
(2001) 10 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 6196 of 1995

Pushpangadan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Kerala Service Rules, 1958 — Rule 125, 26

Citation : (2001) 10 KL CK 0043

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : P.V.S. Nair, S.P. Aravindakshan Pillai and P.V.S. Sudheer, for the Appellant; T.K. Latif, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—While working as High School Assistant and petitioner went on leave for taking up employment abroad from 1.6.1977 onwards. The leave so granted was extended from time to time and the last in the series was Ext. P3, which was for four years from 9.7.1987. As per Ext. P4 the petitioner applied for further extension of leave for 7 months and 16 days ie., till 25.2.1992. Until 25.2.1992 the leave was not sanctioned, though eventually it was sanctioned as per Ext. P5 on 25.3.1992. In the meantime, on seeing that sanction order was not coming and taking note of the expiry of the leave on 25.2.1992, the petitioner reported for duty before the Principal of the Government Higher Secondary School on 26.2.1992 vide Ext. P6. The Principal, in turn, sought the directions of the Deputy Director of Education vide Ext. P7 of the same date. There was no reply and the petitioner could not join duty. Subsequent representations to the Government also did not yield any result.

2. The Petitioner's case is permission to rejoin duty was illegally withheld and that if he had been allowed to join duty on 26.2.1992 he could have availed of the benefit of Rule 60(c) of Part I K.S.R., which would enable him to continue in service until the end of the academic year on 31.3.1992, in which case he could

also have availed of the benefit of Pay revision, which would change his pay scale from Rs. 780-1320 to Rs. 1000-1810 w.e.f. 1.10.1989. Since the permission to rejoin duty was illegally withheld the petitioner contends that he should be treated as continuing in duty until 31.3.1992 and granted all benefits accordingly.

3. The stand of the Government reflected in the counter affidavit is that the benefit of Rule 60(c) is a special benefit intended for the benefit of the student community and that a person like the petitioner, who left the school for 15 long years, has no right to claim the benefit and that his normal date of retirement being 29.2.1992, he should be deemed to have retired on that day. It is based on this view that Ext. P9 communication was sent to him directing him to apply for leave for the period from 25.2.1992 to 29.2.1992. The petitioner did not comply with that directive and chose to apply for leave for one day i.e., for 25.2.1992 asserting that he should be deemed to be on duty from 26.2.1992 when he reported seeking permission to rejoin duty before the Principal.

4. The main point in controversy therefore is the scope and ambit of Rule 60(c) Part I K.S.R. The question is whether that is a discretionary benefit which can be claimed only by a teacher actually on utility to the student community or can be claimed as a matter of right by any Government servant coming within its scope irrespective of whether the benefit of such rejoining would go to the student community or not. It is useful to quote Rule 60(c) aforementioned here.

Rule 60(c): 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. They shall be entitled to the benefits of increments and promotion which fall due, before the last day of the month in which they attain the age of 55 years. But they shall not be eligible for increment or promotion during the period of their service beyond such date. If they are on leave on the day they attain the age of 55 years and if there is no prospect of their returning to duty before the closing day of the academic year for vacation they shall be retired with effect from the last day of the month in which they attain the age of 55 years. But in cases where officers coming under this rule are under suspension on the date of superannuation or thereafter but before the closing day of the academic year, they shall be retired from service on the date of superannuation or on the date of superannuation whichever is later.

If, however, the day on which the teaching staff (including Principals of Colleges) attain the age of 55 years falls within the period of one month beginning with the day of re-opening of the institutions they shall cease to be on duty with effect from the date of such re-opening and they shall be granted additional leave from the date of re-opening to the last day of the month in which they attain the age of 55 years. They shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years.

If they are eligible to continue in service till the close of the academic year under

the 1st paragraph of this sub-rule they shall be granted additional leave from the date of closing for vocation till the last day of the month when the date of closing is earlier than the last day of the month.

The additional leave granted under this sub-rule will not be counted against the eligible leave and will count for pension. During the period of leave they will draw leave allowance at the same rate as the pay and allowances they would have drawn if they were on duty".

What is directed in the provision is that the teacher `shall" continue in service and `shall be entitled" to certain benefits; but shall not be entitled to some others. There is nothing in the provision which gives a discretionary power for the Government to intervene and decide either to grant the benefit or to deny the same. One the teacher concerned comes within the eligible category, ie., if he completes the age of 55 years during the course of academic year, there is not doubt at all left in the section that he should continue in service till the last day of the month in which the academic year ends. The contention of the State that the benefit would be available only if the teacher actually works for the rest of the term has no merit. True, the intention behind the provision is to benefit the student community, but in the absence of any discretion left with the Government to deny the benefit to a teacher of the above category, the State's contention has to fail. In *Sirajudeen v. Direction of Public Instruction* 1994 (1) KLT 361 a Bench of this Court had occasion to consider the scope of the provision. It was found that Rule 60(c) aforementioned statutorily postpones the date of superannuation and therefore the ordinary date of superannuation is the end of the academic year concerned during which the government servant attains 55 years.

5. The claim of the petitioner may be considered from the above background. Ext. P5 shows that leave has granted to the petitioner for a period of 7 months and 16 days from 9.7.1991. That expired on 24.2.1992. The petitioner admittedly reported for duty before the Principal only on 26.2.1992; presumably on the belief that the leave was available till 25.2.1992. The petitioner was thus late by one day in the matter of reporting for duty. It is realizing his mistake and accepting the said stand of the Government that he applied for leave for one day. That request was unacceptable to the Government. What the Government required in Ext. P9 is not application for leave for one day, but leave for the period till 29.2.1992 as though the petitioner was disentitled to the benefit of Rule 60(c). The stand of the Government cannot be accepted as correct in view of Note 4 appearing u/s 12(7) of Part I K.S.R., which reads as follows:

Note4: When a Government servant on return from leave, training, foreign service or an termination of previous appointment, has compulsorily to wait for orders of postings, the interval between the date of report and the date on which he takes charge of his duties shall be treated as "duty" provided that the interval between the date of receipt of orders and his assumption of duties shall not in any case exceed the amount of joining time admissible under Rule 125(a).

During such period of duty, he will be entitled to pay according to Rule 26. Avoidable delay caused in giving posting orders in such cases shall render the authorities concerned, liable for the excess expenditure, if any, caused thereby."

In so far as leave was granted, though belatedly, for the period till 24.2.1992, there was no justification for denying the petitioner the benefits or re-admission to duty and treating the period during which he was disallowed to join duty as period of duty. In other words, he must be deemed to have rejoined duty on 25.2.1992. It that is so, Rule 60(c) takes over and his date of retirement stands postponed to 31.3.1992. Subject to the restrictions in Rule 60(c) he would be entitled to service benefits. The decision in *Santhamma Mathew v. State of Kerala* 2001 (3) KLT SN 30 is an authority for the proposition that the benefit of reoption would be available to person continuing in service during the period of extended service under Rule 60(c).

6. In view of the said decision and on the facts and circumstances of this case, the petitioner is entitled to get consequential benefits arising from the pay revision also, provided he exercises his option for the benefit arising under the pay revision of 1989.

7. In the circumstances the Original Petition is allowed. The first respondent is directed to sanction the leave for 25.2.1992 as applied for by the petitioner. The period from 26.2.1992 until 31.3.1992, on which date the petitioner has retired from service applying Rule 60(c), shall be treated as period of duty and the petitioner will be allowed to exercise his option for the pay revision of 1989. All consequential benefits arising from the exercise of option as above and the retirement benefits will also be released to the petitioner within a period of six months from the date on which a copy of this judgment reaches the first respondent. In case, for the grant of the pensionary benefits any further option or application is required from the petitioner, he will be informed of it shall be the duty of the petitioner to comply with such directions, provided they do not go against the findings in this judgment. Exts. P9, P10, P12 and P14 are quashed. As regards interest on terminal benefits including pension , commuted value and D.C.R.G., the fact that the petitioner had been out of duty for a long period of 15 years and that he came back and reported for duty only on the eve of his retirement and that matters relating to pension could not be finalized in view of the present dispute are factors to be taken note of. It is hence directed that the petitioner benefits and other dues are not disbursed within the time limit of 6 months aforementioned and w.e.f. the expiry of the said time limit.