

(1992) 02 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 6321/91 C

P.N. Somarajan

APPELLANT

Vs

The Principal and Others

RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Kerala Service Rules, 1958 — Rule 60

Citation : (1992) 02 KL CK 0020

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, for the Appellant; N. Sankara Menon, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—The question involved in this case is whether the Petitioner, a Professor in the. Department of Zoology, Sanatana Dharma College, is entitled to continue in service till the end of the academic year 1991-92 in which he attains the age of superannuation. While the Petitioner contends that by virtue of the provision contained under Rule 60(c) of Part I of Kerala Service Rules he need retire from service only by the end of the academic year 1991-92. The Respondents would take the position that he cannot continue in service beyond 30th June 1991 by applying the provisions contained in Note 8 to Rule 60.

2. The Petitioner's date of birth is entered in his S.S.L.C. book as 18th Mithunam 1111 (Malayalam Era). In his service book his date of birth is shown in Malayalam Era as 18th Mithunam 1111 and in Christian. Era as 1st July 1936. The Petitioner submits that going by his date of birth In Malayalam Era, he will be attaining the age of 55 on 18th Mithunam 1166 (M.E.), the corresponding date in Christian Era being 2nd July 1991. On the above basis, the contention put forward is that he would come squarely within the provision of Rule 60(c). The above, claim put forward by the Petitioner was rejected by the 3rd Respondent under; Ext. P-11 order, dated 18th June 1991. For a proper appreciation of the

contentions raised by both sides it is necessary to refer to certain portions of Rule 60 and the notes, thereunder. The relevant portion of Rule 60(c) reads as follows:

The teaching staff of all educational institutions (including Principals of Colleges) who complete the age of 55 years during the course of an academic year shall continue in service till the last day of the month in which the academic year ends.

* * *

Note 6.- for the purpose of this rule as well as the rules in Appendix X, in the case of an officer who entered service prior to first January 1950 and whose date of birth has been noted in Malayalam Era in the Service Records, the age may be calculate in the. Malayalam Era.

Note 7.- Completion 55 years of age in service is in the afternoon and not in the forenoon. A person whose date of birth is first of July completes his 55th year on 30th June and that date (30th June) is the last day of die month in which he completes the 55th year, on first of July he is on his 56th year arid that day is a non-working day for him. He shall cease to be in service on and from 1st July.

Note 8.- A teacher whose date of birth is first July and who attains the age of 55 years shall not continue in service till the end of the academic year. However, such of those who continue in service during the academic year 1974-75 under the practice hitherto in vogue shall be allowed to continue in service till the end of March 1975.

* * *

Note 10.- In this rule the words "Last day of the month" used mean the last day of the month in Christian Era. In cases where the date of superannuation is calculated in the Malayalam Era in accordance with Note 6, the corresponding date. in the Christian Era shall be reasoned for arriving at the last day of the month.

3. Sub-clause (c) of Rule 60 is applicable to the teaching staff of all the educational institutions. The provisions contained in Note 6 is applicable only to officers who entered service prior to 1st January 1950. In their case if the date of birth is noted in Malayalam Era in the service records, the date of superannuation bas to be founded out by calculating the age in the Malayalam Era itself. The provisions contained in Note 6 is further clarified in Note 10 to the effect that where the date of superannuation is calculated in Malayalam Era in accordance with Note 6, the corresponding date in English Era shall be taken into consideration for arriving. at the last day of the month. The provisions contained in Note 6, read with Note 10 are not applicable in the case of the Petitioner for the simple reason that he had not entered service prior to 1st January 1950. On the other, hand, Note 8 is directly applicable to the Petitioner. According to the provisions of Note 8 a teacher whose date of birth is 1st July 1936 and who attains the age of 55 years is not entitled to continue in service till the end of

academic year. Admittedly the date of birth of the Petitioner according to the Christian Era is 1st July 1936. If that be so, he attains the age 55 on 30th July 1991 by applying the provisions contained in Note 7.

4. The claim put forward by the Petitioner is that according to the Malayalam Era, the date of his superannuation is 18th Mithunam 1166 which is equivalent to 2nd July 1991 under the Christian Era and therefore his date of superannuation has to be taken as 2nd July 1991 and not 1st July 1991. The above argument of the, Petitioner is misconceived. The provisions contained in Note 8 do not refer to 1st July with reference to the date of superannuation, on the other hand it refers to 1st July with reference to the date of birth. In Petitioner's case, it is admitted that his date of birth is 1st July 1936. Under these circumstances, it is not possible to accept his contention by taking advantage of the effect of a leap year coming between his date, of birth and date of superannuation, thereby the date 18th Mithunam 1166 under the Malayalam Era falls on 2nd July 1991 under the Christian Era.

5. The Petitioner has contended that no proper opportunity was given to him to produce all the. necessary and relevant records before the 3rd Respondent enabling it to take the correct view on the revision filed by him. I do not think it is necessary to go into the merits of the above contention in this case since the question involved is only an interpretation of the provisions contained under the Rule and all the necessary facts are admitted by both sides.

6. I therefore hold that it is the provision contained in Note 8 that is applicable in the case of the Petitioner and he is not entitled to continue in service till the end of the academic year. In the result, the Original Petition fails and it is dismissed. But it is made clear that the Petitioner will be entitled to salary and other emoluments during the period in which he worked as a Professor under the. order of stay passed he this Court.

7. The Original, Petition is dismissed as above.