
(1999) 09 KL CK 0075
In the High Court Of Kerala
Case No : W.A. No. 422 of 1996

S. Chandrasenan

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 29, 33

Citation : (1999) 2 KLJ 717

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : M.C. Gopi and P.K. Somarajan, for the Appellant; G.T. Ravi Kumar, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, C.J.—Heard.

2. In this appeal, judgment of learned Single Judge holding that Appellant is not entitled to surrender earned leave which stood to his credit on the date of resignation is under challenge. Factual position is almost undisputed and runs as follows. Appellant was Assistant Director of Public Prosecutions. While holding the post, he tendered his resignation by letter dated 1st June 1991. Subsequently on 19th June 1991 he requested permission to surrender all unavailed earned leave standing to his credit. By order dated 23rd November 1991, sanction was accorded by the Government, subject to eligibility. Accountant General raised objection to the prayer for surrender of earned leave by communication dated 19th February 1992. Thereafter, Government declined to accept Appellant's request to surrender earned leave which stood to his credit as on the date of his resignation.

3. According to learned Counsel for Appellant, the view of the learned Single Judge about applicability, of Rule 29(a), Part III, Kerala Service Rules (in short "the Rules") and Rule 33 of Kerala State and Subordinate Services Rules, 1958

(in short "the Subordinate Service Rule") is not correct. It is contended that earned leave has nothing to do with the pensionary benefits which form subject-matter of Rule 29 of the Rules and Rule 33 of the Subordinate Service Rules. Learned Counsel for the State, on the other hand, submitted that the moment there is a resignation, all previous service under the Government stood obliterated and there is forfeiture of all benefits the officer earned while he held office.

4. In order to appreciate the rival submissions, it is necessary to take note of Rule 29 of the Rules and Rule 33 of the Subordinate Service Rules. They read as follows:

29. Resignation and Dismissals.-(a) Resignation of the Public Service, or dismissal or removal from it, entails forfeiture of past service.

(b) Resignation of an appointment to take up Anr. appointment the service in which counts is not resignation from public service.

33. Consequences of Resignation.-A member of a service shall, if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government.

The reappointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointments shall apply and on such reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or orders.

Rule 29(a) of the Rules appears in Part III and inter alia provides that resignation of public service, or dismissal or removal from it, entails forfeiture of past service. Under Rule 33 of the Subordinate Service Rules; consequences of resignation have been indicated. It clearly states that a member of a service shall, if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government. Distinction is sought to be made by learned Counsel for Appellant by stating that the past service may be ignored but the benefits already accrued cannot be denied. This submission is certainly attractive but is not acceptable because Rule 29 of the Rules provides for forfeiture of entailment of past service. Therefore, any benefit linked with and relatable to the past service is automatically denied. That being the position, we are not inclined to entertain the appeal.