
(1995) 03 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 1898 of 1995

S. Samuel

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 08-03-1995

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(2), 10(3), 2(1)(jj), 9

Citation : (1995) 1 KLJ 660

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : S. Venkitasubramanya Iyer, V. Giri and T.R. Rajan, for the Appellant;
D. Somasundram Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.J. Joseph, J.—Petitioner is the President of the Consumer disputes Redressal Forum, Kottayam. He was appointed to the said post as per Ext. P1 order dated 3.10.1991 the date of birth of the petitioner is 2-7-1938. He will attain the age of 65 on 1.7.2003. It is the case of the petitioner that he is entitled to continue in the said post till he attains the age of 65 or on completion of a term of 5 years as President of the Kottayam District Forum. But in Ext. P7 personal particulars of the President and members of the Kerala State Consumer Disputes Commission and Consumer Disputes Redressal Fore, the age of retirement of the petitioner is shown as 4.3.1995 and the date of appointment is shown as 2.2.1990 and the date of taking charge is shown as 5.3.1990. It is the further case of the petitioner that the entries shown in columns 5, 6 and 7 in Ext. P7 relating to the date of appointment, the date of taking charge and date of retirement are wrong. According to the petitioner, his date of appointment to the post of President is 3.10.1991 and he has taken charge of the said post only on 25.6.1991 and therefore, he is entitled to continue in service upto 24.10.1996. Ext. P6 is the letter wherein Government forwarded Ext. P7 particulars to the petitioner on receipt of Exts. P6 & P7 petitioner submitted Ext. P8 representation stating that

the particulars shown in column nos. 5, 6, and 7 as far as he is concerned are wrong and requested the Government to rectify the mistake. But it is the further case of the petitioner that the said representation was not favourably considered and according to the respondents, particulars shown against Ext. P7 are correct and did not call for any change. Petitioner, therefore, files this Original Petition seeking for issuance of a writ of certiorari or other appropriate writ, direction or order quashing the entries under the columns 5,6, and 7 in Ext. P7 as against the petitioner. He has also prayed for issuance of a writ of mandamus or other appropriate writ, direction or order declaring that the, date of appointment of the petitioner as President, Consumer Disputes Redressal Forum, Kottayam District is 3.10.1991 and his date of taking charge as President of the said Forum is 25.10.1991 and further, his retirement will be on 24.10.1996. He has also sought for necessary corrections in the service register of the petitioner incorporating the above service particulars and allow him to continue till 24.10.1996. When the matter has come up before this Court, this Court directed the Government Pleader to get instructions in the matter and thereafter, on 21st February, 1995, on behalf of the respondents, 2nd respondent had filed a detailed statement wherein it is stated that as per 4 notifications dated 2.2.1990, petitioner was appointed by the Government as member in the District Consumer Disputes Redressal Forums of Ernakulam, Palghat, Trichur and Idukki and he took charge on 5.3.1990. It is also stated in the statement that in October, 1991, the government decided to constitute separate forum for each District and thereafter as per Ext. P1 notification, petitioner was appointed as the President of the Kottayam Consumer Disputes Redressal Forum and took charge on 25.10.1991. But according to the Government, his five year term started from 5.3,1990, the date he took charge as Member, Consumer Disputes Redressal Forums of Ernakulam, Palghat, Trichur and Idukki and his date of retirement shall be calculated from 5.3.1990, the date on which he took charge as a member of 4 district forums referred to above and not from 25.10.1991, the date on which he took charge as President of the Kottayam District Consumer Disputes Redressal Forum.

2. According to the petitioner, by virtue of his appointment as President of the Consumer Disputes Redressal Forum for Kottayam District as per Ext. P1 order dated 3.10.1991 he is entitled to continue in the said post for a term of 5 years or till he attains the age of 65 u/s 10(2) of the Consumer Protection Act, 1986.

3. Admittedly, the date of birth of the petitioner is 2.7.1938. This is evident from Ext. P7 personal particulars of President/members of the Consumer Disputes Redressal Forums published by the first respondent, state. He, therefore, attains the age of 65 only on 1.7.2003. But the date of retirement of the petitioner is shown as 4.3.1995 in Ext. P7.

4. Therefore, the only question to be decided is whether the above date of retirement shown in Ext. P7 is correct as far as the petitioner is concerned or whether the petitioner can hold office as President of the District Forum till the

expiry of 5 years from the date on which he had taken charge as President of the District Forum at Kottayam. The establishment of the District Forum is provided u/s 9 of the act by the State Government with the prior approval of the Central Government u/s 10 of the Act, the District Forum shall consist of a President and two members having qualifications prescribed under the Act.

5. The unamended Section 10 of the Act, which is relevant for the purpose of this case is extracted below:

10. Composition of the District Forum - (1) Each District Forum shall consist of-

(a) a person who is or has been or is qualified to a District Judge to be nominated by the state Government, to be its President;

(b) a person of eminence in the field of education, trade or commerce;

(c) a lady social worker;

(2) Every member of the District Forum shall hold office for a term of five years or upto the age of 65 years whichever is earlier, and shall not be eligible for re-appointment.

Provided that a member may resign his office in writing under his hand addressed to the state Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in sub section (1) in relation to the category of the member who has resigned.

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

6. Even though as per the amendment made on 18.6.1993, a new Section (Section 2(1)(jj)) is introduced defining the word "member" which includes the President also, even without the said amendment, in the absence of any other provisions or contrary intention, it shall be held that Section 10(2) of the Act is applicable to the President of the District Forum also. There is no separate provision in the act dealing with the term for holding office of the President. At the time when the petitioner was appointed as per Ext. P1 order, the relevant Section is Section 10 referred to above. Therefore, the question to be decided is whether the petitioner who was appointed as the President of the District Forum as per Ext. P1 order of appointment, can hold the said office till the expiry of the period of 5 years after he assumed charge of the said office. Admittedly, he assumed office of the President of the Kottayam District Consumer Disputes Redressal Forum only on 25.10.1991 and going by the terms of Ext. P1 order, he is entitled to continue in the said office till 24.10.1996, unless he is otherwise disqualified to hold the said post. His appointment as a member of the District Forums of Palghat, Ernakulam, Trichur and Idukki evidenced by Exts. P2 to P5 order to appointment dated 2.2.1990 will not in any way disqualify him to be

appointed as President of the Kottayam District Forum or to continue in the said office as president till he completes the statutory period of 5 years stipulated in Section 10(2) of the Act. Section 10(2) of the Act provides the period that a person can hold office either as President or as member of the District Forum and not in respect of the service that he might have put in all the District Forums, in case Government makes such appointments. u/s 9 (a) of the Act, the State Government is the authority to establish a Consumer Disputes Redressal Forum to be known as "District Forums" with the prior approval of the Central Government in each District of the State by notification. Thus in each district, a District Forum can be established by the Government. Reference to the "District Forums" in Section 10(2) of the Act can only be to such a District Forum made mention in Section 9 of the Act in respect of such a District Forum, confined to that District only.

7. What is stated u/s 10(2) of the Act is that no member appointed to a District Forum is eligible for re-appointment on satisfying the conditions stipulated in that Section. What is stipulated in the Section is that every member of the District Forum shall hold office for a term of 5 years or upto the age of 65 years whichever is earlier and only such persons alone shall not be eligible for re-appointment in that District Forum. Therefore, for attracting the said disqualification contemplated under the said Section, a member including the President of the District Forum had to complete the term of office of 5 years in the "District Forum" or had to attain the age of 65 years. Those persons who satisfy those conditions are not eligible for re-appointment in that District Forum and not under any other circumstances. Admittedly, petitioner had not attained the age of 65 years and he had not completed the period of 5 years as the president of the District Forum at Kottayam on 4.3.1995. He has not also completed 5 years service in any other District Forums when he was appointed as per Ext. P1 order dated 3.10.1991.

8. A re-appointment either as a member or President of the District Forum is not provided in case the member or President did not attain the age of 65 years or served a period of 5 years in his capacity either as a President or as a member. That is the reason why the first respondent had appointed the petitioner against as per Ext. P1 order as President of the District Forum at Kottayam, even though he had served earlier and holding office of a member at Palghat, Trichur, Ernakulam and Idukki at the time when he was appointed as the President of the Kottayam District Consumer Disputes Redressal Forum. The said appointment as per Ext. P1 order has nothing to do with the appointment of the petitioner as member of the District Forums as per Exts. P2 to P5 orders. Whether he had resigned from the membership of the above 4 District Forums and whether the said resignation was accepted by the State as required u/s 10(3) of the act, there is no legal inhibition for his appointment as President of the district Forum at Kottayam as per ext. P1 order, since he had not completed 65 years of age as on 3.10.1991, the date of Ext. P1 order of appointment and he had not completed the 5 years term in office in the District Forum as on 3.10.1991 as per

Exts. P2 to P5 orders dated 2.2.1990.

9. There is no legal or factual basis for the respondents to calculate the 5 year term of the petitioner from 5.3.1990, the date he took charge as member of the four other District Forums. If that be so, there is absolutely no justification to make a fresh appointment again as president of another District Forum, viz. Kottayam Consumer Disputes redressal Forum by another and independent separated order of appointment evidenced by ext. P1 on 3.10.1991, Ext. P1 is a fresh appointment order.

10. In Ext. P1 order, respondent have not stated that the petitioner's appointment is a continuation of his earlier appointment. On the other hand, it is specifically stated that his appointment as President of the District Forum at Kottayam is in supersession of his earlier appointment orders dated 2.2.1990 as member of the other four District Forums. As found earlier, for such an appointment, there was no statutory or legal bar or ban or prohibition for the State and there is no disqualification incurred by the petitioner to accept the said post. As per the terms of Ext. P1 order and in the light of the statutory provisions contained in Section 10(2) of the Act, the petitioner is legally entitled to continue in office till the expiry of the five-year period after he assumed office as president of the Consumer Disputes Redressal Forum in the Kottayam District on the strength of Ext. P1 order of appointment. Since his appointment is in supersession of all the other previous appointments, the right and eligibility of the petitioner to continue in service till the expiry of the 5 years period after he assumed office as President of the Kottayam District Forum is hereby declared and he is entitled to continue in the said office till 24.10.1996, unless he is removed from office in the manner prescribed under the provisions of the Act and the Rules framed thereunder. The right of the petitioner to continue in office as president of the Kottayam Consumer Disputes Redressal Forum upto 24.10.96 is hereby declared. Respondents are directed to make necessary changes in the entries under columns 5,6 and 7 in Ext. P7 as against the name of the petitioner incorporating the fact that the petitioner's appointment to the post of President as 3.10.1991 and the date of taking charge as 25.10.1991 and the date of retirement as 24.10.1996. Petitioner is entitled to get the consequential service benefits also.

Original Petition is allowed. But there will be no order as to costs.