
(1982) 06 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 113 of 1980

K.P. Mustapha Rowther

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-06-1982

Acts Referred:

Citation : (1982) KLJ 376

Hon'ble Judges : S.K. Kader, J

Bench : Single Bench

Advocate : S. Narayanan Poti and S. Sankarasubban, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Kader, J.—The petitioner who retired as Regional Joint Director of Municipalities on 30-9-1979 after having put in 23 years of service, mainly prays that this Court may be pleased to call for the records leading to Ext. P3 and P5 orders and quash the same by issuing a writ of certiorari or other appropriate writ or order and also declare that he is entitled to the benefit conferred under rule 25 (a) of Part III of the K.S.R. It was while the petitioner was practising as a lawyer at the Munsiff's Court, Thiruvalla that he was recruited as Municipal Commissioner by the Travancore-Cochin Public Service Commission. Admittedly the conditions of service of the petitioner are governed by the Kerala Service Rules. The petitioner contends that by virtue of rule 25(a) of Part III of the K.S.R. he is entitled to get added to his service qualifying for superannuation pension a period of 5 years. The petitioner made various representations to the concerned authorities. One such representation is Ext. P2 to which the petitioner received a reply Ext. P3 stating that since experience at the Bar was not prescribed as a qualification for appointment to the post of Municipal Commissioner, the request to count the service spent by the petitioner at the Bar was not admissible. Again the petitioner made a similar representation to the third respondent for reconsideration of Ext. P3. That also was rejected as per Ext. P5 dated 27-9-1979.

2. That the petitioner was directly recruited from the Bar as Municipal Commissioner by the Travancore-Cochin Public Service Commission, and he joined service as such on 26-10-1956, is not a fact in dispute. The stand taken by the counsel appearing for the Government is that the Government had occasion to interpret and construe the meaning of the words "persons recruited from." the bar" appearing in rule 25(a) in this regard and by reason of the Government decision No. 2 to this rule, the petitioner is not entitled to get added five years of his standing at the bar to his service qualifying for superannuation pension.

3. Therefore, the question that arises for determination in this Original Petition is whether on the facts and in the circumstances of the case, the petitioner is entitled to the benefits conferred under rule 25(a) in Chapter III of Part III of the K.S.R., which will hereafter be referred to as Rules. Rule 25(a) reads:

Persons recruited from the Bar after the age of 25 years to appointments in Government service may add to their service qualifying for superannuation pension (but not for any other kind of pension) the actual period not exceeding five years by which their age at the time of recruitment exceeded 25 years provided that no employee can claim the benefit of the rule unless this actual qualifying service at the time he becomes eligible for superannuation pension is not less than eight years. This concession is also subject to the condition that the period that may be so added shall not at any time exceed the actual period of the employees' practice at the Bar.

No application will be entertained for pension or extra pension on the ground that the appointee did not get an opportunity for service for the qualifying period.

The counsel for the petitioner submitted that it is clear from rule 25(a) that the petitioner is entitled to the benefit of getting added to his service qualifying for superannuation pension 5 years of his standing at the Bar. By Government Decision No. 2 (G.O. (P) No. 470/78/Fin. dated 22-5-1978 the Government have interpreted the words "persons recruited from the bar"... it appointments in Government service" to mean that persons who are recruited at the time when they are practising at the Bar to posts requiring law qualification and experience alone will be entitled to the benefits under rule 25 (a). In other words, the benefits under this rule was confined only to officers who satisfy the above requirements.

Rule 25(a) is a statutory rule framed by the Government and it cannot be varied or amended by an executive decision like Government Decision No. 2. An executive decision like the one relied on by the counsel for the Government cannot override or nullify the rights conferred under the rule or reduce the same in any manner. There is no vague expression or words and there is also no ambiguity in the meaning of any of the words used in rule 25(a). This rule is intended to benefit certain persons mentioned therein, provided they satisfy the requirements and conditions mentioned thereunder. To invoke the benefits of this

rule a person must have been recruited from the Bar to appointment in Government service and he must have passed the age of 25 years at the time of such recruitment. There are other conditions also, but there is no condition or stipulation that the person must have been recruited to a post requiring law qualification and experience at the Bar. Rule 25(a) deals with persons recruited from the bar after the age of 25 years to appointments in Government service. A careful reading of the rule discloses that there is nothing in this rule either expressly or impliedly stating or indicating that persons recruited from the Bar to appointments in Government service to posts requiring law qualifications and experience alone will be entitled to the benefit conferred under rule 25(a). In order to secure the benefit of this rule it is not necessary that the post to which a person is recruited from the bar for appointment in government service must be one which requires law qualification and experience. By Government decision No. 2 something which was not there in the rule is read into the rule, thereby restricting the scope of the rule and confining the benefits under the rule only to those persons appointed to the posts requiring law qualification and experience. This is repugnant to and in direct conflict with, what is really stated and meant in rule 25(a). Government decision No. 2 cannot deprive the petitioner of the benefits given under rule 25(a). Therefore, Ext. P3 and P5 which are based on Government decision No. 2 cannot be sustained.

In the result, this Original Petition is allowed, Ext. P3 and P5 are hereby quashed and the respondents are directed to consider afresh the representations made by the petitioner claiming the benefit under rule 25(a) of the K.S.R. in accordance with law and in the light of this judgment and pass appropriate orders. No costs in the circumstances of the case.