
(1992) 06 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 5651 of 1989

Raghu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-06-1992

Acts Referred:

Kerala Service Rules, 1958 — Rule 60

Citation : (1992) 2 KLJ 109 : (1993) 1 LLJ 568

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : M. Ramachandran, for the Appellant; G. Krishnakumari, for the Respondent

Final Decision : Allowed

Judgement

Balanarayana Marar, J.—Petitioner's mother Smt. Vinodini sustained an injury on December 10, 1987 and succumbed to it two days thereafter. She had been working as Headmistress of Government Lower Primary School. Petitioner applied for employment under the dying-in-harness scheme on December 31, 1987. The application was forwarded by 1st respondent to 2nd respondent. As per communication dated August 29, 1988 petitioner was informed that his claim for employment assistance could not be considered since his mother died during the period of extension of service, her normal date of superannuation being September 6, 1987. A representation was again made on April 6, 1989, but that also was rejected as per Ext. P3. Petitioner seeks a writ of certiorari quashing Exts. P1, P2 and P3 orders and for a direction to respondents to provide employment under the dying-in-harness scheme.

2. On behalf of respondents a counter-affidavit was filed contending that petitioner's mother died after she attained the age of 55, her date of birth being September 7, 1932. Being a teacher she could continue in service upto the close of the academic year. The period of service from September 7, 1987 to March 31, 1988 would be treated as extension of service granted by the Government as a

concession. Respondents therefore requested to sustain the order of rejection.

3. Heard counsel for petitioner and Government Pleader.

4. The request of petitioner is seen to have been rejected by virtue of Clause 9 of G.O. (P) No. 34/87/P & ARD dt. December 17, 1987. That clause reads:

"The employment assistance shall not be available to dependant of Government servant who is allowed to continue in service beyond superannuation either by extension of service or by re-employment and in whose case the death takes place after the normal date of retirement on superannuation."

5. According to respondents the deceased had attained the age of superannuation on September 6, 1987 and she continued in service by virtue of Rule 60(c) of Part I of Kerala Service Rules which allowed teachers to continue upto the end of the academic year provided the date of birth falls after July of that year. The continuance after the date of superannuation amounts to extension of service according to Govt. Pleader and Clause 9 of the G.O. disentitles the dependants of a person who died in harness after the age of superannuation, but before the close of the academic year. But the benefits can be denied only if the conditions embodied therein are fulfilled. They are: (1) the Govt. servant is allowed to continue in service beyond the superannuation either by extension of service or by reemployment, and (2) the death takes place after the normal date of retirement on superannuation. There is no order of extension of service nor has there been a reemployment in the case of petitioner's mother. She had been permitted to continue in service by virtue of Rule 60(c) of Part I of the Kerala Service Rules. Ordinarily the date of superannuation and the date of retirement is the last day of the month in which the officer attains the age of 55 years. But an exception is made in regard to teaching staff of educational institutions and they are allowed to continue in service till the last day of the month in which the academic year ends. The academic year ordinarily ends with March 31. By virtue of that rule a teacher governed by the Kerala Service Rules will ordinarily retire on March 31, of the academic year in which he completes 55 years.

6. In the case of a teacher therefore the date of retirement is not the date of superannuation. The date of superannuation will be the last date of the month in which the teacher completes 55 years. But by virtue of Rule 60(c) of the Rules, the teacher is allowed to continue in service and the retirement takes place only on March 31, of that academic year. Only dependant of a Government servant whose death takes place after the normal date of retirement on superannuation is denied the benefit of the scheme under Clause 9. The normal date of retirement in the case of petitioner can only be March 31, 1988. By that clause what is intended is the normal date of retirement on superannuation. In the case of Government servants other than teachers, there cannot be any difficulty. The normal date of retirement is the date of superannuation. If a Government servant continued in service either by extension of service or by re-employment

and death takes place after that date, the employment assistance shall not be available to his dependant. But in the case of teachers the normal date of retirement is different from the date of superannuation. What is intended by the Clause is "normal date of retirement on superannuation". The death of petitioner's mother having taken place before the normal date of retirement on superannuation, none of the ingredients of Clause 9 are fulfilled in this case. Petitioner is therefore not taken out of the category of persons contemplated under Clause 9 of the scheme. The rejection of his request is improper and illegal.

7. The O.P. is therefore allowed and Exts. P1, P2 and P3 are quashed. Respondents are directed to consider the claim of petitioner in the light of the observations contained in this judgment and provide employment under the dying-in-harness scheme, if he is otherwise eligible. No costs.