
(1994) 02 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 1309 of 1994

N. Rabecca

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:

Kerala University Act, 1974 — Section 83

Citation : (1994) 2 KLJ 437

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : Pirappancode V., Sreedharan Nair and S.P. Aravindakshan Pillai, for the Appellant;

Final Decision : Dismissed

Judgement

G.H. Guttal J.

1. The Petitioner, an employee of the University of Kerala, the Respondent No. 3 herein, challenges the validity of the order of the State of Kerala, the Respondent No 1 herein dated 14-1-1994 (Ext. P4), by which the Petitioner was held ineligible to continue in service beyond the age of 55 years. The Petitioner has been in the service of Christian College, Kattakkada affiliated to the University of Kerala for broken periods from 9-2-70 to 15-1-71. She worked continuously from 9-2-70 to 16-4-70, and from 25-5-70 to 12-8-70. She held the office continuously from 15-1-71 as a Last Grade Employee (Peon). The service was broken from 16-4-70 to 24-5-70 and from 12-8-70 to 14-1-71. The Government of Kerala has made First Statutes u/s 83 - of the Kerala University Act 1974 (Act 17 of 74) in respect of pension, provident fund, gratuity, insurance and age of retirement of members of non-teaching staff in private colleges. The provisions of the First Statutes in respect of pension, provident fund and age of retirement of teaching staff apply to all members of the non teaching staff (paragraph 3 of the petition).

Members of the non teaching staff who entered service before 1-4-1962 have the option to retire at sixty years. Those members of the non teaching staff who are in the last grade (as defined in Rule 12 (16 A) Part 1 of the Kerala Service Rules) on 7th April 1970 will retire on the afternoon of the last day of the month in which they attain the age of sixty years.

2. According to the Petitioner, although she was not in service from 16-4-70 to 25-5-70 from 12-8-70 to 14-1-71 she was nevertheless in service "on" 7-4-1970. The question is whether in order to be eligible for the benefit of the above provision, the petitioner must be in service not only on 7-4-1970 but also continuously thereafter. In other words, do the words "on 7th April 1970" mean "on and from 7th April 1970?"

3. If the construction propounded by the petitioner is accepted, it would mean that the employment on a solitary day irrespective of a long interruption thereafter will entitle her to continued service till she attains the age of retirement. An employee in service on 7th April 1970 may cease to be employed on the next day and may be reappointed on 10th April 1970. According to the petitioner's argument such employee would be entitled to the benefit of extended age of retirement. In my opinion the benefit of extended age could not have been intended for such employees though they were in service "ON" 7th April 1970. The provision of the Statute of the University is intended to benefit those who were in continuous service on and after 7th April 1970.

4. If the word "ON" is literally construed, it leads to the absurd result stated in paragraph 4 above. Such manifest contradiction with the purpose of the Statute, and the inherent absurdity, can hardly have been intended by the makers of the Statute. In such circumstances, it is permissible for courts to put such construction upon the word "on" "which modifies its meaning and even the structure of the sentence" (Maxwell on Interpretation of Statutes - 12th Edition page 228)". The lack of skill of the draughtsman cannot be permitted to reduce the Statute to absurdity. Nor should a rigid adherence to the literal meaning of the word "ON" be allowed to impair its true meaning.

5. In my opinion the correct construction would be to understand the words "on 7-4-1990" to mean "on and from 7-4-1970". If the words and figures "on 7-4-1970" are so construed, they render the meaning of the provision intelligible and consistent with the object of the Statute.

6. The Petitioner was not in service on and from 7-4-1970. Therefore she is not entitled to the benefit of extended age of retirement. The Petition is dismissed.