

(2009) 10 KL CK 0121

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12892 of 2009

Kunjachan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 166

Citation : (2009) 4 KLT 648

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : P. Jacob Varghese, Sajan Mannali, Sebastian Champapally, P.J. Vivek Varghese, P.J. Vinod Joseph and Varughese M. Easo, for the Appellant; Manoj Kumar, Spl. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Giri, J.—Common issues have been raised in these Writ Petitions. Therefore, they have been heard together and are being disposed of by this common judgment. I will refer to the facts in W.P.(C)No. 12892/09 in the first instance. The discussion therein will govern the other Writ Petitions as well.

W.P.(C) No. 12892/09

2. The petitioners are Government Servants, working as Section Officer in the General Administration Department and Selection Grade Assistant in the Industries Department, respectively. The 1st petitioner was promoted as the Section Officer on 5.11.2005 and was conferred Higher Grade on 10.5.2007. He was expecting a promotion as an Under Secretary in August, 2009. The second petitioner, is working as Selection Grade Assistant. He was expecting promotion as Section Officer during August, 2009. The petitioners were to retire on 30.11.2009 on attaining the age of 55 years. It is, therefore, that they were expecting promotion, on the eve of their retirement, which they contend, they would have normally obtained. But, their chances of promotion were seriously

affected by a decision taken by the Government to unify the date of retirement of Government servants. By Ext.P3 Government order dated 24.4.2009, the Government ordered that all Government employees and teachers, who attain the age of 55 years during the course of the financial year, will continue in service till the end of the said financial year, that the date of retirement of employees and teachers will be 31st March. It was further provided that the extended period of service of Government employees and teachers will be reckoned for all service benefits such as pay revision, D. A. revision, increment, higher grade, promotion, accrual of leave and for pensionary benefits. Ext.P3 was later followed by S.R.O. No. 582/09 (Ext.P5) amending Rule 60 of Part I of the Kerala Service Rules, which, as it stands now, reads as follows:

Amendment of the Rules: In Part I of the Kerala Service Rules, in Rule 60--(i) for Sub-rule (a), the following shall be substituted, namely:

(a) Except as otherwise provided in these rules the date of compulsory retirement of employees and teachers shall take effect from the afternoon of the last day of the financial year in which they attain the age of 55 years. They may be retained after this date only with the sanction of Government on public grounds which must be recorded in writing, but they must not be retained after the age of 60 years except in very special circumstances;

Note: The extended period of service under Sub-rule (a) shall be reckoned for all service benefits such as increment, pension, higher grade, accrual of leave, promotion and pay revision.

3. The petitioners contend that the reasons put forth by the Government for unifying the date of retirement of employees and teachers are neither tenable nor sustainable.

4. Going by Ext.P3, the age of retirement of employees and teachers have been uniformly extended till the last date of the financial year and the date has been unified in the interest of efficiency of administration. The petitioners contend that this reason is not valid, since there is no way that the efficiency of administration as a whole would be improved or toned up by reason of the fact that the age of retirement is on the 31st March, i.e. end of the financial year. In fact, it would only cause detriment to the efficiency of the administration, contend the petitioners.

5. It is further contended by them that there are several persons amongst the Government servants, who would not derive any significant benefit by reason of the unification of the date of retirement e.g., there are several persons, who attain the age of 55 years during March. They would get extension of service only for a few days. But there are Government servants, whose date of birth would fall in April of the year. They will get extension of 11 months by reason of the impugned amendment. The petitioners contend that assuming that the unification of the date of retirement was necessary, for some reason otherwise felt by the Government, the Government should have also ensured that the

services rendered by the incumbent, beyond the date on which he attains the age of retirement, should not be reckoned for the purpose of promotion and in fact a vacancy must be deemed to have arisen on the date on which the incumbent attains the age of 55. It is contended that, otherwise the promotion prospects of several persons, like the petitioners, are completely extinguished. This, they contend, is the result brought about by the impugned amendment and therefore, the Rule is arbitrary and violative of Article 14 of the Constitution.

6. A counter affidavit has been filed by the Government and they point out that unification of the date of retirement of Government servants to coincide with the end of the financial year is essentially to tone up the efficiency. Once the date of retirement of Government servants is unified as the last date of the financial year during which the incumbent attains the age of 55 years, it will enable the Government to take such steps as are necessary with the knowledge that the vacancies in every department of the Government arise on the 1st of April of the concerned year. Promotions could be effected with certainty. Steps could be taken to see that pension papers and other papers relating to retirement benefits are processed without much delay. All these, it is contended, would have an effect of improving the efficiency of administration.

7. It is further contended that the amendment to the Rule is within the rule making power of the Government. There are very limited grounds available for a court, on judicial review, while examining the validity of a subordinate rule. The rule is not unconstitutional. It does not violate any plenary statute. It is not ultra vires. There are no grounds to declare the rule as invalid, it is contended.

8. I heard Mr. Jacob Varghese, Senior Counsel, Mr. Sajan Mannali and Dr. Sebastian Champapally, Counsel for the petitioners and Mr. Manoj Kumar, learned Special Government Pleader.

9. Learned Counsel for the petitioners contend that the reason given by the Government for bringing in the impugned statutory amendment is not only misconceived, but is also not correct. They contend that it is inconceivable to postulate a situation where efficiency of administration is improved merely because of the unification of the date of retirement. It is pointed out that this could result only in a situation where several senior personnel in any given department retire, thereby leaving a vacuum in the top administrative posts in any department. Apparently, the intention of the Government, according to them is only to purchase time and thereby avoid payment of retirement benefits to a large number of employees who retire during the current financial year.

10. Learned Government Pleader refutes this submission. He points out that the impugned rule brings about a certainty in the date of retirement of Government employees. The Government, as an administrative machinery, is in a position to plan its affairs well ahead of the commencement of the financial year. It can see that the select lists/rank lists are prepared well ahead of the financial year. It can provide for appointments and promotions with effect from the commencement of

the financial year. All these steps taken well in advance from the commencement of the financial year will improve the morale of the Government servants and tone up the administrative efficiency, it is contended.

11. I am not in a position to find that the reasons given by the Government in Ext.P3 Government Order and reiterated in the counter affidavit, for bringing about the amendment are as misconceived and untenable. There are definitely foreseeable positive reasons in unifying the date of retirement. It could definitely tone up the administrative efficiency in any organisation, if the date on which the vacancies arise are certain and if the Government is in a position to bring in the unification of the date on which the vacancies in different posts in different departments arise, they obtain sufficient time to plan for filling up those vacancies with the appropriate person. It would also help the Government to plan its budgetary allocations and also discipline and streamline the mobilisation of resources. Processing of the retirement papers of the Government servants who retire in the course of the financial year is also a matter that generally take up considerable time of several persons in different departments in the Government. Uniformity regarding the date of retirement of personnel would definitely go a long way in speeding up the processing of retirement papers of persons who retire during the course of the financial year. There could be myriad reasons which would indicate advantages to be derived from the unification of the retirement. No doubt, there can be reasons which might indicate the contra, as contended by the petitioner. But, the reasons put forth by the Government as justification for unification of the date of retirement of Government Servants as to coincide with the end of the financial year are not either unsustainable or misconceived.

12. Learned Counsel for the petitioners submit that the impugned rule is arbitrary, inasmuch as that it results in an unreasonable classification of Government servants. It is contended that several Government servants, whose date of birth would fall in March or in February of any year, would hardly get any benefit by reason of the date of retirement being extended to the end of the financial year. On the other hand, there are several other persons, whose date of birth fall in April, who would derive the benefit of an extension of service by 11 months. It is contended that the impugned rule results in unreasonable classification of Government servants, who are similarly situated. This has no nexus with the object sought to be achieved. It is further contended that the purpose as mooted by the Government could even very well be served by the enhancement of the age of retirement.

13. I am not impressed with the submission regarding violation of Article 14 of the Constitution. The rule only unifies the age of retirement of Government servants. The implementation of the rule cannot have the effect of bringing about an unreasonable classification of Government servants. The fact that some of them, whose date of birth fall in April in any year might derive a benefit of a fortuitous circumstance by which they get an extension of almost 11 months is

only one of the consequences of the rule. But, that does not mean that the amendment to the rule is unsustainable and the operation of the rule is to be prevented. The consequences would vary depending upon the fortuitous event of the date of birth of a person. The contention rested on Article 14 of the Constitution, in my view, is misconceived.

14. For the same reasons, I really do not feel that the decisions cited by the learned Counsel for the petitioners in *D. Subba Raju and Ors. v. State of A.P.* (1985) 1 SCC 524 and *Gattu Lal Vs. Gulab Singh and Another*, have any application to be facts of this case. The first among the decisions dealt with the constitutional validity of an Ordinance promulgated in Andhra Pradesh abridging the date of retirement of Government Servants from 55 to 58. The Supreme Court upheld the validity of the orders. The second decision was practically a sequel to the earlier one. The Government of Andhra Pradesh, after having reduced the retirement age from 58 to 55, responded to a huge public outcry and thereafter brought about a plenary legislation providing for enhancing the retirement age from 55 to 58. It also provided for the reinstatement of certain Government servants, who had attained the age of 55 by the date mentioned in the legislation, but at the same time did not give the benefit to the Government employees, who had attained the age of 55 years beyond the prescribed date. While upholding the contention of the Government that it was entitled to enhance the retirement age from 55 to 58, the Supreme Court held that once the Government decided that those persons, who had crossed the age of 55 and therefore, retired from service, were entitled to reinstatement and to continue till the age of 58 years, then the benefit ought to be granted to all the Government servants, who were affected by the reduction of the age of retirement from 58 to 55 as a consequence of the earlier Ordinance. It is in this context that the Supreme Court upheld the contention of the petitioners regarding violation of Article 14 of the Constitution. Obviously, the principles laid down therein have no application to the present case. The rule operates as a uniform and even measure as regards all the Government servants. The fact that some of them might get a longer extended period of service is purely fortuitous over which nobody can really have any grievance.

15. Learned Counsel for the petitioners have referred to the note file leading to Ext. P3 Government order to contend for the position that serious objections, which were raised at various stages and levels in the Government against unification of the date of retirement, have really not been considered by the highest decision making authority in the Government. It is contended that the financial crisis which the Government may face in March and April of the ensuing year, by reason of a bulk of employees retiring from service and the possible liquidated crunch has not been taken into account. The denial of opportunity to a considerable number of Government servants from securing a promotion which otherwise they could have legitimately aspired for by reason of the extension of the service derived by their seniors in service have also not been taken note of. It is contended that the decision taken by the Government was therefore,

vitiated by a non-application of mind.

16. I have been taken through the note file. It is to be noted that objections were raised, as stated above, at different levels. But ultimately, the decision of unification of the date of retirement was taken by the Council of Ministers and the Council had approved the draft order that was put up. In such circumstances, it is only reasonable to presume that the Council of Ministers, who had been constitutionally conferred with the authority of taking such decisions, would have taken note of the objections also. The decision taken by the Council of Ministers need not be laced with the reasoning, and deliberations, dealing as it were the different points of view advanced by the officials at different levels of the Government as a prelude to the papers being placed before the Council of Ministers. What is relevant and what will have to be looked into for the purpose of judicial review is only the constitutionality and the validity of the decision taken by the Government.

17. Learned Counsel for the petitioners then contended that as per the Rules of Business of the Government of Kerala, framed under Article 166 of the Constitution, an amendment to any statutory rule will require a specific approval by the Law Department. Reference is made to Rule 58 in Part C of the Rules of Business, which reads as follows:

58. Whenever it is proposed in any department other than the Law Department:

(i) to issue a statutory rule, modification or order; or

(ii) to sanction under a statutory power, the issue of any rule, bye-law, notification or order by a subordinate authority; or

(iii) to submit to the Central Government any draft, statutory rule notification or order for issue by them, the draft shall be referred to the Law Department for opinion and for revision where necessary.

18. I am of the view that Rule 58 of the Rules of Business may not really have any application to the present case. True, there has been an amendment to a statutory rule and therefore, the opinion of the Law Department was required. But, in the present case, the amendment to Rule 60 of Part I of the Kerala Service Rules was only a measure of giving statutory recognition to a very deliberate decision taken by the Council of Ministers itself. Obviously, the decision, to unify the date of retirement of Government servants, taken by the Council of Ministers, would not again require a further reference to the Law Department, for compliance with Rule 58 of the Rules of Business as such. After all, it is a case where the decision is taken by the highest decision making body in the hierarchy of authorities constituting the Government. The amendment brought about to Rule 60 of Part I Kerala Service Rules, as stated above, was only a consequence of such decision taken by the Council of Ministers. An infraction of Rule 58 of the Rules of Business is not really called for or made out.

19. Further, what is impugned in the present case is a statutory rule and an

alleged deviation from the procedure provided under the Rules of Business as such, will not by itself have the effect of invalidating the Rule. The same could be invalidated only on specific grounds that have been delineated by the Supreme Court in several decisions and followed by this Court also. Reference need be made in this regard to *Pankajakshy v. George Mathew* 1987(2) KLT 723, *State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others*, , *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, , *Mixnam's Properties Ltd. v. Chertsey Urban District Council* 1964 (1) Q.B. 214 and *Indian Express case* AIR 1986 SC 515 and *State of Kerala v. Gopalakrishna Pillai* 2009(2) KLT 39. The principles have been succinctly and eloquently stated by a Bench of this Court in *Pankajakshy* 1987(2) KLT 723. Para. 12 of the said decision reads as follows:

Thus, the rule made under a statute by an authority delegated for the purpose can be challenged on the ground (1) that is ultra vires of the Act; (2) it is opposed to the Fundamental rights; (3) it is opposed to other plenary laws. To ascertain whether a rule is ultra vires of the Act, the Court can go into the question (a) whether it contravenes expressly or impliedly any of the provisions of the statute; (b) whether it achieves the intent and object of the Act; and (c) whether it is "unreasonable" to be manifestly arbitrary, unjust or partial implying thereby want of authority to make such rules.

20. Bearing in mind the aforementioned principles, it does not involve an elaborate process of ratiocination to come to the conclusion that the rule as such does not suffer from any infirmity. Obviously, the amendment to Rule 60(c) of Part I of the Kerala Service Rules will have to be sourced to the Public Services Act. Therefore, the rule is not ultra vires the power of the State Government. The Rule does not violate any other provision contained in any plenary law. There is no such contention as well. Thirdly, the rule does not violate any constitutional provision. In fact, the contention of the petitioners is that the rule results in an unreasonable classification amongst the Government servants and consequently, the same is violative of Article 14 of the Constitution. I have dealt with this contention in the earlier portion of the judgment. The contention regarding violation of Article 14 of the Constitution is only to be rejected.

21. I am, therefore, in agreement with the contention raised by the learned Government Pleader that going by the limited grounds available to consider the validity or otherwise of the subordinate Rule in judicial review, this Court would not be in a position to declare the rule as invalid or unconstitutional.

22. It is also apposite to refer to the dictum laid down by the Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, reiterating the well known principles relating to judicial review of policy decision taken by the Government. The Supreme Court held in para. 14 as follows:

The approach made by the High Court was not correct or proper because the

question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate as to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the case may be, body entrusted with the task of framing the rules or regulations, acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

23. Having undertaken a detailed appreciation of the contentions of the petitioners as also the Government Pleader, I consider it appropriate to encapsulate my conclusions as hereunder:

(1) The reasons put forth by the Government for unifying the date of retirement of all Government Servants, as the justification for amendment of Rule 60 of Part I of the Kerala Service Rules cannot be considered as untenable or misconceived.

(2) The wisdom behind the policy adopted by the Government for unifying the date of retirement of the Government servants and thereafter providing for statutory backing for the same by amending Rule 60(c) of Part I, is not open for judicial review. It is up to the Government to make a statutory rule in this regard by providing for a unified date of retirement.

(3) The impugned amendment to Rule 60 of Part I Kerala Service Rules providing for a unified date of retirement is not illegal or unconstitutional.

For all these reasons, I am of the view that the Writ Petitions are bereft of merit and accordingly, the same are dismissed.