

(1978) 02 KL CK 0028
In the High Court Of Kerala

Mrs. Aley Joseph

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 24-02-1978

Acts Referred:

Kerala Education Rules, 1959 — Rule 8

Citation : (1978) 2 LLJ 214

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Judgement

N.D. Namboodiripad, J.—The petitioner is working as junior lecturer in Chemistry in St. Xavier's College for Women, Alwaye. That is a private college affiliated to the University of Kerala. When the Kerala University First Statute came into force, the petitioner sent Ext.P1, the contents of which may be extracted :

I, Mrs. Aley Joseph hereby opt for the age of retirement of 60 years and thus to be governed by the provisions of Chapter III of the First Statutes on pension prescribed under the Kerala University Act, 1974 (17 of 1974).

The option is dated 24-6-1976. The petitioner did not get any reply regarding Ext.P1. She was later on served with Ext.P2 order dated 23-4-1977 through the Principal of the College, who is the 4th respondent in this petition, whereby she was informed that her retention in service after 1-4-1976 was irregular, and that action may be taken to realise the excess salary (gross) paid to her for the period from 4/16. It is further pointed out that no retirement benefit such as pension, gratuity, Provident Fund, etc. or arrears of salary for the period prior to 1-4-1976 can be paid to the petitioner unless the excess gross salary is realised and remitted first and chalan forwarded to the office of the third respondent. This original petition is to quash Ext.P2 order on the ground that it is illegal and does not apply to the case of the petitioner.

2. The operative portion of Ext.P2 reads as follows :

Shri P. T. Simon, Shri K. M. Alayse and Smt. Aley Joseph do not have continuous

college service in Kerala from 1-4-1958 or from earlier dates. Therefore, as per orders received from the higher authorities, they are not eligible to opt Chapter III or to join the C.P.F. Immediate action may be taken to get Shri P. T. Simon and Shri K. M. Alayse admitted to the Non-contributory P.F. Smt. Aley Joseph whose date of birth is 3-12-1917 and who has service from 7-6-1965 only should have been relieved from service with effect from 1-4-1976 F.N. Under Rule 4 of the First Statutes, 1976. She has been retained irregularly from 1-4-1976 onwards. She may be relieved immediately and fact reported. Action may also be taken to realise the excess salary (gross) paid to her for the period from 4/76. It may also be noted that no retirement benefit such as pension, gratuity P.F., etc. or arrears of salary for the period prior to 1-4--1976 can be paid to her unless the excess gross salary is realised and remitted first and chalan forwarded to this office.

The 3 service books and applications of the above persons are also returned herewith.

Exhibit P2 order apparently proceeds on the basis that the petitioner entered service from 7-6-1965 only. The contention of the petitioner is that the real facts have not been either noted or have been ignored by the concerned authorities in issuing Ext.P2 order. In brief the service particulars of the petitioner are as follows : The petitioner entered service as Junior Lecturer on 23-7-1957 in the B.C.M. College, Kottayam. On 31-5-1958 she left that job and thereafter she took employment in the Deva Matha College, Kuravilangad on 4-9-1964 and continued in that employment till 31-5-1965. Again on 7-6-1965 she joined St. Xavier's College for Women, Alwaye and she is continuing in that college even now. Exhibit P2 order does not apparently refer to the previous employment of the petitioner. That aspect has considerable significance as far as the validity of Ext.P2 is concerned. At the time when the petitioner entered service, her conditions of service were governed by the Statutes and Ordinances issued from time-to-time under the Kerala University Act 14 of 1957. As per the notification published in Kerala Gazette Extra. No. 568 dated 27th July, 1974, the Kerala University Act, 1974 (Act 17 of 1974) came into force and the petitioner is undoubtedly governed by the Statutes and Ordinances issued under Act 17 of 1974. By virtue of Notification No. 33357/B2/75/H. Edn. dated 30th March, 1976 published in the Kerala Gazette Extraordinary dated 1st April, 1976 the First Statutes came into force. The relevant provision of the Statute is Statute No. 4, which is in the following terms :

4. Age of superannuation, etc., of the teachers who entered service before 1-4-1958. (a) Teachers of Private colleges who have entered service prior to 1-4-1958 shall have the right to retire at the age of sixty and be governed by the provisions of Chapter III or to opt for the provisions contained in Chapter II. Those who have entered service prior to 1-4-1958 and who have completed 55 years on the date of commencement of these statutes but who opt for the age of retirement at 55, shall retire only with effect from the date on which they

exercise their option. Those who have entered service on or after 1-4-1958 and completed 55 years at the commencement of these statutes shall retire on 1-4-1976 forenoon.

(b) If they opt for Chapter II their service beyond the 55th year of age shall not count for pension, gratuity, etc. and their contributory provident fund contribution shall to the extent mentioned in Statute 47 and gratuity may be credited to the account of the Government with effect from the date of commencement of these statutes.

(2) An option under Clause (1) shall be preferred in the form prescribed in Appendix IV within a period of three months from the commencement of these statutes or within such further time not exceeding three months, as the Vice-Chancellor may specify in this behalf. The option shall be sent to the Director of Collegiate Education.

(3) An option once exercised shall be final.

(4) The teachers who have not exercised any option within the prescribed period shall be deemed to have opted to be governed by the provisions contained in Chapter II.

The wording of the provision shows that teachers of private colleges who have entered service prior to 1-4-1958 are entitled to continue in service till they attain the age of 60 provided they opt to abide by the provisions of Chapter II, From the service particulars of the petitioner mentioned above, it could be seen that the petitioner was actually working as lecturer in B.C.M. College on the crucial date, viz., 1-4-1958, though shortly thereafter she relinquished that service and served in another college for some time and ultimately joined the St. Xavier's College, Alwaye. The contention of the learned Government Pleader is that to attract Statute No. 4 of the 1st Statute, the petitioner should have been in continuous service. I was not impressed by that argument for two reasons. In the first place, Ext. P2 does not in the least indicate that the authorities concerned have taken into consideration the previous service of the petitioner or that the authorities were of the view that the service should have been continuous for the application of Statute No. 4 of the First Statute. Even assuming that that was the idea which worked in the mind of the authorities, the second ground on which I reject that contention is that the wording of Statute No. 4 does not warrant the construction that the "service" contemplated therein was the "continuous service" from 1-4-1958. In this connection the learned Counsel for the petitioner drew my attention to a corresponding provision in the rules framed under the Kerala Education Act. The relevant rule is Rule 8 of Chapter XXVII (A) of the Kerala Education Rules and that rule and the note thereunder are in the following terms :

8. The age of retirement on superannuation shall be 55 years,

Note : In the case of those who were in the service of any aided school prior to

4-9-1957 the age of retirement on superannuation shall be 60 years subject to the condition that the service beyond the age of 55 years shall not qualify for pension and gratuity under these rules.

A question arose in the matter of interpretation of Rule 8 of Chapter XXVII (A) of the Kerala Education Rules as to whether to claim the benefits of serving till the 60th year, a teacher concerned must have been in continuous service from 4-9-1957 and that matter was considered by this Court in the decision reported in P.C. Blyamma v. District Educational Officer (1965) KLT 1185 and it was held that Rule 8 is not capable of the interpretation that there should be continuous service, that it is not so mentioned in the rule, that there is no justification for adding the word "continuous" to the rule, and that the plain meaning of the rule is that those who were in service before 4-9-1957 are entitled to continue till they attain 60 years of age. Though the wording of the two provisions is not so similar, Statute No. 4 of the First Statute is in pari materia with Rule 8 of the Kerala Education Rules and I do not find any reason to hold that the dictum laid down in the decision of this Court reported in (1965) KLT 1185, cannot be applied in the case of Statute 4 of the First Statute also. Statute 4 of the First Statute, to repeat, does not contain the expression "continuous" as has been pointed out in the decision cited above. Consequently, the authorities concerned have erred in issuing Ext. P2 order.

3. In the result, Ext. P2 order is hereby quashed. The option exercised by the petitioner as per Ext. P1 is valid and it is declared that the petitioner is entitled to the benefits in the matter of pension, gratuity, provident fund, etc., as if she has opted Chapter III of the First Statutes. The arrears of salary, if any, due to the petitioner must be directed to be disbursed to the petitioner forthwith. The original petition is allowed as shown above ; but in the circumstances of the case, I make no order as to costs.