(1982) 02 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No. 581 of 1981

N. Prabhakaran Nair APPELLANT

Vs

State of Kerala and 4 Others RESPONDENT

Date of Decision : 15-02-1982

Acts Referred:

Citation : (1982) KLJ 299

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : V. Sivaraman Nair, T.V. Ramakrishnan and Rajendran, for the Appellant;

Final Decision : Allowed

Judgement

T. Kochu Thommen, J.—The petitioner is a teacher in charge of an aided High School. The dispute relates to his claim for promotion to the post of headmaster in a vacancy which arose on 20-6-1980 on the death of the previous headmaster Shri Sadanandan. The 5th respondent is the rival claimant for the post, although he is junior to the petitioner as a teacher. The 5th respondent had obtained prior to the occurrence of the vacancy all the necessary qualifications required for the post, viz., the test in the Kerala Education Act and the Rules and the Account Test (Lower),. The petitioner has not passed the tests, but claims priority over the 5th respondent in the matter of promotion by virtue of the permanent exemption recognised by the Rule 44 B (2) of Chapter XIV A of the Kerala Education Rules, 1959 (the "K.E.R."). The question is whether the petitioner, who has exercised his option for Chapter XIV B rules of the K.E.R., is right in so contending. The answer depends on the construction of Rule 44 B (2). According to the Government, this rule has no application to persons who opted for Chapter XIV B. Permanent exemption granted by rule 44 B (2) is from the requirements of Rule 44A(1) of Chapter XIV A of the K.E.R. which prescribes the minimum qualifications. It says:

Subject to the provisions contained in sub-rule (1) of rule 44, the minimum service qualification for Appointment as Headmaster, in Aided Complete High Schools Training schools shall be twelve years of continuous graduate service with a pass in the test in the Kerala Education Act and the Kerala Education Rules and pass in Account Test (Lower) conducted by the Kerala Public Service Commission.

Note: Teachers and Headmasters of High and Training Schools will be exempted from passing the Test till the date of the publication of the result of the Third test conducted after 11-6-1977.

For passing the test in K.E.R. which was introduced on 10-12-1968 time was allowed for a period of 8 years from 6-11-1968. In respect of the Account Test (Lower) which was introduced only in 1976 time was allowed till the result of the Third test conducted after 11-6-1977. Rule 44 B (1) provides that a person appointed as a Headmaster prior to 6-11-1968, but had not passed the test (meaning the lest in K.E.R.) even on 6-11-1976 would not get further increments until he passed the test. Rule 44 B (2) provides for permanent exemption from the test in respect of certain persons. It says:

Persons who attain the age of 50 years and who have completed 25 years of service will be granted permanent exemption from passing the tests.

Explanation:- Untrained service of the teachers shall also be taken into account for computing the 25 years'' service.

(emphasis supplied)

The effect of this rule is that persons who have completed (the specified age and years of service are permanently exempted from passing the tests. This exemption is independent of the temporary exemption mentioned earlier. The petitioner at the time of the vacancy had attained the age of 50 years and completed 25 years of service. That fact is not disputed. The dispute is as regards the petitioner''s claim ''for promotion to the post of headmaster on the basis of that exemption. According to the government and the 5th respondent, Rule 44 B(2) avails only those teachers who had opted for Chapter XIV C of the K.E.R. and not persons like the petitioner who had opted for Chapter XIV B.

2. Chapter XIV C relates to persons who either opted for the Rules of that Chapter or who did not exercise any option. In either event such a person would retire at the age of 55 years. On the other hand, those who specifically opted for Chapter XIV B and who had been in service of an aided school since prior to 4-9-1957, would retire only at the age of 60 years, subject to the condition that the service beyond the age of 55 years would not qualify them for pension and gratuity under the relevant rules. (See Chapter XXVII A Rule 8). The petitioner having opted for Chapter XIV B and having been in service of an aided school since prior to 4-9-1957 is entitled to remain in service till the age of 60 years.

3. Teachers opting for Chapter XIV B or Chapter XIV C are governed by separate rules regarding matters of conduct, pension and other benefits. The option has

been exercised by the teachers with reference to the advantages as well as the constraints of the respective provisions of these two chapters. While persons governed by Chapter XIV B would have longer service, those governed by Chapter XIV C would have shorter service, but certain special advantages. It was a matter of option for the respective teachers at the relevant time to decide upon which of the two chapters they desired to be governed by. Whichever be the governing chapter, the requirement''s of the tests apply to all. So do, in my view, the benefits of exemptions. Just as all teachers have the obligation to pass the tests as required under the relevant provisions of Rule 44 A, all teachers, irrespective of the option exercised with reference to Chapter XIV B or C are entitled to the temporary or permanent exemption under the rules.

4. The Government point out that specific exemption has been granted under Rule 44 B (3) in respect of headmasters who opted for chapter XIV B-Rule 44B (3) reads:

Headmasters of complete High/Training Schools who have opted for the rules in Chapter XIV B and who can continue in service upto 60 years of age will be granted exemption from passing the tests if they have passed the age of 55 years.

Explanation:- For the purpose of this rule ''service'' means ''aggregate qualified approved teaching service.

This exemption is meant for headmaster who have opted to remain in service till the age of 60 years as provided under Chapter XIV B and who have attained the age of 55 years. Referring to this provision, the Government Pleader points out that sub-rule (2) of Rule 44 B must therefore be understood with reference to the teachers other than those falling under Chapter XIV B. According to the government only teachers coming within Chapter XIV C can claim the benefit of Rule 44 B(2).

5. While sub-rule (3) of Rule 44 B specifically refers to "headmasters" who have attained the age of 55 years, sub-rule (2) is general as it refers to "persons" While sub-rule (3) does not say that the headmasters who have completed the age of 55 years should also have put in 25 years of service, sub-rule (2) specifically limits the exemption to persons who have completed 25 years of service. The distinction between sub-rule (2) and sub-rule (3) is, while the former takes in all teachers, whether headmasters or otherwise, who have attained the age of 50 years and have completed 25 years of service, the latter limits the exemption to headmasters alone, and, that too to headmasters who have completed the age of 55 years, but does not require them to have put in 25 years of service as required under sub-rule (2). Furthermore while sub-rule (3) specifically refers to headmasters who have opted for Chapter XIV B, sub-rule (2) is general in terms and it does not refer to either of the two chapters. This should ordinary mean that both Chapter XIV B and XIV C are taken in by sub-rule (2). That is in fact how the government first understood these provisions

when they sent Ext. P1 letter dated 15-3-1980 to ''the Director of Public Instruction. The difficulty arose on account of G.O. Rt. 3024/80-G. Education dated 21-10-1980 (Ext. P2) which read into Rule 44 B (2) a rider limiting it to a class of teachers., viz., those who opted for Chapter XIV C. It is on the basis of Et.P2 that the District Educational Officer made Ext. P3 rejecting the petitioner''s claim for promotion on the ground that at the relevant time the petitioner had not attained the age of 55 years and was therefore not qualified to be exempted in terms of Rule 44 B (3). This is on the assumption that Rule 44 B (2) was not available to the petitioner.

6. The petitioner''s claim based on Rule 44 B (2) came up before this Court in OP. Nos. 11921/1977 (and 3815/11977). The learned single Judge dismissing the O.P. No. 1 192/1977 observed:

6. The petitioner in O.P. No. 1192/1977 has not reached the age of 55. He has opted for Chapter XIV B. If so it is only after attaining the age of 55 that he would be entitled to permanent exemption. He is found not entitled to permanent exemption by Ext. P1 in O.P. No. 1192/1977 and that does not call for interference by this Court..."

The learned Judge proceeded on the assumption that the petitioner''s claim rested on Rule 44 B (3). It was accordingly found that the petitioner who had not attained the age of 55 was not entitled to the exemption. That the petitioner had a specific claim under Rule 44 B (2) was also referred to by the learned Judge in the earlier part of the judgment, but it does not appear to have been specifically considered while rejecting the petitioner''s case. This was the complaint of the petitioner before the Division Bench in W.A. No. 109/78. The petitioner contended that, irrespective of his option, he ought to be treated as qualified in view of the exemption available under Rule 44 B(2). The Division Bench, however, does not seem to have specifically dealt with the question whether Rule 44 B (2) was limited to persons who had opted for Chapter XIV-C as the government would have it. The petitioner''s appeal was rejected by the Division Bench for the reason that

...even then the facts disclosed do not help the appellant, because, the vacancy occurred in 1974 and even if the exemption on grounds of 50 years of age and 25 years service is granted in his favour the appellant can be regarded as having become qualified only on 24-3-1976 and not earlier. The 4th respondent became qualified on 15-6-1975, earlier than the appellant...

The 4th respondent in that appeal was Sadanandan, the previous headmaster, who died on 20-6-1980, giving rise to the vacancy in question. It is clear from the portions of the judgments which I have extracted above that the point in controversy arising in the present proceedings had not been, as contended by the Government Pleader and the 5th respondents counsel; specifically dealt with and concluded.

7. The 5th respondent''s counsel refers to Rules 58 (3) and 61 (1A) of Chapter

XIV A, and contends that if Rule 44 B (2) applies also to teachers who have opted for Chapter XIV B, as in the case of the petitioner, such a person, when appointed as a headmaster, would not have the necessary powers of a headmaster, for he says, these provisions do not allow headmasters who have not attained the requisite age and completed the requisite service to exercise all the powers of a headmaster in the matter of granting leave and increments. I do not understand the relevance of Rules 58 (3) and 61 (1A) to the point in issue here, except in so far as they draw a distinction between headmasters who have passed the test or who are temporarily exempted from passing the test on the one hand, and on the other, those headmasters who have opted for either Chapter XIV B or Chapter XIV C and who are by virtue of their age and length of service permanently exempted from the requirement of test qualification. This is a distinction which, if at all, weakens the 5th respondent''s counsel''s argument on the point aft issue, as these provisions have, in the matter of permanent exemption, bracketed together headmasters who have opted for either of the two Chapters.

8. Be that as it may, the rationale of sub-rules (2) and (3) of Rule 44 B is that, while it is the desire of the rule-making authority to dispense with the requirements of test qualification in respect of parsons after a certain age, exemption is not allowed unconditionally. Those who have attained the age of 50 years, whether or not they are headmasters and whichever be the option they have exercised as between Chapters XIV B and XIV C, can claim the permanent exemption provided they have acquired sufficient experience and maturity by completing 25 years of service. On the other hand, in the case of a headmaster who has opted to remain in service till 60 years in terms of Chapter XIV B, permanent exemption is granted when he attains 55 years of age, irrespective of his length of service. Sub-rule (3) thus puts a premium on age, but is limited to headmasters who are to remain in service until 60. The reason for this is clear. They do not retire at 55, unlike in the case of those coming within Chapter XIV C; and, because of their age and of the fact that they are already appointed as headmasters by virtue of temporary exemption, they would not be reverted. I am fortified in this conclusion particularly because there is no mention of any Chapter'' in Sub-rule (2) while it is specified in sub-rule (3). This shows that the rule-making authority had this distinction and reason in mind when the two provisions were made. Accordingly I hold that rule 44 B(2) of Chapter XIV A of the K.E.R. is applicable to any person coming within the terms of that provision, whether or not the option he exercised is in respect of Chapter XIV B or Chapter XIV C. The petitioner who had exercised his option for Chapter XIV B and who had admittedly attained the requisite age and completed he requisite length of service, as provided under Rule 44 B (2), was, on the date of the occurrence of the vacancy in question, fully qualified to be appointed as a head-master. In the circumstances the petitioner being a senior to the 5th respondent as a teacher has priority over him for appointment as headmaster. It is so declared. The O.P. is allowed in the above terms. No costs.

