
(2010) 05 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No. 4392 of 2010 (Arising out of SLP (C) No. 14998 of 2007)

Project Officer, IRDP and Others

APPELLANT

Vs

P.D. Chacko

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Constitution of India, 1950 — Article 309

Kerala Service Rules, 1958 — Rule 12, 12(16A), 14, 14E, 2

Citation : AIR 2010 SC 2626 : (2010) AIRSCW 3471 : (2010) 5 SCALE 597 : (2010) 6 SCC 637 : (2010) 3 Supreme 767

Hon'ble Judges : K. S. Panicker Radhakrishnan, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : G. Prakash, for the Appellant; Bina Madhavan, for Lawyer's Knit and Co., for the Respondent

Final Decision : Disposed Of

Judgement

K.S. Radhakrishnan, J.—Leave granted.

2. The question that falls for our consideration in this case is whether the respondent who was in service as on 07.04.1970 as a full time menial in an aided school is entitled to get the benefit of Rule 60(b) Part-I Kerala Service Rules, (KSR for short) so as to continue in government service upto 60 years of age.

3. The respondents entered service in an aided school on 25.06.1968 and worked as a full time menial upto 09.04.1976. He resigned from the post and joined as a Peon in the Tribal Welfare Department of the Government of Kerala on 10.04.1976. Respondent had raised a claim that he was entitled to continue in service up to 60 years of age as per Rule 60(b) Part-I KSR since he was working as a full time menial in an aided school as on 07.04.1970 and continued to be in the last grade till he attained the age of 55 years. His claim was rejected by the Department vide order No. E-49227/ 2001.

4. Feeling aggrieved by that order he preferred a writ petition O.P. No. 29317/2001 before the Kerala High Court. Learned Single Judge of the Kerala High Court on 25.05.2006 allowed the writ petition holding that had he remained in the aided school service he would have continued upto 60 years of age, hence he was entitled to the benefit of Rule 60(b) Part-I KSR. Learned single judge gave a direction to allow the respondent to continue in service till he attained 60 years of age and to settle his pension and other benefits accordingly. State of Kerala and Others preferred writ appeal No. 35 of 2007 before the Division Bench of the Kerala High Court and the appeal was dismissed on 15th January, 2007 at the admission stage. Feeling aggrieved by that judgment this appeal has been preferred by the State of Kerala and their officers.

5. Mr. G. Prakash, learned Counsel appearing for the State of Kerala submitted that the High Court has committed a grave error in holding that the respondent who was working as a full time menial in an aided school as on 07.04.1970 was entitled to get the benefit of Rule 60(b) of Part-I KSR. Counsel submitted that the service in an aided school has not been included in the last grade service as defined in GO(P)82/66/PD dated 08.03.1966 and as per the government decision No. 1 under Rule 14 in Part-III KSR the said period can be counted only for pensionary benefits but does not confer any right to the incumbent to continue in service upto 60 years of age. Consequently, provisional pension has already been sanctioned to the respondent considering his regular service till he attained the age of 55 years under Rule 3A Part-III KSR.

6. Ms. Beena Madhavan, learned Counsel appearing for respondent submitted that the service put in by the respondent in the aided school from 25.06.1968 to 09.04.1976 should be taken into consideration for the purpose of granting benefit under Rule 60(b) of Part-I KSR. Learned Counsel submitted as per Rule 29(b) of Part-III KSR past service would be counted if a person resigns from a service to join another service. Learned Counsel also referred to Rule 14E of KSR Part-III and submitted that the aided school service put in by the government employee prior to his entry in service would qualify not only for the purpose of pension, but also for continuity in service upto 60 years of age. Learned Counsel, therefore, submitted that respondent had satisfied all the criteria for claiming the benefit of Rule 60(b) Part-I KSR and the High Court has rightly granted the benefit.

7. The primary question that arises for consideration is whether the respondent who was in service of an aided school as on 07.04.1970 was entitled to continue in service till he attained 60 years of age as per clause 'b' of Rule 60 of Part-I KSR.

8. KSR was introduced by the Government of Kerala under the proviso to Article 309 of the Constitution of India with effect from 01.11.1959 and these rules are deemed to have been made under the Kerala Public Service Act (Act 19 of 1968). KSR contains 3 parts. Part-I contains rules relating to general conditions of service, pay fixation, leave, joining time, foreign service etc. Part-II contains

rules relating to traveling allowance and Part-III contains rules of pension. These rules are applicable to all officers who entered service on or after 01.11.1956 and those who entered in service prior to 01.11.1956 and who opted to be governed by these rules. Since introduction of these rules government has issued various amendments and several executive orders by way of directions, instructions, clarification etc. Government has also reserved to itself the power to modify these rules from time to time.

9. Rule 60 dealing with the retirement of officers appears in Chapter VIII of Part I KSR under the heading 'compulsory retirement'. Rule 60(a) is the substantive part of the Rule, which deals with the age of retirement and Rule 60(b) deals with a specified category of officers in the last grade which is an exception to the main provision. Rule 60(a) and (b) read as follows:

60(a) Except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(b) Officers in the Last Grade Service on the 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)

Rule 60(a) prescribes 55 years as the age of retirement in respect of government servants. However, Government servant shall be permitted to continue beyond 55 years, with the sanction of the Government on public grounds which must be recorded in writing. In very special circumstances a Government servant may be retained in service beyond 60 years of age. An exception has however been made in respect of a specified category of government servants under clause 'b' of Rule 60. Clause 'b' of the Rule 60 provides that officers who were in the last grade service as on 07.04.1970 would retire on attaining the age of 60 years, provided they continued to be in last grade service as defined in Rule 12(16A) of the Rules. Rule 12(16A) of Part-I KSR defines 'Last Grade Service', which reads as follows:

[16(A) 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]

Therefore, in order to get benefit of Rule 60(b) two conditions have to be satisfied. The first condition is that the government servant concerned must have been in last grade service as on 07.04.1970 and the second condition is that the

benefit of Clause 'b' would be available only as long as such person continues to be in the last grade service as defined in Rule 12(16A) of the rules.

10. Let us examine why this benefit has been extended to a specified category of government servants, i.e., "Officers in the Last Grade Service" as on 7th April, 1970. Certain categories of posts have been included in the Kerala Last Grade Service by the State of Kerala in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India vide Notification GO(P) No. 82/66/PD dated 8th March, 1966 called 'special rules' for the Kerala Last Grade Service. Rule 1 of the special rules contain various categories of posts which inter alia include any other post in the Last Grade Service as defined in Clause 16A of Rule 12 in Part-I KSR and who has not been included in any other service.

11. Prior to 07.04.1970 government servants who were in last grade service were entitled to higher age of superannuation of 60 years, however with effect from 07.04.1970 they were brought on par with other government servants with the result that they had to retire on attaining the age of superannuation of 55 years. Government felt it was necessary to protect them and hence Clause 'b' was introduced in Rule 60 giving them, the benefit of continuance in service, till they attained the age of 60 years. Normal age of superannuation in a government service is 55 years. Evidently, the said clause was introduced by way of exception to Clause 'a' of Rule 60 to protect their right to continue up to 60 years of age. The benefit of exception clause is, therefore, available only to a specified category of employees who were in last grade service as defined in Rule 12(16A) of the Rules. Rule 60(a) stipulates the age of retirement of government servants as 55 years but an exception has been carved out to a specified category of government servants but for that they also would have fallen in Rule 60(a). By judicial interpretation we cannot enlarge the scope of an exception clause, which is meant for a specified category of government employees.

12. Exception clause, is normally, part of the enacting section, unlike a proviso which follows an enacting part. Crawford's interpretation of Laws (1989) page 128, speaks of exception as follows:

The exception, however, operates to affirm the operation, of the Statute to all cases not excepted and excludes all other exceptions; that is, it exempts something which would otherwise fall within the general words of the Statute.

13. It is trite law that an exception clause has to be strictly interpreted and cannot be assumed but be proved. Exception clause is always subject to the rule of construction and in case of doubt, it must befriend the general provision and disfavour the exception. If any category of person claims exception from the operation of the statute it must establish that it comes within the exception.

14. The respondent has not produced any materials before us to show that the post he was holding i.e., full time menial in an aided school was included in the categories of posts in the special rules for last grade service. Further, the respondent has to show that he continued to be in the last grade service as

defined in Rule 12(16A) of the Rules as on 07.04.1970. Respondent has not produced any materials either before the High Court or before this Court to establish that the service of full time menial in an aided school as on 07.04.1970, has been saved by Clause (b) of Rule 60 Part-I KSR.

15. Rule 2 of Chapter 1 KSR says subject to the provisions of Rule 3, rules in Parts I and II apply to every person in the whole time employment of the government subject to certain exceptions. No materials have been produced before us to show that the aided school service would fall under the above mentioned provisions, or in the Last Grade Service as defined under Rule 12(16A) of the Rules.

16. Part-III KSR deals with pension. Chapter 2 of that Part deals with "qualifying service". Rule 14 E of the above mentioned Rules says that service in an aided school put in by government employees prior to any other government service qualify for pension. If the intention of the rule making authority was to give the benefit of continuous service of 60 years of age for those who were in aided school service then the same would have been specifically provided in the rules. Aided school service prior to government service is reckoned as qualifying years of service only for calculating pension not for continuity of service up to 60 years of age. Rule 29(b) Part III is also, not applicable to the facts of the case, since in this case we are concerned with the question whether the respondent falls within the exception Clause (b) of Rule 60. Respondent's prior service in an aided school, we are informed has already been reckoned for the purpose of calculating pension but the period he has served from 55 years of age to 60 years of age on the basis of court's order cannot be reckoned for the purpose of pension and other service benefits since he was not legally entitled to get the benefit of Rule 60(b) Part-I KSR. However, salary if any paid to the respondent for the above period shall not be recovered.

17. For the above mentioned reasons, we are inclined to allow this appeal and set aside the judgment of the Kerala High Court and uphold the order passed by the Department E-49227 of 2001.

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