request made by the petitioner for sanction of pension, the Director of Municipal Administration requests the Deputy Commissioner of the District to send a report so as to submit the proposal to the State Government for sanction of pensionary benefits to the petitioner as opined by Assistant Controller of Audit Circle, Belgaum. In turn, the Deputy Commissioner, not only sends the report and also recommends petitioner's case for sanction of pensionary benefits. The communication of the Deputy Commissioner, Belgaum, dated 21-3-1989 to the Director of Municipal Administration is a very important document which comes to the aid of the petitioner. The English translation of the said communication is reproduced and it reads as under:

"With reference to your letter mentioned above in respect of sanctioning pension to Smt. Kallavva Apoli Revadi, retired municipal employee, the Assistant Controller, local Accountant Audit Centre, Belgaum, in their letter No. AAL. 14. ARAC 88-89, dated 1-3-1989 have returned the documents sent by the Chief Officer, Municipality, Chikodi.

The Assistant Controller, Local Accounts Auditing Centre, Belgaum, in their letter No. LAL 14 ARAC 88-89, dated 6-8-1988 (addressed to the Chief Officer, copy of which sent to this office) have stated that Smt. Kallawa Apoli Revadi had to be retired on 27-4-1968. But the Municipality by extending her services, have retired her on 31-10-1978. Hence, as on 31-10-1978 her age will be 65 years, 6 months 4 days. For extending her services, sanction from the Government has to be obtained.

The Chief Officer, Chikodi Municipality in their report No. 848 of 1988, dated 12-10-1988 have intimated that no records are available in the municipality to show, for extending her services upto 31-10-1978. In addition her service record is also not available and the concerned original records have been sent to the Assistant Controller, Local Accounts Auditing Centre, Belgaum.

Perused the records sent by the Chief Officer, Chikodi Municipality. The details are as under:

- (1) Affidavit of certification in place of service register - 3 copies.
- (2) Birth Certificate of Smt. Kallavva w/o Apoli Revadi - 3 copies along with originals.
- (3) Monthly salary extract (for ten months) - 3 copies.
- (4) Affidavit showing the date of entry into service by Smt. Kallavva Apoli Revadi - 3 copies in Kannada.
- (5) Said original letter in Marathi.

(6) Copy of the resolution regularising the services of Smt. Kallawa w/o Apoli Revadi, Municipal Employee, retired Pourkarmika, in 3 copies.

(7) Government Order No. 6-E(A) 3 CPD 84, Bangalore, dated 14-10-1985.

(Procedure to be followed in reconstruction of register for disbursing pension, when the original service register is lost).

Pension has not been sanctioned to Smt. Kallawa Apoli Revadi, retired Municipal employee since her service extended beyond the date of retirement. It is necessary to obtain Government sanction for extending the services of an employee as referred to by the Assistant Controller, for not sanctioning the pension so far, the retired employee is in financial difficulties. For obtaining Government financial sanction in respect of granting pension to the said employee, the record containing pages 1 to 121 is hereby submitted along with recommendation after perusal".

11. After repeated representations by the petitioner and after innumerable requests by the Director of Municipal Administration, for sanctioning the pensionary claim of the petitioner, the Government in its cryptic order rejects the proposal made by the Director for sanction of pensionary claims only on the ground that petitioner ought to have been retired on 26-4-1968 and since the Town Municipal Council has continued her services and have retired her only on 31-10-1978, she is not entitled for any pensionary benefits as provided under Service Rules of the Municipal employees. This communication is dated 11-10-1989. As a follow-up action, the Director of Municipal Administration by his communication dated 27-2-1990 has informed the petitioner that she is not eligible for pensionary benefits. It is these orders which are being questioned in the writ petition.

12. Pension is not but a just allowance made in consideration of the past services of an employee. The purpose behind it is to reward faithful service by pension allowance. The rules and regulations provided for sanction of pension is applied fairly and broadly so that the benefits intended are not arbitrarily denied to civil servant. All reasonable doubts in that regard go in favour of the applicability of Service Rules, by liberal construction in favour of the employee. It is well-settled by the Supreme Court that right to pension is a condition of service and therefore, employee is entitled for pension subject to fulfillment of conditions of grant of permission. Therefore, what is required to be considered is whether the petitioner is entitled for pension under service rules of the municipal employees. Petitioner is an employee of Town Panchayat, Chikodi ought to have been retired as on 26-4-1968 on attaining the age of superannuation since her date of birth was 27-4-1913. But her services came to be continued by the panchayath from year to year with the prior permission of the Deputy Commissioner of the District. This has to be assumed since the Deputy Commissioner of the District recommends the petitioner's case for pensionary benefits. The Town Panchayath, Chikodi was converted into Town Municipal Council, Chikodi and petitioner's

services were absorbed by the Municipal Council and she was continued in service till 31-10-1978. For continuation for one year, from the date of retirement, Municipal Council need not take prior permission of the State Government and a resolution to that effect by the Municipal Council is sufficient compliance as required under Rule 48 of the old Rules. The Municipal Council continues her services till she attains the age of 65 years and retires only on 31-10-1978. The State Government by its order dated 5th November, 1979 has regularised the services of those Municipal employees who were not retired on attaining the age of 55 years but continued till the age of 65 years in good faith on extension of service. So when she was retired, she was the employee of Town Municipal Council, Chikodi, and like any other Municipal employee she is entitled to pensionary benefits as provided under the Service Rules of the Municipalities in particular sub-rule (3) of Rule 5 as amended by 1987 Rules. Therefore, the thinking of the State Government that the petitioner is not entitled for pensionary benefits is unsustainable in law.

13. For the reasons stated, petition deserves to be allowed. Accordingly, it is allowed. Rule made absolute. The impugned order framed by the State Government dated 11-10-1989 is quashed. In view of the quashing of the aforesaid order, consequential orders made by the Director of Municipal Administration dated 27-2-1996 and the endorsement issued by the State Government dated 22-3-1990 requires to be set aside. Accordingly, they are set aside. In the normal course, matter requires to be remanded to the State Government to reconsider the claim made by the petitioner in accordance with law keeping in view the observations made in the course of this order. As an exceptional case, since the pensioner is already 84 years of age she may not live to see the order that may be passed by the State Government. Therefore, a direction is issued to the State Government to direct the Municipal Council, Chikodi from whose services, petitioner retired from service, to settle the pensionary claims of the petitioner and pay the same after its quantification as expeditiously as possible, at any rate, within three months from the date of receipt of this Court's order.

14. Before parting with the case, I should place it on record the untiring and undoubting efforts of this old lady to secure what was due to her as a matter of right.