

(2010) 05 KL CK 0013
In the High Court Of Kerala
Case No : W.A. No. 262 of 2010

Prabhakaran, N.T.

APPELLANT

Vs

Additional Secretary to Government and Others

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Kerala Service Rules, 1958 — Rule 29

Citation : (2010) 05 KL CK 0013

Hon'ble Judges : P.S. Gopinathan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : N.N. Sugunapalan and S. Sujin, for the Appellant; Lakshmi Narayan, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The appeal is filed against judgment of the learned Single Judge declining Appellant's demand for pension from State Government wherefrom he resigned in the year 1972. The Appellant's case is that after working in different departments like Judiciary and Co-operative Department in the clerical cadre under the State Government, he got direct recruitment as an Officer in ICAR which is an autonomous body under the Central Government. Therefore, he left his service with the State Government by resigning and joined the new employer wherefrom he retired on superannuation. When pension was granted to him by ICAR, his service in State Government was not counted and therefore, Appellant filed application before the Central Administrative Tribunal for pensionary benefit from ICAR reckoning his service in State Government. Even though CAT allowed the claim, on petition by ICAR to this Court, a Division Bench of this Court held that Appellant is not entitled to reckon his service in State Government for the purpose of pension from ICAR. The Appellant appears to have accepted this judgment. However, thereafter he has taken up the matter with the State Government for grant of separate pension for the period of service he had with the State Government under various Departments. The claim was based on Rule 29(b) of Part III of Kerala Service Rules. The learned Single Judge declined to grant relief and consequently this Writ Appeal is filed. We have heard

counsel appearing for the Appellant and the Government Pleader for Respondents.

2. As already stated above, Appellant is a pensioner from ICAR after serving that organisation from 1972 till the date of superannuation. The question to be considered is whether he is entitled to claim pension for the period of service he had under various departments in the State Government, which according to the Appellant is around 14 years. Rule 29 of Part III of Kerala Service Rules under which claim is made is as follows:

29. Resignation and Dismissals.--(a) Resignation of the Public Service or dismissal or removal from it, entails forfeiture of past service.

(b) Resignation of an appointment to take up Anr. appointment the service in which counts is not resignation from public service.

The Appellant banks on Sub-clause (b) because according to him since his resignation from State Government was to take up Anr. appointment, he is entitled to pension. However, what is clear from Clause (b) is that resignation will not be treated as such leading to forfeiture of service only if such resignation is for taking up Anr. appointment wherein the service in the State Government is counted. The Rule, therefore, contemplates something like continuity of service for a man who resigns from a department in Government service probably to join Anr. department also under the Government. A case of resignation not being treated as such under Rule 29(b) applies to a person who resigns from one department to join Anr. wherefrom he retires. We do not think this Rule entitles the person resigning from one department in State Government and joining Anr. department in Central Government, after retirement from Central Government, to come back and ask for separate pension from the State Government independent of the pension he is availing from the department wherefrom he retired. In other words, Rule 29(b) does not contemplate two independent pensions, but there will not be forfeiture of service in terms of Rule 29(a), if such resignation is for joining Anr. department where service in the earlier department wherefrom he resigned is counted. In this case the Appellant has no case that the terms of appointment in the ICAR provided for reckoning service in the State Government which is clear from the fact that they have not given pension reckoning the period of service the Appellant had with the State Government. So much so, in our view, Appellant after retirement from ICAR cannot demand pension independently for the service rendered in the State after nearly three decades of his resignation from the State Government. In other words, we are of the view that Rule 29(b) does not visualise independent pension from a department in State Government wherefrom a person had to resign to join Anr. service with the Central Government. The Writ Appeal is consequently dismissed.