**(2001) 11 KL CK 0043**

**In the High Court Of Kerala**

**Case No :** W.A. No. 2825 of 2000 etc.

Krishna Panicker APPELLANT

Vs

State of Kerala RESPONDENT

**Date of Decision :** 22-11-2001

**Acts Referred:**
Kerala Service Rules, 1958 — Rule 60

**Citation :** (2002) 2 ILR (Ker) 576

**Hon'ble Judges :** K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

**Bench :** Division Bench

**Advocate :** Mathai M. Paikaday, K.S. Hariharaputhran, P.J. Joseph, George Mathew, B. Raman Pillai, Aniyan Joseph, George Jacob, K.B. Ganesh, Vakkom N. Vijayan, K.S. Sherimon, P.K. Padmanabhan, N. Ramdas, Aysha Youseff and M.A. Farooq Marickar, for the Appellant; Mohan C. Menon, Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.S. Radhakrishnan, J.—We are in this case called upon to examine the scope and ambit of Rule 60(c) Part I of the Kerala Service Rules which enables a teacher to continue in service till the end of the academic year if his date of superannuation falls during the course of the academic year.

2. Learned Single Judge of this Court referred O.P. No. 9595 of 1997 and other connected cases since divergent views have been expressed by learned Judges of this Court regarding rights of those teachers to claim the benefit of pay revision, increment, higher grade etc. when they continue in service beyond the date of superannuation till the end of the academic year. Learned Single Judge made reference to the decisions in Reghu v. State of Kerala 1992 (2) KLT 69 and Sirajudeen v. Director of Public Instruction 1994 (1) KLT 361 as well as the judgment in O.P. No. 13284 of 1991. In the above decisions learned Judge noted that the Court upheld the right to re-option and also directed Government to grant all monetary benefits including pensionary benefits at the revised pay. In

 

view of the apparent conflict of the views expressed in some of the decisions learned Judge felt that an authoritative pronouncement is necessary. Thus the matter is placed before us.

3. We will first examine the scope of Rule 60(c) of Part I K.S.R., which is extracted below for easy reference.

"60(a). Except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of the Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(aa) ..... (b) ..... (c) The teaching staff of all educational institutions (including Principal 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 falls 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. If they are on leave on the day they attain the age of 55 years and if there is no prospect of their returning to duty before the closing day of the academic year for vacation they shall be retired with effect from the last day of the month in which they attain the age of 55 years. But in cases where officers coming under this rule are under suspension on the date of superannuation or thereafter but before the closing day of the academic year, they shall be retired from service on the date superannuation or on the date of suspension whichever is later.

If, however, the day on which the teaching staff (including Principals of Colleges) attain the age of 55 years falls within the period of one month beginning with the date of reopening of the institutions they shall cease to be on duty with effect from the date of such reopening and they shall be granted additional leave from the date of reopening to the last day of the month in which they attain the age of 55 years. They shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years.

If they are eligible to continue in service till the close of the academic year under the first paragraph of this sub rule they shall be granted additional leave from the date of closing for vacation till the last day of the month when the date of closing is earlier than the last day of the month.

The additional leave granted under this sub-rule will not be counted against the eligible leave and will count for pension. During the period of leave they will draw leave allowance at the same rate as the pay and allowances they would have drawn if they were on duty."

Normal retirement date of a Government employee governed by the Kerala

 

Service Rules is 55 years. He could be retained after the date of superannuation only with the sanction of the Government in public interest which may be recorded in writing. In the case of a teaching staff of educational institutions including Principals of Colleges, those who complete 55 years of age during the course of the academic year shall continue in service till the last day of the month in which the academic year ends. If a member of the teaching staff of the educational institution is to superannuate during the middle of the academic year it would adversely affect the interest of the pupils. It is with that intention, aforementioned provision was enacted.

4. Government had earlier issued G.O. dated 23.1.1967 holding that aided school teachers coming under Chapter XIVB and C of the Kerala Education Rules could continue in service till the last day of the month in which the academic year ended and count the said period for increment and pension. Later Government found that the said order was issued by mistake. A section of Government employees would get the extension of age on superannuation beyond 55 years of age which is not available to other Government employees. Government felt that it was not the intention of the Government to confer this advantage to any category of such employees. Accordingly Government issued G.O. (P) 360/86/ Fin. dated 15.5.1986 stating as follows:

"As per Rule 60 Part I KSR, 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. The intention of the Government was that such continuance beyond the date of superannuation should not confer on them any benefit while it is not available to any other Government servants except the salary for the extended period of service. In the G.O. read above it was ordered that the aided school teachers coming under Chapter XIV-B and C of Kerala Education Rules who continue in service till the last day of the month in which the academic year ends, are allowed to count this period for increments and pension. This was under a wrong notion that as per Kerala Service Rules such extended period will count for increment and pension. But the actual position is that such teaching staff were allowed the benefit of increment during the extended period of service and that too only if the increment during the extended period of service and that too only if the increment falls due before they attain the age of 55. By allowing the extended period for pension, a portion of the Government employees will get the benefit of extension of age of superannuation beyond 55 years of age, which is not available to other Government employees. Government have no intention to confer this advantage to any category of its employees.

In the circumstances Government hereby order that in the case of teaching staff of the Educational Institutions (including Principals of Colleges) who are allowed to continue beyond the age of 55 years till the end of the academic year, their extended service will not count for pension. Past cases will not be re-opened."

 

This Court in W.A. No. 1115 of 1993 held that teaching staff under Rule 60(c) of Part I K.S.R. are continuing in service on the strength of the statutory postponement of date of superannuation and such continuance shall not be treated as extension of service after superannuation. Government however felt claims of those dependents of the teaching staff who die in harness after superannuation may also be considered for employment under the dying in harness scheme. Consequently Government issued G.O. (P) No. 1/98/P&ARD dated 5.1.1998 stating as follows:

"As per Rule 60(c) Kerala Service Rules, Part I, the teaching staff of all educational institutions (including Principals of Colleges), who have completed the age of 55 years during the course of an academic year will continue in service till the last day of the month in which the academic year ends. The Hon''ble High Court had held in W.A.No. 1115 of 1993-A that the teaching staff continuing under Rule 60(c) Kerala Service Rules, Part I are continuing in service on the strength of the statutory postponement of the date of superannuation and such continuance shall not be treated as extension of service or re-employment after superannuation.

On the basis of the above ruling of the High Court, Government are pleased to order that the departments of the teaching staff of all educational institutions (including Principals of Colleges) who on completion of the age of 55 years during the course of an academic year continue in service, under Rule 60(c) Kerala Service Rules, Part I, till the last day of the month in which the academic year ends and who die during the period of such continuance will be eligible for the employment assistance under the Compassionate Employment Scheme."

The aforementioned G.O. has extended concession to dependants of those teaching staff who dies during postponement period of superannuation.

5. Counsel for the petitioners however submitted that extended period of superannuation should be counted for the purpose of pension, increments, pay fixation etc. Counsel submitted the said period also should be treated as qualifying service for the purpose of salary, promotion, increment, pension etc. Learned Government Pleader, on the other hand, contended that date of superannuation is fixed as 55 years as per Rule 60(a) of Part I K.S.R. by which all the Government employees including teaching staff are to retire at the age of 55 years on superannuation. But in the case of teaching staff as per Rule 60(c) concession has been extended to them in public interest postponing date of retirement from service till the end of the academic year provided the teaching staff retires during the midst of the academic year. It is submitted that this period beyond the date of superannuation till the end of the academic year would not be counted for any service benefits. Statue has not conferred any such benefit on those category of teaching staff and consequently no writ of mandamus could be issued for enforcing claim raised by the writ petitioners.

6. We feel that the statutory provision is clear and calls for no interpretation.

 

Rule 60(c) only enables teaching staff of educational institutions to continue in service till the academic year ends. With regard to benefit of increment and promotion it is specifically stated in Rule 60(c) that they shall be entitled to benefits of increments and promotion which fall due before the last day of the month before they attain the age of 55 years. Rule also specifically states they shall not be eligible for increment or promotion during the period of their service beyond such date.

7. We may in this connection point out just like Government school teachers governed by Rule 60(c) Part I Kerala Service Rules aided school teachers are governed by Rule 62 Chapter XIV-A of Kerala Education Rules. They are also governed by Chapter VIII Part I Kerala Service Rules by virtue of Rule 2A of Chapter XIV-C KER. Teachers whether they are Government school teachers or aided school teachers are to be treated alike. G.O. (Ms) No. 360/85/Fin. dated 13.5.1986 was issued to treat whole teaching community alike. The object behind the rule as we have already indicated, is to safeguard interest of students, that is why rule further says that if any of the teaching staff is on leave on the day he attains the age of 55 years and if there is no prospect of his returning to duty before the closing day of the academic year for vacation he shall be retired with effect from the last day of the month in which he attains the age of 55 years. There is also cases where officers coming under this rule are under suspension on the date of superannuation or thereafter but before the closing day of the academic year, they shall be retired from service on the date of superannuation or on the date of suspension whichever is later. Rule is also provided that if however, the day on which the teaching staff (including Principals of Colleges) attain the age of 55 years falls within the period of one month beginning with the day of re-opening of the institutions they shall cease to be on duty with effect from the date of such re-opening and they shall be granted additional leave from the date of re- opening to the last day of the month in which they attain the age of 55 years and they shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years.

8. We may in this connection refer to the decision of this Court in Raghu v. State of Kerala 1992 (2) KLT 69 as well as the decision in Sirajudeen v. Director of Public Instruction 1994 (1) KLT 361 . In those cases this Court was dealing with the scope of Clause (9) of the Government Order granting compassionate appointment under dying in harness scheme. The question that came up for consideration in those cases was whether dependent of a teacher who died in harness during the extended period would get the benefit of employment assistance under the dying in harness scheme. After interpreting the Government Order as well as Rule 60(c) this Court took the view that they are entitled to. Single Judge of this Court in 1996 (1) KLT 3 permitted the teacher to exercise re-option for the grant of monetary benefits during the extended period of service. For the purpose of claiming benefit under the dying in harness scheme as well as for purpose of re-option and also for making application for correction of date of

 

birth in the service records during the extended period of service under Rule 60(c) this court took the view that those applications are entertainable. One of the decisions referred to above has considered the scope and ambit of Rule 60(c) and held that the extended period has to be reckoned for the purpose of pension and other statutory benefits. Some of the observations in the judgment, we are of the view, cannot be treated as binding precedents as to the interpretation of Rule 60(c) of Part I K.S.R.

9. We are of the view that if the interpretation given by the Writ Petitioners is accepted there will be two sets of Government employees and teaching staff of institutions that is, those who retire from service beyond 55 years and those who retire at the age of 55 years and that will be arbitrary. The Government employees and teaching staff of educational institutions governed by the Kerala Service Rules will have to retire at the age of 55 years. There cannot be another set of Government employees or teaching staff of institutions who retire beyond 55 years of age. The period of postponing superannuation is only in public interest and not with the intention to extend the period of superannuation.

10. We hold that during the extended period the teachers can claim only salary and they cannot claim increment, the benefit of pay revision, higher grade, promotion leave other than casual leave. The period also will not count for pension. Of course it is open to Government to pass appropriate orders on compassionate ground just like extending the benefit to dependents of those persons who die in harness. We may also indicate in this connection, Government has already incorporated Ruling 3 under Rule 60(c) Part I K.S.R. vide G.O.(P) 1552/2000/Fin. dated 15.12.2000 which reads as follows:

"The extended period of service beyond the date of superannuation of the teaching staff, covered by Rule 60(c) Part I of KSRs shall not be reckoned as qualifying service for pension and also the benefit of pay revision effective from the date after the date of superannuation shall not be allowed".

Government have re-emphasised the said position by incorporating ruling No. 3. Rule has been incorporated in public interest and to safeguard the interest of students that is not to disrupt the studies till the end of academic year. We therefore hold that writ petitioners are not entitled to get the benefit of pay revision, increments and higher grade or to reckon the said period for pensionary benefits. It is so declared.

11. We dismiss all the Writ Petitions. We therefore allow W.A. No. 142 of filed by the State. W.A.No. 2825 of 2000 and other O.Ps. will stand dismissed.