

(1979) 08 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 964 of 1979-M

S. Sundararaja Iyer

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-08-1979

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 5(2)
Kerala Education Rules, 1959 — Rule 8

Citation : (1979) 08 KL CK 0008

Hon'ble Judges : R.Bhaskaran, J;George Abraham Vadakkal, J

Bench : Division Bench

Advocate : George Varghese Kannanthanam, P.C. Joseph, Abraham Vakkanal and Kurien George Kannanthanam, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

George Vadakkal, J.—During the period 21st March 1956 to 20th March 1959 the Petitioner was a research scholar doing research in Applied Chemistry in the Department of Applied Chemistry of the University. Before that, from 8th June 1953 to 20th March 1956 he was a Lecturer in the S.T. Hindu College, Nagercoil. After his research work he joined service as a Lecturer in the B.C.M. College, Kottayam on 1st June 1959 and continued so till 31st May 1960. On 11th August 1960 he joined the service of Sree Sankara College, Kalady as Professor. In between 31st May 1960 and 11th August 1960 for a short time he was in the service of the S.D. College, Alleppey. Is he entitled to continue till he attains 60 years of age in the service of the college is the question that falls for consideration.

2. Statute 4(a) in Chapter I of the First Statutes made under the Kerala University Act, 1974, reads:

4. Age of superannuation, etc. of the teachers who entered service before 1st April 1958.--(a) Teachers of Private Colleges who have entered service prior to

1st April 1958 shall have the right to retire at the age of sixty and be governed by the provisions of Chapter III or to opt for the provisions contained in Chapter II. Those who have entered service prior to 1st April 1958 and who have completed 55 years on the date of commencement of these statutes but who opt for the age of retirement at 55, shall retire only with effect from the date on which they exercise their option. Those who have entered service on or after 1st April 1958 and completed 55 years at the commencement of these statutes shall retire on 1st April 1976 forenoon.

3. In *Aley Joseph v. University of Kerala* 1978 KLT 457 this statute was construed as entitling a private college teacher who has entered service of any Private College prior to 1st April 1958 to opt to continue in service till he attains the age of 60 notwithstanding break in service. Therein relying on *Elyamma v. District Educational Officer* 1965 KLT 1185 it was held that "service" contemplated in statute 4 may even be discontinuous service. In that case, the Petitioner had entered service on 23rd July 1957 in the B.C.M. College, Kottayam. On 31st May 1958 she left that college and thereafter joined the Deva Matha College, Kuravilangad, on 4th September 1964. She left that college on 31st May 1965 and joined St. Xavier's College for Women, Alwaye. Despite the fact that during the period 31st May 1958 to 4th September 1964 she was not working in any college, and though her service as Lecturer after 1st April 1958 was not in the same college where she was working prior to and as on 1st April 1958, but in other different colleges, this Court held that she is entitled to opt for continuance till she attains the age of 60 years.

4. Construing the Note to Rule 8 in Chapter XXVII(A) of the Kerala Education Rules, 1959, this Court in *Elyamma v. District Educational Officer* 1965 KLT 1185 said as follows:

I do not think that the rule is capable of the interpretation that there should be continuous service. It is not so mentioned in the rule and I see no justification for adding the word "continuous" to the rule. The plain meaning of the rule is that those who have been in service before 4th September 1957 are entitled to continue till they attain 60 years of age.

Rule 8 with the Note considered there reads:

8. The age of retirement on superannuation shall be 55 years.

Note: In the case of those who were in the service of any aided school prior to 4th September 1957 the age of retirement on superannuation shall be 60 years subject to the condition that the service beyond the age of 55 years shall not qualify for pension and gratuity under these rules.

5. Statute 4(a) again came up for consideration of this Court in *Rev. Father Peter Uralil v. The Director of Collegiate Education* O.P. No. 3411 of 1976. This Court therein said:

As is pointed out in *F.T. Wood's "A Remedial English Grammar for Foreign*

Students", page 87:

The perfect tense (made up from the past participle of a verb preceded by the present tense of the auxiliary have: I have eaten, they have gone) is the tense that is used when we wish to express the idea that some activity that took place in the past, or a situation that originated in the past, is connected in some way with the present. It may be the recent past that is referred to (I have just finished my dinner), a more distant past, or an indeterminate past (I have lived in the East). The nearness or remoteness of the time is not material, for the perfect tense merely states the position at the present moment.

For example A had entered service in 1958. He is in service at present. His service might not be continuous in the sense that there was no break of service. He might have taken extraordinary leave which might imply break in service. Or he might have been deputed for other work by his superior authorities. Even in such cases it could be very well said that he has entered service in 1958.

I think this appears to be a reasonable construction of Rule 4 of Chapter I of the First Statutes. Therefore, I see no reason why the Petitioner should be denied the right to take advantage of Rule 4 and his option to be in service till he attains sixty years should be rejected.

6. In Rev. Father Peter Uralil's case, it was also said that the same cannot be treated as authority for the position that "the rule would apply in a case where there is a total termination of the previous service commenced before 1st April 1958 and then a fresh entry into service after the date". To the same effect is the Division Bench decision in Sankara Warriar v. Secretary to Government, Education Department 1972 KLT 213 which considered the Note to Rule 8 in Chapter XXVII(A) of the Kerala Education Rules, 1959, with reference to the decision in Elyamma's case 1965 KLT 1185. In Sankara Warriar's case 1972 KLT 213 the teacher had resigned in 1946 and left the school. Thereafter he was appointed on 29th July 1957. However, the department approved this appointment only with effect from 13th June 1958. He was therefore considered to have entered service only on 13th June 1958 and that service was considered by the Division Bench to be fresh service from 13th June 1958, presumably because he by his resignation had abandoned the post and thereby brought to an end his prior service. It is to be noted that Division Bench only said that Elyamma's case 1965 KLT 1185 would not govern Sankara Warriar's case 1972 KLT 213 and did not overrule or even doubt the correctness of the decision in Elyamma's case 1965 KLT 1185 though the case was referred by the learned Single Judge to Division Bench because he felt that Elyamma's case 1965 KLT 1185 requires reconsideration. In Rev. Father Peter Uralil's case, this Court took the view that there was no total termination of the service though there were breaks in his service.

7. The principles that emerge from the decisions discussed above are: (i) the service prior to the relevant date need not necessarily be continuous service; (ii)

break or breaks in the service one has prior to the material date would not affect the concerned teacher's right to continue in service till he attains the age of sixty; (iii) what matters is service as a teacher [in any aided school so far as Rule 8 in Chapter XXVII(A) of the Kerala Education Rules, 1959 is concerned, and in any private college so far as statute 4(a) in Chapter I of the Kerala University First Statutes, 1976 is concerned] and not service under the same management both before and after the relevant date; and (iv) where there is a complete severance of the teacher's service-relationship with the management he was serving prior to the relevant date, and he re-enters service as a teacher only after that date, his prior service would not be of any assistance to him to claim that he is entitled to remain in service till he attains the age of sixty.

8. May be, perhaps, another view is possible and another construction can be placed on the expressions occurring in the Note to Rule 8 and in statute 4(a) and may be, it could very well be said, as did the Full Bench in *Kunhammed Keyi v. Premalatha* 1962 KLT 366 with reference to the expression "has been fixed" in the proviso to Section 5(2) of the Kerala Buildings (Lease and Rent Control) Act, 1959, that the present tense of logic is used not to denote a thing or event which took place in the past, but something or some event which originated in the past (entry into service) and continues into the present (continues to be in service from the date of entry thereinto). The proviso mentioned above said that, the fair rent fixed may in proper cases be lower than but shall in no case exceed by 15 per cent the monthly rent on the basis of which the property tax or house tax for the building has been fixed

The Full Bench said:

In our view, "has been fixed" cannot refer to something which was but is no longer fixed in other words, to an assessment which has been superseded.

Likewise it can be argued that "have entered service prior to 1st April 1958" does not refer to a service which has come to an end prior to 1st April 1958 and that it refers to a service that had its origin prior thereto and subsisted from prior to and on 1st April 1958, and subsists on the date the statute 4(a) came into force; and that "were in service on 4th September 1957" similarly refers to a service relationship that existed from prior to and on that date and which continued therefrom upto the present, namely when the Note came into force.

9. Though it is possible and plausible as aforesaid, to interpret the two expressions differently, we do not think that it would be just and equitable to adopt any different construction now. The decision in *Elyamma's case* 1965 KLT 1185 was rendered on June 4, 1965 and the Note has not been amended thereafter. Besides, those who would be benefited by the Note and statute 4(a) are only a few who were teachers at some time or other, in one case before 4th September 1957 and in the other before 1st April 1958 or in other words those who had worked as teachers at some time or other more than 21 years ago in the past. They constitute a vanishing class. Even on availing of the benefit of

continuance in service till they attain the age of 60 years all such teachers would be in service only for a few more years and after the retirement of the youngest of that group, the provisions in the Note and statute 4(a) would automatically become defunct and otiose. Therefore, we prefer to follow the rule of *Stare decisis* without embarking upon any further consideration of the matter.

10. It is contended that as on 1st April 1958 the Petitioner was not working in any college and on that date he was a research scholar, and that, therefore, he is not entitled to exercise the option to remain in service till he attains the age of 60. The rationale of the decisions discussed above is that one need not necessarily have been a teacher from prior to and on the relevant date, and thereafter also, till the relevant provision came into force continuously without any break in order to claim the right of exercising the option, but needs to satisfy only one requirement, namely that at sometime or other prior to the relevant date, he worked as a teacher and that service-relationship has not been completely and totally broken. The Petitioner was till 20th March 1956 working as a lecturer in the S.T. Hindu College then affiliated to the University of Travancore which has been reconstituted and reorganized as the University of Kerala in 1957. On 21st March 1956 he began his research work in Applied Chemistry in the Department of Applied Chemistry of that University as a Government of India Research Scholar. He worked so till 20th March 1959, and when after the midsummer recess of that academic year (1958-59) the colleges re-opened, joined as lecturer in the B.C.M. College, Kottayam, on 1st June 1959. There is nothing to show that he abandoned his post as a lecturer in the S.T. Hindu College or that college totally terminated his service as a lecturer. By the time his research work was over the S.T. Hindu College, Nagercoil, became disaffiliated to the Travancore University, and he joined the service of another college affiliated to that University, by then, Kerala University. Of course there was break in his service but we are not prepared to say that the same amounts to total and complete termination of his service.

11. As per Ext. P-5 the 3rd Respondent rejected the option exercised by the Petitioner to retire at the age of sixty. However, he was directed by the 3rd Respondent to take up the question with the higher authorities. He accordingly approached the Government claiming the right of option to retire at the age of sixty. The same was rejected as per Ext. P-6 order of the 1st Respondent. The Petitioner's option was rejected as per Ext. P-5 on the ground that he does not have continuous college service from 1st April 1958 or earlier, and as per Ext. P-6 for the reason that he has no continuous service in private college prior to 1st April 1958. In view of what is stated above, the Petitioner is entitled to exercise the option to remain in service till he attains the age of 60 years. We hold so and consequently quash Exts. P-5 and P-6 orders. The Respondents are directed to deal with the option exercised by the Petitioner accordingly and in the light of what is stated herein. This writ petition is allowed to the above extent. There will be no orders as regards costs.