

(1980) 07 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 4152 of 1978-L

P. Padmanabhan Nair

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 30-07-1980

Acts Referred:

Kerala Last Grade Service-Special Rules, 1966 — Rule 1
Kerala Service (Amendment) Rules, 1979 — Rule 1(2), 2
Kerala Service Rules, 1958 — Rule 12(16A), 12(A), 60

Citation : (1980) 07 KL CK 0007

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : C.P. Sudhakara Prasad and B. Reghunathan, for the Appellant;
Government Pleader, for the Respondent

Judgement

Bhaskaran, J.—The question that falls for decision is whether in the case of the Petitioner, who has continuous service as Attender in the Indigenous branch of the Health Department from 1950, is to be reckoned in accordance with Clause (a) of Rule 60, Part I of the Kerala Service Rules (the Rules), or Clause (b) thereof. If it is Clause (a) that governs, he was to retire on 31st December 1978, his date of birth being 26th Vrischikam 1099 (M.E.); if not, he could continue in service till 31st December 1983.

Rule 60(b) of the Rules lays down:

Officers in the last grade service on 7th April, 1970 will retire on the afternoon of the 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(16A).

For the retirement to be governed by Rule 60(b) of the Rules two conditions are to be satisfied: (1) as on 7th April 1970 the officer was in the last grade service as defined in Rule 12(16A) of the Rules; and (2) he has to continue in that grade as long as he wants to enjoy that benefit. Rule 12(16A) substituted by Rule 2 of

the Kerala Service (Amendment) Rules, 1979, (Vide S.R.O. No. 1350/79) published under G.O. (P) No. 1060/79/Fin., of the Finance (Rules Department, dated 6th December 1979) reads as follows:

2. In Part I of the Kerala Service Rules, for Sub-rule (16A) of Rule 12 and the note thereunder the following rule shall be substituted, namely:

(16A) Last Grade Service.--"Last Grade Service" means service in any post included in the Kerala Last Grade Service constituted by the Special Rules for the Kerala Last Grade Service, published under G.O. (P) No. 82/Public (Rules) Department dated the 8th March, 1966, in Part I of the Kerala Gazette No. 14 dated the 5th April 1966 as amended from time to time, and includes service in any post declared by the Government to be a post in the Last Grade Service.

Sub-rule (2) of Rule 1 of the Amendment Rules provides:

They shall come into force at once.

2. The Petitioner having had reason to apprehend that steps were afoot to compulsorily retire him on his attaining the age of 55, had submitted to the 1st Respondent. [The Secretary to Government, Health Department (Ayurveda), Secretariat, Trivandrum] a representation dated 14th November 1978, a copy of which is Ext. P-2. Therein he had stated inter alia that the scale of pay for the post of attender held by him was before 1966, Rs. 35.45 which was revised to Rs. 65.85 with effect from 1st April 1966 as per G.O. (P) No. 370/66/Fin., dated 12th August 1966; that, therefore, the post came under Last Grade Service as defined in Rule 12(16A) of the Rules, as amended by (Ext. P-1) G.O. (P) No. 416/78/Fin., dated 12th April 1978; that he had relinquished his right to claim promotion to the post of Attender, Grade I; that he had not been promoted to Grade I; that as on 7th April 1970 he was holding the post of Attender in the Last Grade Service; hence under Rule 60(b) of the Rules he was entitled to continue in service till the age of 60 years. Not having received "immediate orders" as requested for in Ext. P-2, the Petitioner filed O.P. No. 4197 of 1978-N for the issue of a writ of mandamus directing the 1st Respondent to dispose of Ext. P-2 representation; and Ext. P-3 is the copy of the judgment of this Court dated 7th December 1978 in that Writ Petition, directing the 1st Respondent to dispose of Ext. P-2 as expeditiously as possible. Thereafter the 1st Respondent disposed of Ext. P-2 by the order dated 14th December 1978, a copy of which is Ext. P-4, which in its material portion reads as follows:

I am to invite your attention to the reference cited. Attenders actually do not belong to Last Grade Service. But the Special Rules for the Kerala Last Grade Service refers to a category named "Last Grade Attender". This was meant to denote the Last Grade Servants in some departments who were designated as "Attenders". However in allowing a writ petition filed by an Attender the High Court held that those Attenders whose scale of pay is the lowest among the scales of pay of various categories of Attenders come within the meaning of "Last Grade Attenders", referred to in the Special Rules for Kerala Last Grade Service.

In view of the above judgment some Attenders who belong to the above category have been allowed to continue in service till the age of 60.

In the Department of Indigenous Medicine, Attenders are on the scale of pay of Rs. 200.285, which is the lowest scale of pay in the case of Attenders. But the category of Attender (Technical) has been specifically included in the Kerala Indigenous Medicine Subordinate Service. Thus they cannot be treated as belonging to Last Grade Service. Your request is therefore declined.

3. The 3rd Respondent, the Director of Indigenous Medicine, Trivandrum, also had communicated to the Petitioner a copy of Ext. P-4 Government Order in his letter dated 18th December 1978, a copy of which is Ext. P-3. In essence the challenge in this writ petition is directed against Ext. P-4 Government Order. Before entering the discussion on the merits of the contentions raised by the Petitioner and the Respondents, it would be advantageous to notice the provisions of Rule 12(16A) of the Rules as it stood [when mended by G.O. (P) 416/78], before being amended by the Kerala Service (Amendment) Rules, 1979; it read as follows:

(16A) Last Grade Service.--Last Grade Service includes all service in the following appointments unless otherwise declared by the Government:

- (a) service as peon, head peon, mochee and duffadar;
- (b) services of person who were holding posts, the pay or the maximum pay in which as revised in the general pay revision in the year 1966, did not exceed Rs. 85, and who continue to hold any such posts;
- (c) any service which has been specifically classed as last grade service by the orders of Government.

Note.--Service in the following posts will not be treated as last grade service:

- 1. Excise guard
- 2. Forest guard
- 3. (deleted) [G.O. (P) S/74/Fin. Dated 14th February 1963].
- 4. Warder in the Jail Department.
- 7. Omitted with effect from 26th October 1966--G.O. (P) 18/77/Fin., dated 17th January 1977.

In support of Ext. P-4 Government order it is seen stated in paragraph 2 (repeated in paragraphs 4 and 6) of the counter-affidavit filed on behalf of the 1st Respondent that the Petitioner was not a Last Grade Servant on 7th April 1970 to be eligible for continuation in service till the age of 60 in terms of Rule 60(b) of the rules, as under Rule 12(16A) of the rules Hospital Attenders who were below the age of 50 on 14th December 1963 would not be treated as Last Grade Servant. This contention, I find, has no foundation either in law or on

facts. The Petitioner, as has been pointed out in paragraph 3 of the reply affidavit, is only a Dispensary Attender Grade II in the Ayurvedic Dispensary in the Department of Indigenous Medicine, not a Health Assistant in the Health Service Department. That apart, as per the amendment to the Last Grade Service Rules, 1966 published in the Kerala Gazette No. 47, dated 21st November 1978, Hospital Attendant, Grade II in the Health Service Department also is included in the Last Grade Service, vide Category 4, Clause (n). The averment made by the Petitioner in paragraph 3 of the reply affidavit that while holding the post of Dispensary Attender, Grade II, promotion as Attender, Grade I was available to the Petitioner, but he relinquished that right and he continued as Attender, Grade II, has not been controverted. What crystalises, therefore, is that treated either as a Dispensary Attender, Grade II as claimed by the Petitioner, or as an Hospital Attendant, Grade II as characterised by the 1st Respondent; the Petitioner never ceased to be in the Last Grade Service.

4. The Government Pleader has an alternate contention that now that Rule 12(16A) of the rules has been amended by the Kerala Service (Amendment) Rules, 1979, defining "Last Grade Service" as meaning "service in any post" included in the Kerala Last Grade Service, published under G.O.(P) No. 82/Public (Rules) Department, dated the 8th April, 1966, as amended from time to time, and includes service in any post declared by the Government to be a post in the Last Grade Service the Petitioner, in any event, is no longer in the Last Grade Service. He has a two-fold argument based on this amendment: (1) Clause (b) of Rule 12(A) which reads: "Service of persons who were holding posts, the pay or the maximum pay of which as revised in the general pay revision in the year 1966, did not exceed Rs. 85 and who continue to hold any such post" having been taken away, a person placed in the position of the Petitioner cannot claim the benefits of Rule 60(b) of the Rules; and (2) even assuming, without conceding, that he was entitled to the benefit of the aforesaid Rule 60(b), he would cease to be entitled to it, with the coming, into force of the amending rule, and as such he has to be deemed to have compulsorily retired with effect from 6th December 1979 on which date the amendment came into force. On a close scrutiny of the provisions I do not find it possible to agree with either of these contentions. Substitution of the original Rule 12(16A), in which process Clause (b) thereof got eliminated, by the amendment rules could not affect the Petitioner's rights to continue in service till he attained the age of 60, inasmuch as on 7th April 1970 he was holding a post the pay or the maximum pay of which as revised in the general pay revision in the year 1966, did not exceed Rs. 85 and also he continued to hold such a post when the amendment under G.O. (P) 416/78/Fin., dated the 12th April 1978 came into force. The Petitioner, was, therefore, by virtue of the provisions contained in Rule 12(16A) read with Rule 60(b) of the rules, as it then stand, entitled to continue in service till he attained the age of 60, without being required to retire compulsorily on 31st December 1978 under Rule 60(a) of the rules. The amendment rule of 1979, which has no retrospective effect cannot and will not operate to the detriment of the person on

whom the benefit under Rule 60(b) was conferred. The Petitioner will continue to enjoy the protection of Rule 60(b), intendment of the amended rule obviously not being to operate to the prejudice of those who had already been brought under one or the other category of Last Grade Service.

5. However, even the amended Rule 12(16A) of the rules which adopts the definition contained in Rule 1 of the Special Rules (Kerala Last Grade Service) appears to come to his rescue inasmuch as "Dispensary Attendant" is seen to have been included in category 2 of the Special Rules.

6. From the foregoing discussion it is clear that the stand taken by the 1st Respondent in Ext. P-4, and in the counter-affidavit, and the Government Pleader during the course of his argument, is totally untenable. Exts.P-4 and P-5 are, therefore, quashed and the Petitioner, who had continued in service even after 31st December 1978 on the strength of the interim order, dated 22nd December 1978 in C.M.P. No. 18498 of 1978, but who is stated to have been relieved on the afternoon of 28th June 1970 as evidenced by Ext. P-7 relieving certificate in pursuance of the direction continued in Ext. P-6 communication issued by the 2nd Respondent, the District Medical Officer, Indian System of Medicine, Trichur on the assumption that the writ petition itself was dismissed on 20th June 1980, is to be reinstated into service forthwith with continuity of service and all service benefits under Rule 60(b) of the rules; the period after 28th June 1980 on which date he was relieved as per Ext. P-7 till his reinstatement in pursuance of the direction contained in this judgment, shall be treated as on duty. Arrears of salary and allowance due to the Petitioner for the period subsequent to 31st November 1978 shall be claimed and disbursed to the Petitioner as expeditiously as possible.

The writ petition is disposed of in the above lines. There will be no order as to costs.