

(1979) 06 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 2997 of 1975

M.K. Devassy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Public service Commission (Composition and Conditions of Service of Members and Staff) Regulations, 1957 — Regulation 7

Citation : (1979) 06 KL CK 0015

Hon'ble Judges : R.Bhaskaran, J;George Abraham Vadakkal, J

Bench : Division Bench

Advocate : M. Ramachandran, C.J. Balakrishna, U.K. Ramakrishna and P. Vijayamma, for the Appellant; C.S. Rajan, Government Pleader, for the Respondent

Judgement

Bhaskaran, J.—The Petitioner is a retired I.A.S. Officer. It was while he was the Home Secretary of the Government of Kerala that he was appointed Chairman of the Kerala Public Service Commission on 29th March 1967. He retired from the Public Service Commission on superannuation on 26th August 1972.

2. What calls for consideration in this writ petition is the scope of the proviso to Regulation 7 of the Kerala Public service Commission (Composition and Conditions of Service of Members and Staff) Regulations, 1957, hereinafter called the Regulations. Regulation 7 of the Regulations reads as follows:

7. No pension will ordinarily be attached to the office of Member as such, but in the case of a Member who, on the date of his appointment was in the service of the Government, service and salary as member (until he retires from such Government Service) shall count for pension under the rules applicable to the service to which such Member belonged:

Provided that the limitation, if any, regarding the maximum amount of pension specified in such rules shall have no application in fixing the pension of a Member

under this regulation.

3. In terms of the All India Services (Death-cum -- Retirement Benefits) Rules, 1958, hereinafter called the Rules, the maximum pension that was admissible in the case of an I.A.S. Officer during the material time was Rs. 8,100 per annum which works out at Rs. 675 per month. The Petitioner's case was that he was entitled to receive pension at the rate of Rs. 966 per month, he having been in the service of the Government on the date on which he was appointed a Member (Chairman) of the Kerala Public Service Commission, and as such he was entitled to the benefit of Regulation 7, including the proviso thereto.

4. The stand taken by the Respondent, the State of Kerala, in Ext.P-2 reply, dated 24th July 1974 to the Petitioner's notice Ext.P-1, dated 28th January 1974 was that the Petitioner at the time of his appointment to the office of Chairman, Public Service Commission, belonged to the All India Service, and as such Regulations 7A to 7C alone were applicable to him. It is also stated therein that Regulation 7 of the Regulations pertained only to the pension payable to Members of the Public Service Commission who, at the time of their appointment, belonged to the service of the State. Aggrieved by the decision of the Respondent, as communicated in Ext.P-2, the Petitioner has filed this writ petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorari quashing Ext.P-2 and a writ of mandamus directing the Respondent to fix his pension without applying the limitation regarding the maximum pension specified in the Rules and disburse it with the arrears due after adjusting the amount commuted.

5. On a careful examination of the provisions contained in Regulation 7 we find it difficult to accept the construction sought to be placed by the Respondent. The expression "a Member who, on the date of his appointment was in the service of the Government" used in Regulation 7 must carry with it the ordinary meaning attached to it without restricting it to mean the service of any particular Government. The term "Government" is not seen to have been defined in Regulation 2 of the Regulations. If it was the intention of the State to restrict the ambit of the expression to "a Member who was in the service of the Government of Kerala" that position would have been made clear in Regulation 7 itself. There is no bar against officers who were in the All India Service or in the service of any other State Government being appointed Member of the Public Service Commission. That being the position, if as a matter of fact the intention of the State was to exclude all categories of officers other than those in the service of the Kerala Government from the purview of Regulation 7, that would have been incorporated in that Regulation itself expressly, or at least by necessary implication. In, our view, the benefit conferred by Regulation 7, would be available not only to officers in the service of the State Government at the time of their appointment to the office of Member of the Public Service Commission, but also to those who were in the All India Service at the time of such appointment, and would even extend to those who were in the service of the

Government of other States at the time of such appointment. This position is clear from the use of the expression "under the rules applicable to the service to which such Member belonged". The Governor, therefore, while making Regulation 7, must have had in mind more than one service to which the officers concerned could have belonged. Otherwise, there was no need to use the expression "under the rules applicable to the service to which such Member belonged". On a proper consideration it could also be found that the provisions of Regulations 7A to 7C on the one hand and the provisions of Regulation 7 on the other, are not mutually exclusive.

6. The Respondent appears to have reconciled to the position that if Regulation 7 is applicable to a Member who was, at the time of his appointment to the office of Member of the Public Service Commission, in the service of the Government other than that of the State of Kerala, the proviso to that Regulation also would be applicable to such an officer. Our view, as mentioned above, being that the Regulation is applicable also to members who, at the time of their appointment, were in the All India Service, it goes without saying that by virtue of the proviso to the Regulation the officer concerned is entitled to his pension in terms of the Regulation, unaffected by the ceiling fixed in and by the Rules.

7. For the foregoing reasons we quash Ext. P-2 communication of the Respondent, and direct the Respondent to fix the Petitioner's pension in accordance with Regulation 7 of the Regulations and in the light of the observations contained in this judgment, and to disburse the arrears due to the Petitioner after making necessary adjustments. The writ petition is disposed of as above. There will be no order as to costs.