
(2016) 03 KL CK 0013

In the High Court Of Kerala

Case No : W.P. (C) Nos. 11573 of 2015 (V), 14811 and 21975 of 2015

Rajambika L. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Citation : (2016) 03 KL CK 0013

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillay, N. Santha, K.A. Balan, V. Varghese, Peter Jose Christo, S.A. Anand, Saju John and L. Annapoorna, Advocates, for the Appellant; M.A. Fayaz, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—1. Totally inconsistent stance raised by the petitioners between themselves, ANERT, the employer, and the Government, who constituted ANERT, make the resolution of the dispute complex.

2. The admitted facts are that the petitioners in W.P.(C) Nos. 14811/2015 and 21975/2015 are technical staff and the petitioners in W.P.(C) No. 11573/2015 are administrative staff. The issue raised is the age of superannuation applicable to the employees of ANERT, whether it be 58 or 60. ANERT and the Government assert that it is 58 years, but reliance is placed on different rules. The petitioners assert that it is 60 years, again placing reliance on different rules.

3. ANERT was amalgamated with Kerala State Council for Science, Technology and Environment (for brevity "KSCSTE") for a brief period and then de-linked from the said organisation. The rules relied on by the different parties are the rules framed for ANERT and the rules applicable to KSCSTE.

4. To understand the contention of the technical staff, W.P.(C) No. 14811/2015 has to be looked into. The petitioner therein relies on the booklet issued by ANERT and available in the library of the organisation produced along with memo

dated 28.01.2016. Specific reliance is placed on clause 1.3.10(ii)(a), wherein the superannuation age of scientific or technical staff is seen to be 60 years and that for administrative staff to be 58 years. On the basis of the same, the contention is that the technical staff are liable to be retired only when they attain the age of 60 years.

5. ANERT, contends that as per the rules approved by the Governing Body, which is produced by them along with memo dated 03.02.2016, the technical and administrative staff were to be retired on attaining the age of 58 years. ANERT however contends that when they were amalgamated with KSCSTE, they had adopted the rules applicable to KSCSTE. On de-linking from KSCSTE, ANERT had been re-registered as a Society and the Governing Body had decided to continue with the rules of KSCSTE.

6. The Government, by their counter affidavit, asserts that the service rules of KSCSTE was approved by KSCSTE only on 12.03.2004; after ANERT had been de-linked from KSCSTE, as early as on 12.08.2003. The rules of KSCSTE does not apply to ANERT, is the specific ground taken by the Government. The Government has also produced the rules as approved by the Governing Body of ANERT at Exhibit R1(b), which is similar to the one produced by ANERT.

7. The administrative staff has a contention that, ANERT, having accepted the service rules applicable to KSCSTE, all the employees of ANERT should be retired only at the age of 60 years, since, as of now, KSCSTE has decided to adopt the superannuation age of 60 years for all its employees. The learned Counsel appearing for ANERT would refute such contention on the ground that ANERT merely had adopted the rules then existing of KSCSTE when they were amalgamated. On de-linking; the rules of KSCSTE was made applicable to the employees of KSCSTE, which at that time provided retirement at the age of 58 years. The amendment made, enhancing retirement age in the rules of KSCSTE, was in the year 2012 and the same would not be applicable, unless expressly adopted by ANERT, is the specific contention.

8. First, the issue to be considered is whether the rules produced by the Government and ANERT; framed by ANERT prior to its amalgamation with KSCSTE, or the rule booklet produced by the petitioner in W.P.(C) No. 14811/2015 is to be accepted as that validly made by the Governing Body of ANERT on 12.07.1994. The petitioner has raised specific grounds to contend that the rules produced by the Government and that produced by ANERT is not the rules approved by the Governing Body.

9. The petitioner contends that clause 1.3.16 was deleted on 24.05.1996 by A.O. No. 1038/1996/Adm., which is evidenced at Ext. P7. The book-let produced by the petitioner shows the deletion and, hence, it is not the rules produced by the Government that has to be accepted. The rules produced by the Government are only the draft rules, is the specific contention. To that end, it is also submitted that the Managing Director, who signed the draft rules produced by the

Government, retired on 31.01.1994 as is indicated in Ext. P8, and hence he could not have signed the rules, which were approved only after his retirement. Further, though not produced along with the writ petition, the learned Counsel hands over the Minutes of the meeting of the Governing Body of ANERT held on 12.07.1994, and contends that the Governing Body had, by Item No. 10.5 resolved so:

"ANERT Service Rules

The draft Service Rules approved by the Executive Committee was accepted. It was suggested that rule 1.3.4, 1.3.6 and 1.3.10(ii)(a) should be revised. The Governing Body authorised the Vice-Chairman to revise these rules suitably."

The comparison of the specified rules, in the rules produced by the Government and those produced by the petitioner, would definitely indicate that the latter is the genuine one; which shows the amendments having been incorporated.

10. In the context of conflicting contentions made by the organisation and its employees one has to look at the rules produced by the Government. Admittedly the State is the major stake holder in ANERT. The Governing Body minutes produced by the petitioner, indicates that the members are all high functionaries of the Government. They are (i) the Chief Secretary as the Chairman, (ii) the Chairman, STEC, as the Vice Chariman, (iii) the Commissioner and Secretary (Housing), (iv) the Secretary, Planning and Economic Affairs, (v) the Finance Secretary, (vi) the Additional Chief Secretary, Local Administration (representing Secretary, Local Administration), (vii) the Chief Engineer (R&D), Kerala State Electricity Board, Thiruvananthapuram, (viii) the Director of Technical Education (in charge), (ix) & (x) two individual members and (xi) the Director of ANERT. The meeting of the Governing Body has also been held in the Government Secretariat and hence the approved rules produced by the State; is that available in its files.

11. The rules produced by the Government is Ext. R1(b), similar to that produced by ANERT through a memo. Ext. R1(b) indicates the proceedings of the Director, which reads as under:

"The 10th meeting of the Governing Body of the ANERT held on 12.7.1994 at Chief Secretaries Conference Hall, Government Secretariat, Thiruvananthapuram has approved "the ANERT Service Rules". Rules are appended here under. These rules will deem to have come into force w.e.f. 12.7.1994."

The Governing Body hence convened on 12.07.1994 in the Chief Secretaries Conference Hall at the Government Secretariat, approved ANERT Service Rules; which, as available with the Government, is produced at Ext. R1(b). The genuineness of that document is hence beyond any pale of controversy.

12. Now the discrepancies pointed out by the petitioners; on a comparison of the two set of rules are to be examined. The first contention raised is that the Chairman, who signed Ext. R1(b), is one who retired on 31.01.1994 and the

same is a draft rule. Considering the fact that the Governing Body met on 12.07.1994, it is imminently possible that the erstwhile Chairman had forwarded the draft rules to the Governing Body members. The same was placed in the meeting of the Governing Body on 12.07.1994 and it was approved, when the new Director also had participated. The fact that the erstwhile Chairman had signed the same indicates only that the draft rules were prepared and submitted by the then incumbent Chairman and the draft had been approved by the Governing Body on 12.07.1994, after his retirement. The rather proximate dates on which the retirement is said to have occasioned and the convening of the Governing Body; especially tested with reference to the time taken normally to settle governmental affairs; this Court is unable to find any discrepancy on that count.

13. The further contention is with respect to the Governing Body meeting on 12.07.1994, which indicates that the draft Service Rules approved by the Executive Committee was accepted and suggestions to make revision of rules 1.3.4, 1.3.6 and 1.3.10(ii)(a) were also accepted. The contention is that the revision effected is evident in the rules produced, published as a booklet by ANERT. On a comparison of the two set of rules produced; it is evident that there are amendments made and they are incorporated in the booklet. But that only lends credence to the acceptability of the approved rules produced by the Government. Even as per the minutes of the Governing Body the draft rules were approved and the Vice-Chairman was authorised to revise the rules. The revision hence was subsequent to the approval.

14. Be that as it may, it can be safely taken that there was a deviation from that suggested in Ext. R1(b), but, the deviation was not with respect to the age of superannuation. The clause with respect to superannuation, being 1.3.10(ii)(a), as contained in Ext. R1(b) produced by the Government, stipulates that the scientific staff shall be retired at 60 years and the technical and administrative staff at 58 years. Obviously, a mistake has crept in while the book was published by ANERT. The draft rules approved by the Government having shown the superannuation age as 58 years for the administrative and technical staff and no specific revision having been effected, even as per the minutes of the meeting of the Governing Body, produced by the petitioners across the Bar, this Court has to take it that the retirement age prescribed was, and still is 58 years.

15. The next contention raised is that the deletion of clause 1.3.16 in the booklet produced by the petitioners would again be an indicator of the said rules being genuine. As per Ext. P7, the rule 1.3.16 was deleted only in 1996 and obviously the booklet was issued after that. There is again no decision taken by the Governing Body of ANERT to revise the retirement age from 58 years to 60 years for the scientific staff, from that available at Annexure R1(b). This again proves that the booklet, published after 1996, erroneously showed the superannuation age.

16. Now one has to look at whether the contention raised by ANERT, that rules of

KSCSTE would be applicable is valid and if valid, the contention of the administrative staff that the subsequent amendments made in KSCSTE rules would also be applicable. It is the specific contention of ANERT that the rules of KSCSTE were adopted by the Governing Body when they were amalgamated with KSCSTE. However, nothing is produced to indicate that such an adoption was made. ANERT has placed reliance on a judgment of this Court produced as Annexure R1(c) in W.P.(C) No. 14811/2015 in which the rules of KSCSTE were found to be applicable to its employees. Therein also, the rules herein produced by the technical staff, were relied on by the writ petitioner, who was also a technical staff. This Court in Annexure R1(c) found that the rules applicable were those applicable to KSCSTE, in the context only of the said two rules alone being produced. There is no declaration of law discernible as such and the other facts brought on record in this case were not before the learned Single Judge. In such circumstance, this Court does not find any binding precedent in Annexure R1(c) judgment.

17. The reliance placed by the administrative staff is on Ext. P3 produced in W.P. (C) No. 11573/2015. Ext. P3 produced is the proceedings of the Director of ANERT which indicates that on de-linking and re-registration, the rules and orders which were in force at the time of re-registration of ANERT shall continue in force. There is no indication as to KSCSTE rules having been adopted or having been continued on such re-registration. Though the order specifically says that ANERT had adopted certain rules and orders to regulate the functioning of the institution and service conditions of its employees, there is nothing found in the said order or in any of the other documents that the rules of KSCSTE were adopted. It is an admitted fact that in 1994, rules were framed for ANERT and in such circumstance, the reference to the adoption of certain rules and orders could, as well be of the rules and orders existing in 1994. The Government too, as was noticed, the major stake holder, asserts that the rules applicable is that framed for ANERT in 1994.

18. In any event, even if the rules of KSCSTE were adopted, ANERT having been de-linked and having only adopted such rules of KSCSTE existing at the time of ANERT being de-linked from KSCSTE, the subsequent amendments brought to the rules of KSCSTE would have to be specifically adopted to the service conditions of ANERT. Otherwise, there should be a clear adoption of the rules with a condition that the amendments brought in to the rules of KSCSTE from time to time would be applicable to ANERT also. Neither of these being evidenced, this Court cannot accept the contention of the administrative staff that the rules of KSCSTE were adopted to the services of the employees of ANERT. The subsequent amendment prescribing the age of superannuation as 60 years, would also be inapplicable. The contention of ANERT that the rules of KSCSTE were adopted to the services of ANERT, has also to be negated.

19. The writ petition filed by the administrative staff is to be rejected. Going by KCSTE rules as adopted at the time of ANERT being brought under the said

council and the rules framed in the year 1994; provide for superannuation of the administrative staff, at 58 years. Even if KSCSTE rules were adopted, the subsequent amendments would have to be expressly adopted to the service conditions in ANERT.

20. In the circumstance of this Court having held that the rules applicable to the employees of ANERT, on the issue of superannuation, is that produced by the Government, the technical staff and the administrative staff would have to retire on attaining the age of 58 years. The Government also has, refuted the contention of ANERT that the rules of KSCSTE were applicable to them and asserted that the retirement age has to be by Exhibit R1(b), which is 58 years for the administrative and technical staff. W.P.(C) Nos. 14811/2015 and 21975/2015, filed by the technical staff, are also devoid of merit.

21. The petitioners have all retired from service and the petitioners have not accepted the retirement benefits only due to the pendency of the above writ petitions. In such circumstance, the petitioners shall be paid the entire retirement benefits within a period of one month from the date of receipt of the certified copy of this judgment. Where ever there is any arrears of pay and allowances to be granted to the employees, the same also shall be given within the time afore mentioned.

On the above reasoning, the writ petitions would stand dismissed. No Costs.