

(1994) 01 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 1115 of 1993

K.M. Sirajudeen

APPELLANT

Vs

D.P.I. and another

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Citation : (1994) 1 KLJ 348

Hon'ble Judges : M. Jagannadha Rao, C.J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : K.A. Abdul Gafoor, for the Appellant; V. Bhaskara Menon, Govt. Pleader, for the Respondent

Judgement

Jagannadha Rao, C.J.—This writ appeal is preferred by the writ petitioner against the judgment of the learned single Judge in OP 10604 of 1989-K dated 37-7-1991 and also against the order passed in RP 134 of 1992 dated 26-2-1993 refusing to review the said judgment. The brief facts of the case are as follows: Writ petitioner's father was a Headmaster in a Government School and died on 3.2.1989 while in service. Writ petitioner's father was born on 8.11.1933 and as provided in Rule 60 (c) of Part 1 of Kerala Service Rules, he was to retire from service on 31-3-1989. Writ petitioner" contend that as his father died while in service, the petitioner is entitled to the employment benefit given to dependents who died In harness as per Ext. P1, GO(P) No. 34/87 P&ARD dated 17.12.1987. The learned single Judge dismissed the writ petition holding that the petitioner is not entitled to any such benefits inasmuch as the petitioner's father must be deemed to have been under "extension of service" and clause (9) of the above said Government Order which deals the scheme of employment assistance does not extend the benefits of the scheme where the deceased- government servant died while under "extension" of service. This was because the deceased had completed 55 years of age on 8-11-1988 and It was because of Rub 60(c) of Part I of the Kerla Services Rules that the Govt. felt that his service stood"extended" upto 31-3.1989 and, therefore, the case fell within clause (9) of the Government

Order which specifically denied the benefit of the Scheme to cases where the deceased government servant had died while under "extension" of service.

2. Aggrieved by the said judgment, the writ petitioner had filed a Review Petition, as stated above. But, the same was also dismissed by the learned single Judge. This appeal has been preferred questioning both the orders.

3. Normally, the age of superannuation in the State of Kerala is 55 years. But, in respect of teaching staff in the educational institutions (including Principals of Colleges), it is stated in Rule. 60 (c) of Part I of KSR, that they "shall continue in service" till the last day of the month in which the academic year ends. Learned Counsel for the appellant contends that this is not a case of extension of service, but is a case of statutory continuance of service or rather a postponement of the date of superannuation and, therefore, the case of the appellant does not fall within clause (9) of the above said Ext. P1 Government Order. Learned Counsel for the appellant also relies upon a judgment of another learned single Judge of the Court in Raghu v. State of Kerala (1992 (2) KLT 69) dated 9-6-1992, which judgment was rendered subsequently to the main judgment now under appeal before us.

4. We have heard learned Government Pleader.

5. We shall first refer to Rule 60(c) of Part I of the Kerala Service Rules, in so far as it is relevant for our purpose, reads as follows :

R. 60(c) - The teaching staff of all educational institutions (including Principals of Colleges) who complete the age of 55 years during the course of an academic year shall continue In service till the last day of the month in which the academic year ends. They shall be entitled to the benefits of increments and promotion which fall due, before the last day of the month in which they attain the age of 55 years. But they shall not be eligible for increment or promotion during the period of their service beyond such date.

As stated earlier, Learned Counsel for the appellant contends that the Rule statutorily increases the age of superannuation till the last day of the month In which the academic year ends. But, on the other hand, learned Government Pleader contends that even if it 1st a statutory "extension" of service, and the matter still falls under clause (9) of the Government Order dated 17-12-1987 referred to above.

6. Clause (9) of Ext. P1 Government Order reads as follows:

9. The employment assistance shall not be available to dependant of Government servant who is allowed to continue in service beyond superannuation either, by extension of service or by reemployment and in whose case the death takes place after the normal date of retirement on superannuation.

In our view, the words "continue in service" used in Rule 60 (c) of Part I of KSR cannot be equated with the words "extension of service" used in clause (9) of

the Government Order. If we read clause (9) in entirety, it is clear that what is contemplated by the words "by extension of service or by re-employment" is an individual order of extension of service or of re-employment passed by the Government in that behalf. Clause (9) when it uses the words "by extension of service or by re-employment" was not Intended to cover cases where there is statutory postponement of the date of superannuation as in Rule 60 (c) of Part I of KSR. The words used in clause (9) would Indicate the passing of an Individual order of extension of service or of employment and cannot be taken to include postponement of superannuation by statutory provisions like Rule 60 (c) of Part of the Kerala Service Rules. We are, therefore, in entire agreement with the view taken by the learned single Judge who disposed of *Raghn v. State of Kerala* 1992 (2) KLT (69). The learned Judge in that ease rightly came to the conclusion that Rule 60 (c) of Part I of KSR statutorily postpone the date of superannuation and, therefore, the ordinary date of superannuation is the end of the academic year concerned during which the Government servant must have attained 55 years. The learned Judge construed the words "normal date of superannuation" in clause (9) of the Government Order as the last date of the academic year in question and held that the death must be deemed to have occurred before the normal date of retirement, namely, the last date of the academic year in question. We agree with the interpretation put by the learned single Judge on the words "normal date of retirement on superannuation" and we have also given additional reasons to support the view of the learned single Judge who decided *Raghu's case* 1992 (2) KLT 69). We have further started that the words "by extension of service relates to an individual order of extension and not a date of superannuation covered by the statutory role. In fact, if " a teacher reaches 55 years during an academic year - say in January of a year - under Rule 60 (c) his service is continued statutorily upto the end of the academic year and if he dies during the period subsequent to the completion of 55 years and before the end of the academic year, the provisions of clause (9) of the Government Order would not his-entitle dis dependents from claiming the benefit of Ext.P1 Government Order. But in a case if after the end of the academic year in question in which he had attained 55 years-say for example 31st March of that year-a further individual order of extension is passed-say for three months and if the dies during that period of three months, then clause (9) of the Government Order would come in and will not give the benefit of the scheme to he dependents of that person. In our view, this is the proper way of construing clause (9) of the Government Order in the context of Rule 60(c) of Part of the Kerala Service Rules.

For the aforesaid reasons, we allow the writ appeal, set aside judgment in the writ petition as well as the order in the Review Petition and we also allow the writ petition. We direct the respondents to consider the case of the writ petitioner for employment assistance under Ext.P1 on the basis that clause (9) of Ext.P1 Government Order is not applicable to this case. There will be a further direction to the first respondent-Director of Public Instruction to forward the writ

petitioner's application to the Government and the Government will dispose of the application in accordance with law and in the light of the judgment rendered above. The Government shall pass orders, as stated above, within a period of three months from the date of receipt of a copy of this Judgment.