
(2005) 03 KL CK 0027

In the High Court Of Kerala

Case No : O.P. No"s. 13224 of 1998, 3690/99 and 20479 of 2002

Raman

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Kerala Panchayat (Establishment) Rules, 1967 — Rule 17, 2, 3
Kerala Service Rules, 1958 — Rule 12(16A), 3, 60

Citation : (2005) 3 ILR (Ker) 81 : (2005) 2 KLT 239

Hon'ble Judges : M. Ramachandran, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Sebastian Champapilly, Antony M. Ambat and T.S. Harikumar, for the Appellant; Augustine Joseph, Government Pleader, K.M. Sathyanatha Menon and K.P. Dandapani, for the Respondent

Judgement

M. Ramachandran, J.—When O.P. No. 20479 of 2002 had come up for consideration, the learned Government Pleader had brought to the attention of the Court a judgment of this Court in O.P.No. 105 of 1992, where it had been held that a full time Sweeper as on 7.4.1970 working in a Panchayat is not entitled to continue in service till attainment of the age of 60. The claim urged in O.P. No. 20479 of 2002 was that the petitioner was entitled to continue in service till he attains the age of 60 years, as authorised by Rule 60(b) of Part I of the Kerala Service Rules, since he was in service as a last grade servant as on O.P.Nos. 13224 of 1998, 3690/99 & 20479/2002. Decided on 17th March, 2005. 7.4.1970. The learned Single Judge had found that the decision in O.P. No. 105/92 might have to be examined with particular reference to certain other rules and there was possibility of recognition of the claims as highlighted in the later Original Petition. The said Original Petition was therefore referred for consideration by a Bench. It is noticed that on the same day the learned Judge had directed the other two Original Petitions also to be listed along with the referred case.

2. The claims as put in O.P. No. 13224 of 1998 and O.P. No. 20479 of 2002 are

identical in nature, but the facts presented in O.P. No. 3690 of 1999 appear to be different on certain aspects. The petitioner in O.P. No. 3690 of 1999 was the petitioner in O.P. No. 105 of 1992, referred to earlier. His claims had been found as not sustainable, and as a consequential measure certain payments made over to him were attempted to be recovered as inadmissible. These proceedings are challenged. We will deal with the above O.P. after examining the contentions in the connected cases.

3. Petitioners in O.P. No. 20479 of 2002 and O.P. No. 13224 of 1998 are similarly situated. We may first refer to the facts stated in O.P. No. 20479 of 2002. At the time of filing of the Original Petition, the petitioner was working as a Peon of a Grama Panchayat. His first appointment was as a full time Sweeper at Kattiparuthi Panchayat on 1.11.1965. He claims that his appointment was as a last grade servant. He had been later promoted as a Peon on 1.7.1972. He submits that this too was a last grade service, as could be seen from Ext.P2. The averment in the Original Petition is that when the Kerala Panchayat Common Service Rules came in the year 1977, he was placed as a last grade servant in the common service. Thereafter, Special Rules for the Kerala Panchayats Subordinate Service were introduced in 1994 and they were deemed to have come into force effective from 1.1.1990. It is also submitted that on the formation of the Kerala Panchayats Subordinate Service Rules, staff under the Local Administration Department and staff coming under the purview of the Kerala Panchayat Common Service were integrated into one service, namely Kerala Panchayats Subordinate Service.

4. The contention is that the benefit of Rule 60(b) of Part I of the Kerala Service Rules were always available to the staff of Local Administration Department in respect of members, who had been in service as on 7.4.1970, in the last grade service, provided they were continuing in the last grade service thereafter. Therefore, it is argued that when such services are integrated, a differential treatment could not have been practiced, sidelining the claims of a group of persons in the integrated cadres. But he was issued with an order asking him to go on superannuation on attaining, the age of 55 years. This was irregular and illegal. In fact, this is the subject matter of challenge. In view of interlocutory orders passed, the petitioner is continuing in service.

5. In O.P. No. 13224 of 1998, the petitioner commenced his service in 1965, according to him, as a Full Time Scavenger at Parappanangadi Panchayat, as a last grade servant. He was promoted as Peon on 1.4.1973 and continued to work as a last grade servant. Reference is made to the Panchayats Common Service Rules, 1977 as also the Kerala Panchayats Subordinate Service Rules, 1994 and he had obtained the benefits. But he was attempted to retired on attaining the age of 55 years and the Original Petition had been filed challenging such proposals, and in view of the interim orders, he had continued up to the attainment of 60 years of age. Now he has retired from service. In both the cases, the petitioners pray for a declaration that they are entitled to the benefits

of Rule 60(b) of Part I K.S.R.

6. Counter affidavits have been filed by the Deputy Director of Panchayats. According to the Government Pleader, the claims are not sustainable. The petitioners were contingent employees, when they received appointments, and could be recognised as belonging to the last grade service, only after securing the postings as peons. That was far later than 7.4.1970. Therefore, they did not come within the purview of Rule 60(b), and were obliged to retire at the age of 55. The interim orders have come to their help to continue, but the legal position requires to be clarified.

7. One more aspect has been brought in through the counter affidavit. It is that the Panchayat employees have been declared as Government servants by G.O. (MS).No. 25/87/LAD dated 3.2.1987, and from the above said date, they are recognised as Government servants. It had no retrospective effect, and the contingent employees were never given any larger rights. According to the Government Pleader, the integration with the employees of Local Administration Department did not confer the rights as the petitioners agitated in the Original Petitions.

8. The learned Judge, however, was of the opinion that a fresh look might be necessary, in respect of the claims urged by the petitioners that they were always governed by the Kerala Service Rules.

9. In O.P. No. 105 of 1992, a learned Judge by judgment dated 3.4.1995, had considered the claims of almost identical nature. The petitioner there (petitioner in O.P. No. 3690 of 1999) had joined service as a part time Sweeper in 1960 and in 1963 he became a full time Sweeper. In 1972, a post of Peon had arisen and after certain legal proceedings he had been directed to be accommodated thereto. The claim was that he being a full time contingent employee right from 1963, he was entitled to the benefit of Rule 60(b) of Part I K.S.R., and therefore, could continue up to the age of 60 years. The Court had repelled the contentions, pointing out that he was not a Government servant as on 7.4.1970 but was an employee attached to a Panchayat. The learned Judge also found that he was not in the cadre of last grade service.

10. It had been observed that although Government servants, who were part time contingent employees, were regularised with effect from 7.4.1970 and became entitled to the benefit of Rule 60(b) of Part I K.S.R., such orders had not come to the benefit of employees of the Panchayat. The learned Judge found that only by order dated 3.2.1987, the Government had declared that Panchayat employees of the State would be treated as full scale Government servants. The claims were rejected on these premises. In view of the reference order, we may therefore examine as to whether the judgment needs a reconsideration.

11. The argument of the learned counsel for the petitioners Dr. Sebastian Champappilly, which has been highlighted in the reference order, is that although the petitioners were employees attached to the Panchayat, they were always

governed by the provisions of the Kerala Service Rules. It is submitted that the Kerala Panchayat (Establishment) Rules, 1967 governed them. Rule 2(vi) says that "last grade servants" has the same meaning as in the Kerala Service Rules. Rule 12(16A) of Part I K.S.R defines "last grade service" as following:

"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 all other posts carrying the lowest scale of pay in the schedule of pay scales in force from time to time and service in any post declared by the Government to be a post in the Last Grade Service".

The argument is that as the post of full time Sweeper is included as a last grade post in the Special Rules for the Last Grade Service, the incumbent can be treated as a last grade servant. Category 4 in the Special Rules for Kerala Last Grade Service is clear to show that Sweeper is a post which is to be considered as a last grade servant. Counsel contends that because of Rule 2(vi) of the Kerala Panchayats (Establishment) Rules, 1967, the petitioners concerned were to be treated as last grade servants. This is especially because Rule 17 of the said Rules provided that the Kerala Service Rules shall mutatis mutandis apply to the Panchayat employees. The consequence, according to him, would be that they will get the benefit of Rule 60(b) as well.

12. According to the referring Judge, these aspects have not been gone into when the earlier judgment had been pronounced, and especially adoption by Rule 17 had been overlooked. Therefore, an opinion has been entered that the person need not be a Government servant as on 7.4.1970 and the question of extending the benefit to the employees, who were attached to a Panchayat also, could be re-examined.

13. Although with vehemence this argument is fielded, We have also necessarily to examine the background and the scope of the applicability of the Rules. The counter affidavit filed clearly indicates that on the crucial date i.e. on 7.4.1970, the petitioners were paid from contingent fund of the Panchayat and were only contingent employees. The Kerala Panchayats (Establishment) Rules, 1967 were not applicable to such persons at all, as could be seen from Rule 3 thereof. It is prescribed that:

"3. Applicability -- These rules shall apply to all full time employees in the service of Panchayats in the State, other than executive officers, whether permanent, temporary or officiating but shall not apply to those who are paid out of contingencies."

If that is the case, the petitioners cannot seek assistance from Rule 17, which provides for application of Kerala Service Rules, only to the Panchayat employees. As pointed out in the counter affidavit, if they were Panchayat employees, they could have been roped in for the benefit. But that is not the

case here. The petitioners were not last grade employees as on the date, but were only contingent employees and had come to the category of last grade service only on later dates. Panchayats Common Service Rules came into force in 1977 and although they were not applicable to contingent employees, by this time the petitioners, of course had become regular Panchayat employees. The provisions of the Kerala Service Rules were applicable to them, as adopted, but we have to take notice of the situation that the Panchayats Common Service Rules were in operation from 1.4.1977 alone. This did not confer any special benefits on the petitioners as attempted to be urged in the Original Petitions, notwithstanding that from 1972 and 1973 onwards the petitioners were to be deemed as last grade employees having been appointed as Peons.

14. From 3.2.1987 onwards, by the operation of G.O.(MS) No. 25/87/LAD, the Panchayat employees were declared as Government servants, but this was also with prospective effect. Therefore, by any stretch of interpretation, it could not have been possible to hold that the petitioners were entitled to be considered as Government employees in the last grade service as on 7.4.1970. Only if a positive finding with regard to such claims had come in favour of the petitioners, they could have claimed to continue in service notwithstanding the attainment of 55 years of age.

15. Contingent employees are the group of personnel who receive salaries from contingent funds. They had no security or regularity of employment. The significance of 7.4.1970, according to the Government Pleader, is that it was on the said date that the contingent employees in Government service had been regularised as Government servants. The benefit of continuation up to the age of 60 years had thereupon been saved, and incorporated in the Rules. But, a contingent employee of Panchayat had not been conferred any such right at any time. Therefore, the claims as presented were inherently weak.

16. The Kerala Panchayats Subordinate Service Rules, 1994 had come into force from 1.1.1990 and although it might have been possible for the employees of erstwhile Local Administration Department to put up claims as arising from Rule 60(b), it could not have been claimable by the petitioners, for the reason that as on the crucial date they were contingent employees, not covered by the Kerala Service Rules or last grade service rules and therefore not employees of last grade service, as the definition under Rule 2(vi) of the rules would have relevance only in the case of personnel, who came within the fold of the rules. Consequently, the Original Petitions are liable to be dismissed.

17. On the strength of the interim orders passed, petitioner in O.P. No. 13224 of 1998 had been continuing in service and had duly retired on attainment of the age of 60 years. His services after the attainment of 55 years of age therefore could not have conferred on him, any benefits other than pay and allowances, for which he was eligible, to the extent permissible. It cannot be denied. However, in such matters, the monetary reliefs have to be paid on the basis of last pay drawn on the date of the normal retirement date, without the benefit of increments,

weightage etc.

18. Government Circular No. 81/88 dated 28.10.1988 perhaps would be relevant, and modified by later orders. Period of retention beyond the normal date of superannuation is to be treated as period spent on duty only for the limited purpose and claiming pay and allowances, restricted to that to which he would have entitled to on the normal date of superannuation. Increments, promotion or pay revision benefits also are inadmissible, and benefits of commutation would be admissible, without medical examination, provided he applies for it within one year of his date of discharge. When we find that the continuation beyond the age of 55 was inadmissible, these consequences necessarily have to follow.

19. Resultantly, the petitioner will have to refund the excess amounts he would have drawn, than to which he would have been legally entitled to as per the Government orders in force. His service for the purpose of pension will also have to be reckoned as on the date on which he had attained the age of 55 years and he will be entitled to pension only from the date of his actual departure from service, taking notice of the circumstance that he continued as a full member till such time getting larger emoluments than pension. These are to be appropriately adjudged. The petitioner may be advised immediately about the monetary liability and reliefs arising out of these exercises, and to the extent possible, within a period of three months from the date of receipt of a copy of this judgment.

20. Similar directions, as has been made above, will govern the case of the petitioner in O.P. No. 20479 of 2002, He has to relieve from service forthwith and will be entitled to pension only reckoning his service up to the attainment of 55 years of age. Pensionary benefits will be payable from today onwards. In his case also, Government orders regarding the actual pay admissible for the period beyond 55 years of age is to be calculated and without the benefit of increments or fixation, and excess payments could be recovered.

21. As far as the contentions raised in O.P. No. 3690 of 1999 are concerned, he is already bound by the judgment in O.P. No. 105 of 1992. He had also got the benefit of continuing in service on the strength of interim orders. It is seen that initially he had overstayed in service because of the oversight on the part of his superior officers in omitting to notice his age of superannuation. Ext. P11 had been issued to him during July, 1998 intimating that he had drawn excess pay and allowances. Increments, earned leave surrender and certain benefits, to which he would not have been normally entitled to, were disbursed. It is also evident that inadmissible period of service (service as a contingent employee) had been reckoned for conferment of higher grades on completing ten years and 20 years. If at all, it could have been taken only for the grade admissible on rendering 25 years of service, as prescribed by the Government orders. The petitioner's contention is that having been permitted to continue in service on the strength of interim orders, such benefits should not have been denied to him,

and reference had been made to a reported decision in Kochu Kunju v. State of Kerala (1986 KLT 1281) Although every excess payments requires to be remitted back, of course subject to Rules, in this particular case, we do not think the petitioner is to be directed to pay back the amounts. This is for the reason that O.P. No. 105 of 1992 had been dismissed on 03.04.1995 and the petitioner was forthwith directed to go on retirement. But it was only after a period of three years, and by Ext.P11 dated 17.7.1998, he had been advised of the alleged excess overdrawn payments. This was therefore irregular and without authority of law, as an upper limit of three years is prescribed by Note 3 to Rule 3 Part III of the Kerala Service Rules, for arranging recovery from the pensioner. The petitioner had retired from service on 3.4.1995. There was delay in regularising the period of his service, but the Department should have taken expeditious steps. The Government Pleader submits that while granting provisional pension, within the three year period, an undertaking had been obtained from the petitioner. But, we feel that the Note to the Rule is part of the Rule and strict observance of the period has to get obedience.

22. In the aforesaid circumstances, Exts.P11 and P12 demand will stand quashed. The petitioner will be entitled only to a pension, taking notice of the circumstance that his continuance in service after the attainment of 55 years of age was impermissible, although subsequently regularised for the purpose of expediency.

The Original Petitions are disposed of as above.