
(1992) 02 KL CK 0034

In the High Court Of Kerala

Case No : O.P. No's. 1052 of 1992 and 1970 of 1992 B

K.P. Mohammed

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-02-1992

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (1992) 02 KL CK 0034

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker, for the Appellant; A.M. Poulouse, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—Identical issues arise for consideration in these Original Petitions. Therefore I consider it advantageous to dispose of these petitions by a common judgment.

2. Petitioner in O.P. No. 1052/92 was a member of the State Judicial Service. He was working as Chief Judicial Magistrate, Kozhikode. He attained the age of 55 years in November 1991. So as per the Service Rules, he was to retire on 30th November 1991. In view of the decision of the Supreme Court in All India Judges Association v. Union of India 1992 (1) KLT 108 (S.C), (decided on 13th November 1991), he filed a representation to Government to allow him to continue in service till he completes the age of 60 years. The representation forwarded through the High Court was considered by the Government and informed the High Court that pending detailed consideration of the Supreme Court judgment Petitioner may be provisionally allowed to continue in service. Pursuant to that direction, Petitioner continued in service beyond 31st November 1991.

3. Petitioner in O.P. No. 1070/92 was functioning as Selection Grade District

Judge in the Higher Judicial Service of the State. He completed the age of 55 years in December, 1991. As per the Rules governing conditions of service, he was to retire from service on 31st December 1991. In view of the decision of the Supreme Court in All India Judges Association case, he put in Ext. P-1 representation to Government for permission to continue in service till appropriate steps for implementation of the direction of the Supreme Court are finalised (Ext. P-1 is the copy of the representation). Government informed the High Court that pending detailed consideration of the Supreme Court decision on the age of superannuation of Judicial Officers and pending issue of orders thereon, Petitioner may be provisionally allowed to continue in service. Pursuant to that direction, High Court issued Ext. P-2 proceedings allowing the Petitioner to continue in service provisionally until further orders.

4. Government by message No. 69815/C3/91/Home, dated 16th January 1992 informed the High Court of their decision to terminate the services of Petitioners in these original petitions. Thereupon High Court issued Ext. P-3 proceedings dated 20th January 1992 terminating their services. Hence these original petitions.

5. The main argument advanced by the learned Counsel representing the Petitioners in these original petitions are the following:

(1) In paragraph 25 of the All India Judges Association case 1992 (1) KLT 108 (S.C). Their Lordships observed:

We are of the view that on the logic which was adopted by the Law Commission and for the reasons which we have indicated the age of retirement of Judicial of officers should be 60 years.

This is a declaration of the law coming within the purview of Article 141 of the Constitution. That law must be enforced by all Courts within the territory of India. Consequently this Court must direct the Respondents to allow the Petitioners to continue in service till they complete the age of 60 years.

(2) On the basis of the All India Judges" Association case 1992 (1) KLT 108 (S.C.), Petitioners filed representations to Government praying for continuance in service till appropriate steps for implementation of the directions of the Supreme Court are finalised. On the basis of that representation Government informed the High Court to permit them to continue in service. Thereafter, without affording them m opportunity of being heard, Government unilaterally decided to terminate their services, This order has been passed in violation of the principles of natural justice. Consequently the order of the Government terminating the services and the proceedings issued by the Registrar, High Court retiring them from service are liable to be set aside.

6. I shall proceed to deal with these arguments in detail.

7. A Judicial Officer in the service of the State of Utter Pradesh who was to retire on 30th November 1991 approached the Government to Continue in service till

he completes the age of 60 years in view of the pronouncement of the Supreme Court in the All India Judges' Association case 1992 (1) KLT 108 (S.C.) The State Government did not permit him to continue in service beyond the age of superannuation namely, 58 years. He approached the High Court of Allahabad. The High Court restrained the State Government from retiring judicial officers from service on their attaining the age of 58 years by an interim order. the State Government took up the matter in SLP No. 19731/91 before the Supreme Court, Their Lordships disposed of that petition observing:

What the High Court has done is to treat the judicial officers as continuing in service after 13th November 1991, that is the date of this Court's judgment under consideration, As if we had directed raisings the age of retiring to 60 year from the date of judgment. "The direction given was that the State Governments and the Union Territories should take appropriate state to raise the age of retirement of judicial officers to 60 years before 31st December 1992. In that view of the matter, we think that the impugned order passed by the High Court cannot be sustained We, therefore, set it aside, We, however, do hope that the State Government and Union Territories will undertake the exercise for raising the age of retirement to 60 years as per our direction in paragraph 63 of the judgment as early as possible without waiting for the outer date of 31st December 1992. (emphasis added).

8. From the above decision, it is abundantly clear that the judgment in All India Judges' Association case 1992 (1) KLT 108 (S.C.) has not raised the age of superannuation of Judicial Officers to 60 years. The observation made in paragraph 25 of the judgment on which reliance was placed by the learned Counsel representing the Petitioner which is quoted below cannot be taken as having laid down the law binding on all Courts under Article 141 of the Constitution.

We are of the view that on the logic which was adopted by the Law Commission and for the reasons which we have indicated the age of retirement of judicial officers should be 60 years.

This must be read along with the directions given in paragraph 63 of the judgment. It is trite law that sentence in a judgment is not to be culled out and read out of context, to contend that the statement in, that sentence is the Stare Decisis of that case. The Supreme Court itself has condemned the tendency to read the observations, made by that court as statutory enactments Vide *Rajeswar Prasad v. State of West Bengal* AIR 1965 S.C. 1887. In the instant case, if the argument that the above quoted sentence in paragraph 25 of the judgment is the decision entitled to the protection of Article 141 of the Constitution, judicial officer in the service of the Uttar Pradesh Government should not have been retired on his completing the age of 58 years. The High Court directed his retention in service beyond the age of 58 years. That direction was set at naught by the Supreme Court observing that the High Court was wrong in proceeding as if the Supreme Court directed raising the age of

retirement to 60 years from the date of the decision in All India Judges' Association case.

9. The age of retirement is one of the conditions of service of a judicial officer like any other member in Government service. It is fixed by the Rules governing the service.

Rules governing the conditions of service of judicial officers, it is conceded, are not to be promulgated in consultation with the High Court, Government have got the authority to make the Rules. In exercise of that powers, Government made Rules fixing the age of retirement of its servants at 55 years. It applies to judicial officers as well. Service organisations in this State approached this Court to get the age of retirement raised from 55 years. That was considered by a learned single Judge of this Court in K.G.O. Front v. State of Kerala 1987 (1) K.L.T 336. This Court dismissed the Original Petition with the observation that the matter of policy with possible reverberations in the regions of complex problems of unemployment is a matter better decided by the State as a part of comprehensive national employment policy with the assistance of sociologists and economists rather than this Court. That decision was upheld by a Division Bench in W.A. 784/86 and by the Supreme Court by dismissing SLP No. 1884/87. So, the question of the age of retirement is a matter falling within the purview of the State, and it has to be decided by the State. In the case of the judicial officers Supreme Court directed the State Governments to take appropriate steps to raise the age of retirement to 60 years before 31st December 1992. Till steps in pursuance of that direction are taken by the Government and the Rules amended, no officer can put forward any right to continue in service beyond the age of 55 years fixed in the existing Rules. This view is seen to have been accepted by the Supreme Court while allowing the SLP No. 19731/1991. In these circumstances, I do not find any merit, in the first contention raised by the Petitioner.

10. Immediately after the decision of the Supreme Court in All India judges's Association case 1992 (1) KLT 108. (S.C.) , Petitioners filed representations for continuing in service beyond the age of 55 years. On getting that representation, Government thought it proper to allow them to continue provisionally till a decision is taken on the age of retirement. Later it appears that they have taken a decision not to continue the officers beyond the age of 55 years. The Rule fixing the age of retirement has not been amended. Petitioners have, as per Rule, no right to continue beyond the age of 55 years. Petitioners have no case that the Rules have been amended by the Government enhancing their age of retirement to 60 years. Supreme Court also did not direct the Government to amend the Rules immediately after the pronouncement of the judgment. Government have been given time till 31st December 1992 for amending the Rules. That position has been conceded by the Supreme Court in the order in SLP 19731/1991 as well. The first order issued by the High Court was one allowing them to continue on a provisional basis till the Government takes a decision on

the age of retirement of the judicial officers. Now they have taken a decision not to amend the Rules for the time being, by extending the age of retirement of judicial officers. This decision is in the nature of legislation. The Rules are to be made by Government. Function of the Government in making the Rules is neither executive nor administrative. It is indeed a legislative process. Courts cannot sit in judgment over this exercise of power. This power is not subject to the rules of natural justice. Rules of natural justice are not applicable to legislative action. The Government decided not to amend the Rules enhancing the retirement age of judicial officers at present. This decision is not open to challenge in this Court under Article 226 of the Constitution. The action of the Government has not gone in violation of the directions given by the Supreme Court either. Before taking such a decision, it was not necessary for the Government to hear the Petitioners. It is settled law that the legislative power of the Government is not subject to procedural requirement of hearing unless it is specifically provided by legislation vide *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, . Petitioners, have no case that the Government. are bound to hear service Organisations or members of any service before the Service Rules are amended. Since the Government's decision not to extend the age of retirement of judicial officers, for the time being, is one taken in the exercise of legislative power, it is not to be interfered. with on the ground that Petitioners were not afforded an opportunity of being heard the matter. On this basis, I hold that the second contention raised by the learned Counsel is also untenable.

11. In View of what has been stated above, I find no merit in these Original Petitions, They are accordingly dismissed.