
(2000) 09 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 6846 of 2000 M

Krishna Panicker, N.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Kerala Service Rules, 1958 — Rule 60

Citation : (2000) 2 KLJ 608

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : K.S. Hariharaputhran, M.D. Sasikumar, P.J. Joseph and George Mathew, for the Appellant; T.P. Sajan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G. Sasidharan, J.—The retirement of a Government servant takes effect from the afternoon of the last day of the month in which he attains the age of 55 years. Teaching staff of all educational institutions who complete the age of 55 years during the course of an academic year will be allowed to continue in service till the last day of the month in which the academic year ends. The pension payable to a retired Government servant is calculated on the basis of the average emoluments for the last ten months of qualifying service. The question which arises for consideration here is whether a teacher who is allowed to continue in service till the last day of the month in which the academic year ends is entitled to get pension on the basis of the average emoluments calculated by taking into account the revision of pay of the Government employees made in between the last day of the month in which he attains the age of 55 years and the last day of the month in which the academic year ends.

2. The Petitioner claims that the average emoluments for the last ten months will be the average of the pay of ten months treating his date of retirement as the last day of the month in which the academic year ends. Pension of the Petitioner was fixed by the authorities without giving the benefit of pay revision for the

reason that pay revision was given effect only after the last day of the month in which he attained the age of 55 years. The Petitioner had qualifying service of 30 years and as per Ext. P-3 order an amount of Rs. 974 was fixed as pension. According to the Petitioner, he is entitled to get an amount of Rs. 1545 as pension. The contention raised by the Respondents is that there is no provision in the rule to count the pay of an employee beyond the month of superannuation for service benefits and hence average emoluments for ten months prior to 31st July 1988 was taken as the basis for sanction of pension.

3. In *Mary v. Commissioner for Govt. Examinations* 1991 (2) KLT 132 a two Judge Bench of this Court held that the expression "date of retirement" cannot be taken to mean the date on which an officer completes 55 years or even the last day of the month in which the officer completes 35 years if he is allowed to continue, till the last day of the month in which "the academic year ends. That was a case in which an application for correction of date of birth was given by a teacher and the application was rejected on the ground that it was not given two years before the date of retirement. Two years prior to which application for correction of date of birth had to be filed was taken as the two years prior to the last day of the month in which the "teacher completed 55 years of age. The Division Bench of this Court in the above decision held that in so far as teaching staff of an educational institution is concerned, he retires, except in exceptional cases, on the 31st of March being the last day of the academic year. Such a decision was taken by the Division Bench for the reason that Government orders in respect of correction of date of birth used the expression "date of retirement" and for that purpose date of retirement cannot be taken to be the date on which the officer completes 55 years or even the last day of the month in which the officer completes 55 years. In that decision, the question whether a teacher who can continue in service by virtue of Rule 60(c) Part I of the Kerala Service Rules therein after referred to as "the Rules") till the last day of the month in which the academic year ends is entitled to get increments or benefits of pay revision during that period was not considered.

4. In deciding whether a teacher who continues in service even after the last day of the month in which he completes 55 years is entitled to get the pension fixed by taking into account the pay revision which was given effect during the period he is entitled to be in service by virtue of Rule 60(c) of the rules, the provisions in that regard available in the rules have to be taken into account. The general rule is that a Government servant will have to retire on the last day of the month in which he attains the age of 55 years. What Rule 60(c) of the rules says is that the teaching staff of all educational institutions 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. A teacher who completes the age of 55 years on a day in the last month of the academic year will have to retire as per the general rule on the last day of the month in which he attains the age of 55 years. Clause (c) of Rule 60 of the rules has to be understood as a provision which allows continuance of service of a teacher till the last day of the month in

which the academic year ends even though as per the general rule he is to retire on the last day of the month in which he attains the age of 55 years.

5. There is clear provision in Rule 60(c) of the rules which says that the teaching staff of the educational institutions who are allowed to continue in service till the last day of the month in which the academic year ends are not eligible for increment or promotion during the period of their service beyond such date. That is a clear provision which would indicate that even though a teacher is allowed to continue in service even after the last day of the month in which he completes 55 years, he should not be given the benefit of getting increment on completing one year from the date of last increment and also promotion during the period he is allowed to continue in service. Giving effect to pay revision necessarily involves granting of increment. Granting of increment during the period a teacher is allowed to continue even after the last day of the month in which he completes 55 years is clearly prohibited as per Rule 60(c) of the rules. For that reason also, it can be said that the Petitioner is not entitled to get pension by taking into account the average emoluments for ten months including the period during which he was allowed to continue in service by virtue of Clause (c) of Rule 60 of the rules. There is nothing to show that the order by which the pension of the Petitioner was granted is against the provisions of the Kerala Service Rules.

The Original Petition is accordingly dismissed.