

(1991) 03 KL CK 0014
In the High Court Of Kerala
Case No : O.P. 2193/91

P.T. Mary

APPELLANT

Vs

The Commissioner for Government Examinations and Others

RESPONDENT

Date of Decision : 01-03-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Service Rules, 1958 — Rule 60

Citation : (1991) 1 KLJ 717

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : Thampy Cherian, for the Appellant; M.C. Gopi, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—Petitioner is a P.D. teacher in the Government Lower Primary Girls School, Kothamangalam. Her date of birth, as per service records, is 20th February 1937. That date was entered on the basis of the date of birth entered in the S.S.L.C. book. According to that date, she completes the age of 55 on 19th February 1992. Being a member of the teaching staff she can continue till the last date of the academic year 1991-92, namely, 31st March 1992.

2. Petitioner's correct date of birth, according to her, is 25th October 1939. To get that date of birth entered in the school records, she approached the first Respondent-Commissioner for Government Examinations. By order dated 29th March 1990, first Respondent accorded sanction to correct the date of birth in the school records. In pursuance to that sanction, the date of birth was corrected in the school records, as 25th October 1939.

3. After getting the date of birth corrected in the school records, Petitioner put in Ext. P-2 application dated 30th March 1990 to the Government for correcting the date of birth in the service records. By Ext. P-3 order dated 24th July 1990 Government rejected her prayer on the ground that her application was within two years of the date of retirement as per the date now entered in the service

records and that there is no justifiable reason for condoning the delay in filing that application. Thereupon, Petitioner put in a review application. In that application she raised a contention that as per Rule 60(c) of Part I of the Kerala Service Rules, she has to retire, even as per the date now entered in the service records, only on 31st March 1992 and her application dated 30th March 1990 is well beyond two years of the date of retirement. This contention has been rejected by Ext. P-7 order dated 4th October 1990. Thereafter Petitioner again filed another review petition before the Government. Government re-examined the entire issue and passed Ext. P-8 order dated 17th January 1991 declining the prayer to correct the date of birth in the service records. Hence this Original Petition.

4. A copy of this petition was served on learned Government Pleader. He was also heard.

5. The main argument advanced by learned Counsel representing the Petitioner is that the members, of the teaching staff of the educational institutions retire only on the last date of the academic year. Petitioner being a member of the teaching staff is to retire only on 31st March 1992, as per the date of birth entered in the service records. Therefore, her application dated 30th March 1990 was beyond two years of the date of retirement. Consequently it is alleged that Government were clearly in error in treating the application dated 30th March 1990 as within two years of the date of retirement and consequently Exts. P-3, P-7 and P-8 orders are unsustainable.

6. Rule 60(a) of Part I of the Kerala Service Rules provides that an officer should retire from service on the afternoon of the last day of the month in which he attains the age of 55 years. The date of completion of the age of 55 years is fixed with respect to all officers in service, because the date of birth has already been entered in the service records. With reference to that date of birth officers have to retire from service on the afternoon of the last day of the month in which he completes the age of 55 years. In the case of teaching staff of educational institutions, Clause (c) of that, rule provides that a member of the staff who completes 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. This clause has got no effect of postponing the date of retirement. It only states that a member of the teaching staff who completes the age of 55 years during the course of an academic year shall continue in service till the last day of the academic year. In other words, the date of retirement of the members of staff of educational institutions is not postponed to the last day of the academic year. Such members are allowed to continue in service even beyond the date of superannuation. This benefit that is given to the members of the staff of educational institutions is to benefit the student community. In order to facilitate continuity of coaching in the classes members of the teaching staff who complete the age of 55 years during the course of the academic year are allowed to continue in service till the last day of the academic year. So, I have no hesitation

in holding that the date of retirement on superannuation of members of the teaching staff is not postponed to the last day of the academic year, but they are only given a privilege to continue in service.

7. In the instant case, Petitioner completes the age of 55 years on 19th February 1992. So she is to retire from service on superannuation on 19th-February 1992. Application for correction of date of birth in the service records was filed only on 30th March 1990. It is well within two years from the date of retirement. Petitioner has not shown any cause for condoning the delay in filing the application. Government have taken a view that there is no ground to condone the delay. This finding, arrived at by the Government, is one based on facts. That finding on fact is not to be interfered with by this Court under Article 226 of the Constitution of India.

Petitioner is not entitled to any of the reliefs asked for. Original Petition fails. It is accordingly dismissed.