

(1997) 09 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 2604/97 I

Madhusudhanan Pillai

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Constitution of India, 1950 — Article 25(2), 26
Kerala Service Rules, 1959 — Rule 12(16A) , 60
Kerala State and Subordinate Services Rules, 1958 — Rule 27

Citation : (1998) 1 KLJ 187

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : B. Krishna Mani, for the Appellant; M.S. Radhakrishnan, Government Pleader, for the Respondent

Judgement

K.G. Balakrishnan, J.—The Petitioner was selected by the Public Service Commission for appointment as Peon in the Kerala Last Grade Service. He joined on 29th May 1970 as a full time Peon in the Agricultural Income Tax and Sales Tax Department. His appointment order was issued pursuant to an advice given by the Public Service Commission on 21st February 1970. Petitioner contends that in view of Rule 60(b) of Part I of the Kerala Service Rules, he is entitled to continue in service upto 60 years. The Petitioner alleges that as he was advised by the P.S.C. on 21st February 1970, it must be deemed that he was in service from that date onwards. The Petitioner filed the Original Petition for a writ of mandamus or any other writ, direction or order directing the Respondents to grant him the benefit of Rule 60(b) of Part I of the K.S.R.

2. We heard the Petitioner's Counsel and the learned Government Pleader. The Petitioner's Counsel elaborately argued and contended that Rule 60(b) of Part I of the K.S.R. to be read along with section 27(c) of the Kerala State and Subordinate Service Rules, 1958 and if a harmonious interpretation of the two provisions is made, it will lead to the conclusion that the Petitioner can deemed to be in service from 21st February 1970 and thus the Petitioner is entitled to the

benefit of Rule 60(b) of Part I of the K.S.R. The relevant portion of Rule 60(b) of Part I of the K.S.R. reads as follows:

Officers in the Last Grade Service on 7th April, 1970 will retire on the afternoon of last day of the month in which they attain the age of 60 years provided that this benefit will be available to them only as long as they continue to be in the Last Grade Service as defined in Rule 12(16-A).

The normal retirement of the Government servant is on the last day of the month on which he attains the age of 55 years. Rule 60(b) of Part I of K.S.R. an exception to the general Rule and the same is applicable only to those Government servants who are in the last grade service as 7th April 1970. The only condition attached to this Rule is they shall be continued to be in service as last grade servants even at the time of their retirement. From a plain reading of Rule 60(b) of Part I of K.S.R. it is clear that in order to avail this benefit the officer must be in the last grade service as on 7th April 1970. The "Last Grade Service" has been defined as service in any post included in the Kerala Last Grade Service. Admittedly the Petitioner was appointed as a last grade servant and continued to be in the last grade service. But the Petitioner was not in service as on 7th April 1970, as he joined service only on 29th May 1970 pursuant to the appointment order issued to him on 28th May 1970.

3. The contention of the Petitioner is that in view of Rule 27(c) of the K.S. and S.S.R., the Petitioner's service shall be counted from 28th February 1970 the date on which the P.S.C issued the advice memo to the Petitioner. Rule 27(c) of the K.S. and S.S.R. deals with seniority. Rule 27(a) says that seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category or grade. Rule 27(c) of the K.S. and S.S.R. reads as follows:

Notwithstanding anything contained in clauses (a) and (b) above the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list.

(emphasis supplied)

Prior to the inclusion of Rule 27(c), the seniority was being determined on the basis of the date of joining service. This created a series of disputes and those who obtained the appointment order to join duty in nearby places had an advantage over others who got appointment order to join the post in a distant place. This was explained in the decision of a Division Bench of this Court in *Haridasan v. State of Kerala* 1987 (2) KLT 466.

The purpose of Rule 27(c) is to equate the date of advice for appointment made by the Public Service Commission to the actual date of appointment prescribed in Rule 27(a). When, therefore, seniority has to be fixed in any service, class or grade and there are persons appointed on the advice of the Public Service Commission and also persons not so advised, seniority has to be fixed with reference to the date of advice of the former and the date of appointment of the latter. The date of advice is treated as the date of appointment for purposes of seniority. This in substance is the effect of Rule 27(a) and (c).

4. The contention of the Petitioner's Counsel is that rule 27(c) of the K.S. and S.S.R. and Rule 60(b) of the K.S.R. are to be interpreted in a harmonious way so as to confer the benefit of Rule 60(b) to the Petitioner. First of all there is no contradiction between Rule 60(b) of Part I of K.S.R. and Rule 27(c) of the K.S. and S.S.R. Both these Rules are operating in different areas. Rule 27(c) of the K.S. and S.S.R. does not say that from the date of advice by the P.S.C. the officer would be deemed in service. Rule 27(c) of the K.S. and S.S.R. could be used only for the purpose of determining the seniority of an officer vis-a-vis the candidate included in the same list and advised by the P.S.C. The question of harmonious interpretation arises only when the provision contained in the two statutes give rise to a mutually contradictory view and a question of reconciliation arises. Learned Counsel for the Petitioner made reference to a series of decisions of the Supreme Court to contend for the position that the harmonious interpretation is to be resorted to when there is a conflict between the two provisions in a statute.

5. In *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, it was held that:

When there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the Rule of harmonious construction.

It was held that the right conferred under Article 25(2)(b) to enter into a temple for the purpose of worship has to be reconciled with the right conferred under Article 26(b) of the Constitution. It was also held that the exclusive right of the members of the community to worship for all the time must necessarily be subject to some limitations or regulations and that such limitation or regulation must arise in the process of harmonising the right conferred by Article 25(2)(b). It was held in *Chandra Mohan v. State of U.P.* AIR 1966 S.C. 1987 that:

The fundamental Rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of parliament, namely, that the Court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, if, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law

nugatory.

Reference was also made to the decision of the Supreme Court in Directorate of Enforcement Vs. Deepak Mahajan and another, . It was held that:

It is permissible for Courts to have fundamental approaches and look into the legislative intention and sometimes may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

Based on the above observations made by the Supreme Court, learned Counsel for the Petitioner contended that if a literal interpretation is given to Rule 60(b) of Part I of K.S.R., it will lead to an absurd situation that a person who got appointment order one or two days prior to 7th April 1970 would be able to join duty before 7th April 1970 and the persons who got appointment to join duty at a distant place would not be in a position to join on that date and such persons would be disentitled to avail the benefit of Rule 60(b) of Part I of K.S.R. We are not inclined to accept this contention. The Rule says that those who are in service as last grade servants as on 7th April 1970 alone would be entitled to get the benefit of continuance in service upto 60 years. This Rule does not give rise to any absurd situation and the intent and object of the section is very clear and does not give rise to any ambiguity. When there is no ambiguity, the Court cannot read into the statute something else and give a different meaning. We are unable to agree with the contentions raised by the Petitioner's Counsel that Rule 27(c) of the K.S. and S.S.R. should be applied and the Petitioner must be deemed to have in service right from 28th February 1970 the date on which the P.S.C. issued the advice memo to him.

6. As the Petitioner was not in service on 7th April 1970 as last grade servant, he is certainly not entitled to continue in service upto 60 years. The reliefs prayed for in the Original Petition cannot be allowed.

7. Learned Counsel for the Petitioner submitted that the Petitioner completed 55 years in the month of August, 1997 and he ought to have retired from service on 31st August 1997. Learned Single Judge, who referred the matter to the Division Bench, granted an interim stay of termination of services of the Petitioner for a period of one month and on the strength of the interim order, the Petitioner must have continued in service upto 25th September 1997. Therefore, we direct that Petitioner be paid salary allowances for this period within a period of 15 days, if not already paid.

Original Petition is disposed of accordingly.