
(1988) 03 KL CK 0050
In the High Court Of Kerala
Case No : O.P. No. 1996 of 1987

K.G. Raghavan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-03-1988

Acts Referred:

Kerala Education Rules, 1959 — Rule 1

Citation : (1988) 03 KL CK 0050

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P.K. Ramakrishna Pillai, for the Appellant; Government Pleader, for the Respondent

Judgement

Sreedharan, J.—Petitioner was appointed Full-time Menial (Watchman) on regular basis in the High School, Koothattukulam on 1st July 1961. He was fully qualified for holding the post. In the school year 1981-82 when the staff fixation order was issued one of the two posts of Full-time Menial was abolished. The Petitioner being the junior most Fulltime Menial was granted protection. He was thereupon transferred to Malappuram District. He approached this Court challenging the order of transfer by filing O.P. No. 4006/1982. This Court stayed the operation of the order of transfer. The Original Petition was disposed of by judgment, dated 11th August 1986 directing that the Petitioner should be retained in the very same school till his requirement. Accordingly he was retained in the school at Koothattukulam till he retired on superannuation on 31st March 1987.

2. During the academic years 1981-82 and 1983-84 the Petitioner had been paid 54 days" salary as the value of the earned leave surrendered. The said earned leave was credited in the account of the Petitioner as if he was a non-vacation staff. The stand taken by the Respondents is that the Petitioner became a protected Menial from 1981-82 and that he was not entitled to be on duty during vacation. Consequently he had no earned leave as if he was a non-vacation staff. In support of this plea reliance has placed on Exts. R-2 (a) and R-2 (b) Circulars

issued by the Director of Public Instruction. Ext. R-2 (a) Circular deals with the case of Laboratory and Library Attenders. As per these circulars all categories of non-teaching staff in aided schools except Laboratory and Library Attenders are treated as non-vacation staff and hence they are eligible to enjoy the benefit of surrender of leave etc. Ext. R-2 (b) was issued on account of the audit objection relating to the benefit of surrender of earned leave enjoyed by the protected non-teaching staff till 24th March 1973. As per that circular the benefit of surrender of earned leave enjoyed by the protected non-teaching staff till 24th March 1973 is to be treated as in order, with a view to clear all audit objections raised against the surrender of earned leave already granted to the protected non-teaching staff in aided schools up to 24th March 1973. These two circulars have no relevance to the Petitioner's case. Even as per the Respondents' contentions, the Petitioner became protected only from 1981-82. During the years 1981-82 and 1982-83 the earned leave was credited in the account of the Petitioner as if he was a non-vacation staff. No reason is stated in the counter affidavit for treating him otherwise than as a non-vacation staff from 1981-82. The duties and responsibilities and the nature of work of regular and protected Menials are the same. Both categories of personnel are doing the same work. The Petitioner was told that he was not to attend vacation duty for the first time on 1st April 1986, by Ext. P-2 order. The Petitioner has specifically averred that in spite of Ext. P-2 he continued to discharge duties as watchman during vacations. That statement has not been denied. Further, the proviso to Rule 1 in Chapter XXIV-A of the Kerala Education Rules states:

Provided that qualified non-teaching staff appointed against sanctioned post prior to 1969-70 on a regular basis will be allowed to continue as such.

* * *

The Petitioner being a qualified non-teaching staff appointed against a sanctioned post prior to 1969-70 on regular basis was entitled to continue in that post till retirement. Accordingly he must be deemed to have continued as a Menial (Watchman) on regular basis till 31st March 1987. The above mentioned statutory provision has not been varied by amending the provisions in the K.E.R. Any executive order if made, contrary to the said statutory provision cannot go to deny the Petitioner's status as regular Menial.

4. The status of a protected Lower Division Clerk as against a regular Lower Division Clerk in an aided school came up for consideration before me in O.P. 5752/1985. After dealing with the relevant provisions of the K.E.R., it was observed:

A protected Lower Division Clerk is on a par with a regular Lower Division Clerk of the school. The regular Lower Division Clerk is entitled to the benefits of earned leave. Those benefits must enure to the protected clerk as well.

The above statement of the law applies on all fours to the facts before me.

5. The Petitioner who was appointed as a regular Menial in the school on 1st July 1961 continued as such till he retired on superannuation on 31st March 1987. He did work during vacation. He had earned leave during the entire period of his service. That earned leave is entitled to be surrendered and encashed. The contrary view taken by the District Educational Officer, Muvattupuzha, is unsustainable. Consequently Exts. P-7 and P-8 orders passed by the District Educational Officer and the Headmaster of the school respectively are quashed. The District Educational Officer and the Headmaster are directed to take affective urgent steps to fix the retirement benefits due to the Petitioner and to disburse the same as expeditiously as possible.

The Original Petition is allowed in the above terms. No costs.