

(2006) 07 KL CK 0112
In the High Court Of Kerala
Case No : W.A. No. 2591 of 2005

K.D. Ninan and Another

APPELLANT

Vs

S.B.T. and Another

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Citation : (2006) 3 KLJ 621

Hon'ble Judges : K.P. Balachandran, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : K.R.B. Kaimal and M. Ajay, for the Appellant; M. Pathrose Mathai, Saji Varghese and Rony J. Pallath, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The writ Appellants are writ Petitioners. They did not succeed in O.P. 2702/2000 wherein they claimed employment for the second Appellant, the son of the first Appellant who had retired from the service of the State Bank of Travancore allegedly under medical grounds, relying on Ext. P-3 scheme. Therefore, this writ appeal.

2. The contention before us is that Ext. P-3 scheme provided for appointment of dependents of deceased employees. It was subsequently modified to include, with certain stipulations, the dependents of employees who had retired from bank service on medical grounds. The first Appellant had in Ext. P-4 dated 3-5-1999 applied to consider his case for voluntary retirement sympathetically, as he was unable to carry out his duties because of certain ailments that he did have. This was accepted as per Ext. P-5 dated 2-6-1999 and he was allowed to retire from service. Thereupon, he represented for employment assistance for his son, the 2nd Appellant on the basis of Ext. P-3 scheme. This was turned down in Ext. P-8 on the ground that he did not mention in his application for voluntary retirement that he sought it on medical grounds and that he did not present himself for examination by an approved Medical Board. This was also represented against by him before the Managing Director who issued Ext. P-12 order

declining his request on the ground that retirement benefits had been enough to maintain his family and that his retirement granted as per Ext. P-5 was not on medical grounds; but only an ordinary voluntary retirement. The challenge against these orders was repelled by the learned Single Judge, accepting the submissions of the Respondents. So this appeal.

3. It is reiterated before us by the Counsel for the Appellants/Petitioners that when scheme in Ext. P-3 provided employment assistance to the dependents of employees who have retired from service on medical grounds, they cannot be denied of the benefit derived therefrom. His application, Ext. P-4 seeking voluntary retirement was on the ground of ill-health. It had been acted upon and sanctioned as per Ext. P-5 order within a month. Therefore, the bank cannot turn down the request on the ground that his retirement was not on medical ground.

4. Ext. P-13 is the extract from rules relating to the conditions of service of State Bank employees. It provides for different classes of pension like superannuation pension, pension on voluntary retirement and invalid pension apart from Compassionate Allowance, Premature Retirement Pension and Compulsory Retirement Pension with which we are not concerned. On any account, he cannot be a Superannuation Pensioner as he had voluntarily retired. Admittedly, before us he is not an invalid pensioner covered by Rule 30 in Ext. P-13. Necessarily, his case can fall only under Rule 29 of Ext. P-13 which provides for pension on voluntary retirement. There is no count of retirement on medical grounds other than the invalid pension for which he has to undergo medical examination. Admittedly before us as already mentioned above, he does not have a case that, his pension comes under Rule 30 which deals with invalid pension. Then his case will squarely fall under Rule 29 in which case, it will not attract Clause 1 of Ext. P-3 to claim employment assistance.

5. It is true, as contented by the Counsel for the Appellants, for an ordinary voluntary retirement one has to give three months notice to the employer. Ext. P-4 application did not have that much period until it culminated in Ext. P-5 order sanctioning voluntary retirement. But three months notice is a convenience for the employer to make substitute arrangement till Anr. regular hand joins duty. The employer can at his will waive that requirement. Therefore, that contention does not improve the case of the 1st Appellant to place him outside Rule 29 of Ext. P-13.

6. Ext. P-5 order granting voluntary retirement also does not stipulate that the bank had granted him voluntary retirement on medical grounds. Merely because of the reasons stated in Ext. P-4 representation that he was on ailment and of the prayer in Ext P-4 to sympathetically consider his application to "grant me voluntary retirement as I cannot continue to carry out my duties in the Bank", and on the strength of the voluntary retirement obtained on this count, he cannot contend that his successor shall be enthroned in the chair vacated by him.

7. We agree with the views taken by the learned Single Judge and therefore,

mere is nothing for interference in this writ appeal.

8. Writ appeal fails and is dismissed accordingly.