
(1980) 06 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 2272 of 1977-D

Parukutty Amma

APPELLANT

Vs

Devaswom Commissioner and Others

RESPONDENT

Date of Decision : 05-06-1980

Acts Referred:

Kerala Service Rules, 1958 — Rule 2, 60

Citation : (1980) 06 KL CK 0007

Hon'ble Judges : V. Balakrishna Eradi, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : N. Haridas, for the Appellant; P. Kesavan Nair and N.R. Radhakrishna Pillai for 1st Respondent and Government Pleader for Respondents 2 and 3, for the Respondent

Judgement

V. Balakrishna Eradi, J.—The judgment of the Court was delivered by the Chief Justice.--The Petitioner joined service in an aided High School as part-time sweeper with effect from 16th July 1966. Her appointment as part-time sweeper was approved by the concerned District Educational Officer (2nd Respondent) as per his proceedings evidenced by Ext. P-1 dated 20th May 1967. Subsequently the Petitioner was promoted as a full-time sweeper as per the order Ext. P-2 passed by the 2nd Respondent on 15th July 1971. On 27th June 1977 the 2nd Respondent issued a direction to the Headmaster of that school as per the communication Ext. P-3 to relieve the Petitioner from service with immediate effect on the ground that she had already passed the age of 55 years. Ext. P-3 also contains a direction to the Headmaster to recover from the Petitioner the excess salary paid to her from 1st June 1976 onwards. "The Petitioner has brought this writ petition seeking to quash Ext. P-3.

2. It is contended by the learned advocate appearing for the Petitioner that the Petitioner is a last grade servant entitled to continue in service till the attainment of the age of 60 years under Rule 60(b) of Chapter VIII, Part I of the, Kerala Service Rules. It is on this basis that the Petitioner has challenged Ext. P-3 as

illegal and without jurisdiction. We do not find it possible to uphold the aforesaid contention put-forward by the Petitioner. Rule 2 (ii) of Chapter I of the Kerala Service Rules specifically makes it clear that the rules contained in Part I will apply only to persons in whole-time employment. The Petitioner was only a part-time employee of the school till 15th July 1971. Rule 60(b) of Chapter VIII of Part I of the Kerala Service Rules confers the benefit of retention in service till the attainment of the age of 60 years only on officers who were borne on the Last Grade service as on 7th April 1970. Thus, in order to claim the benefit of the said provision, the Petitioner must have been an employee in the Last Grade Service governed by the Kerala Service Rules as on 7th April 1970. Unfortunately, she was only a part-time employee not coming within the scope of the provisions of the Kerala Service Rules till 15th July 1971. Hence it is the provision contained in Rule 60 (a) that governs her case and she is liable to retire from service on superannuation on attaining the age of 55 years. The action taken by the 2nd Respondent as per Ext. P-3 in directing the Petitioner to be retired from service on the ground that she had already completed the age of 55 years cannot, therefore, be said to be illegal.

3. Admittedly, the Petitioner had been actually working in the school beyond 1st June 1976 and she was continuing to work as full-time sweeper on the date on which the order Ext. P-3 was passed. When a person has thus been allowed to work in a post and the employer has had the benefit of his service it is not legally permissible to "call upon the employee to refund the salary and allowances paid to him for such work on its being subsequently discovered that the retention of the employee in service was not warranted by the rules. Hence the direction contained in Ext. P-3 for recovery from the Petitioner of the pay drawn by her for the period subsequent to 1st June 1976 is illegal and without jurisdiction and it will accordingly stand quashed.

4. During the pendency of this writ petition the Petitioner has continued to work in the same post in the school pursuant to the order of stay issued by this Court in C.M.P. No. 9522 of 1977. The Petitioner is entitled to be paid salary and allowances for the entire period during which she has actually been functioning as a sweeper in the school on the strength of the order, of stay issued by this Court. In the light of the decision now rendered by this Court that the direction for retirement of the Petitioner contained in Ext. P-3 is legally valid, it will be open to the Respondents to take immediate action for relieving the Petitioner from duty in the school.

5. It is stated before us by the counsel appearing on behalf of the Petitioner that for the period during which the Petitioner has been continuing to work in the school on the strength of the order of stay granted by this Court she has not, so far, been paid her salary and allowances. In the light of what we have pointed out earlier, the 2nd Respondent should take immediate action to disburse to the Petitioner the salary and allowances for the entire period during which she has been working in the school on the strength of the stay order passed by this

Court. This should be done within a period not exceeding two months from today.

6. The Original Petition is disposed of as above. The parties will bear their respective costs.