(1988) 11 KL CK 0035

In the High Court Of Kerala

Case No : O.P. No. 1532 of 1988-G

Sabu Zacharias and Another — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 11-11-1988

Acts Referred:

Kerala Service Rules, 1958 — Rule 57, 60, 64, 65, 66
Kerala University Act, 1974 — Section 33

Citation : (1989) 1 KLJ 197

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : Babu Thomas K. and K. Ravikumar, for the Appellant; K.R.B. Kaimal, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Petitioners are the heirs of late V.S. Kuncheriya, who while working as Professor of Physical Education in Mar Ivanios College, Trivandrum (within the jurisdiction of Kerala University) died on 20th July 1981 after completion of 56 years of age. Admittedly he had opted to be governed by Chapter III of the First Statutes in respect of pension, Provident Fund, Gratuity, Insurance, and age of retirement of teachers of private colleges (for short ''the First Statutes''). Petitioners complaint of nonpayment of family pension benefit, D.C.R.G., compassionate gratuity and provident fund amount due to them by virtue of their being heirs of the deceased and have filed the Original Petition seeking appropriate writs of mandamus. According to them, Ext. P-2 communication holding that they are not entitled to compassionate gratuity and Ext. P-8 communication reiterating the same stand are liable to be quashed.

2. Counter-affidavit has been filed on behalf of the second, Respondent. First Statutes have been issued by the Government u/s 33 of the Kerala University Act, 1974. Rule 3 of the Statutes provides that except as otherwise provided, age of compulsory retirement of private college teachers shall be 55 years. Rule 4

provides that teachers who were in service prior to 1st April 1958 shall have the right to retire at the age of 60 years and also to be governed by the provisions of Chapter III of the Statutes. Those who retire at the age of 55 are governed by the provisions of Chapter II of the Statutes and they are entitled to pension and gratuity as in the case of Government employees as laid down in the Kerala Service Rules. Those who opt for Chapter III of the Statutes and continue in service till the completion of 60 years of age are not eligible for full pension or gratuity. They are eligible for pension only at the reduced rate. Dependents of those optees are not entitled to payment of family pension. But the Government as per order, dated. 30th January 1984 Ext. R-2(a) extended certain concessions in the matter of payment of family pension to the members of the families of such teachers (that is subject to maximum of 75 per cent of the family pension which would have been admissible had the teacher opted for Chapter II and it is subject to certain other restrictions also). Petitioners do not satisfy the requirements of Sub-rules (6) and (7) of Rule 90 of Part III Kerala Service Rule so as to become entitled for payment of family pension. Teachers who opt for Chapter III of the Statutes are not eligible for gratuity. Compassionate gratuity is payable only to a teacher who died before the commencement of the Statutes. Petitioners'' father died long after such date. Petitioners'' father was not a subscriber to the Kerala Private College Teachers Provident Fund. Principal of the college had recovered Rs. 1,230 from the salary of the teacher and credited it to the fund. Recovery and credit were irregular, deceased not being a subscriber. Principal has been directed to withdraw the amount and pay it to the legal heirs of the deceased Petitioners are not entitled to any relief.

3. Learned Counsel for the Petitioners submits that the amount paid by the Petitioners'' father toward provident fund amount has been disbursed. Learned Counsel also submitted that the Petitioners do not press the claim for family pension. The claim is now confined to gratuity. Petitioners assert right for payment of gratuity and this is rebutted by the learned Government Pleader.

4. Petitioners'' father was in service prior to 1st April 1958. He therefore had the right to opt to continue in service till he attained the age of 60 years and to be governed by Chapter III of the Statutes. Admittedly he exercised that option. There is no dispute that he was governed by Chapter III of the statutes. The short question for consideration is whether he was entitled to payment of gratuity. If he was so entitled to payment of gratuity, Petitioners are entitled to claim the same as his heirs.

5. I will now refer to the relevant rules in Chapter. III of the First Statutes. Rule 16 states that the service of teachers in private colleges beyond the age of 55 shall, not qualify for pension and gratuity under the statutes. Rule 17 states that in computing the length of service for calculation of pension and gratuity, continuous service shall alone be reckoned as qualifying service. Time passed on leave of any kind shall be allowed to count as qualifying service to the extent provided under Rule 26 of Part III of the Kerala Service Rules. Rule 18 deals with

time of eligibility for pension and gratuity. It states that a teacher shall be eligible for payment of pension and gratuity, as the case may be, on retirement after attaining the age of superannuation or on voluntary retirement after completing a qualifying" service of 20 years or on discharge due to the abolition of the post or on discharge due to invalidation on medical grounds. The heading of Rule 19 is "eligibility for pension". A teacher shall be eligible for pension if he has rendered total qualifying service of ten years or more. The rule also states that if the qualifying service is less than ten years, but not less than five years, gratuity equal to one-half of month''s emoluments last drawn for each completed year of service shall be paid. No gratuity shall be admissible to a teacher who has put in a qualifying service of less than five years. Rule 20 deals with compassionate gratuity; this rule cannot be invoked in this case and there is no claim thereunder.

6. Turning now to Chapter II of the First Statutes, it is seen that Rule 5 states that teachers who retire at the age of 55 shall be entitled to receive the same pensionary benefits as are allowed to similar categories of teachers in Government Colleges including family pension and death-cum-retirement gratuity and all the conditions for the grant of these benefits applicable to Government servants as laid down in Part III of the Kerala Service Rules shall mutatis mutandis apply to such teachers.

7. Part III of Kerala Service Rules (for short the Rules 5) deals with pension. Rule 1 of Chapter I states, inter alia, that the pensions of all employees to whom the Rules apply are regulated by the Rules in Part III. Rule 57 states that amount of pension, that may be granted is determined by the length of service as set forth in Rules 64 to 70. Note 1 to the Rule states that the term "pension" includes gratuity, death-cum-retirement gratuity and pension also. Rule 60 states that an employee entitled to pension may not take a gratuity instead of pension. Rule 64 prescribes the amount of gratuity or pension admissible based on completed years of qualifying service. The tabular details indicate that what an employee on retirement is entitled to is gratuity, and not pension if he has less than ten years of qualifying service and pension and not gratuity if he has ten years or more of qualifying service. Rule 66 says that an employee who has completed five years of qualifying service may be granted additional gratuity not exceeding the amount specified in Rule 68 when he retires from service and is eligible for a gratuity or pension under preceding rules. In other words, additional gratuity is an addition to gratuity or pension, as the case may be, provided the employee has qualifying service of five years. Rule 67 deals with D.C.R.G. The Rule states that if an employee who has completed five years of, qualifying service, dies while in service, a gratuity not exceeding the amount specified in Rule 68 may be paid to person or persons on whom the right to receive the gratuity is conferred the Rules or if there is no such person, to the surviving members of his family as defined in Rule 71. This is payable in the case of death after retirement also.

8. Entitlement to pension/gratuity/D.C.R.G. under the Rules is well defined. Subject to other Rules, an employee is not entitled to pension and gratuity.

Entitlement is to pension or gratuity, the former being payable to an employee who has ten years or more of qualifying service and the latter being payable to an employee who has only less than ten years of qualifying service. Additional gratuity is a benefit in addition to pension or gratuity, as the case may be provided the employee has minimum qualifying service of five years. If he dies while in service, the provision regarding pension will not be operative, but the nominees or heirs or members of his family (as the case may be) will be entitled to D.C.R.G. provided the employee had five years of qualifying service.

9. The normal age of retirement on superannuation under the Rule is 55 years. Pensionary benefits on such retirement is dealt with in Part III of the Rules. Private college teachers who retire on completion of 55 years of age are governed by Chapter II of the Statutes and by virtue of Rule 5 are entitled to pensionary benefits (including D.C.R.G.) due to Government college teachers under the Rules; they are entitled to D.C.R.G. in addition to pension or gratuity as the case may be. Private college teachers who opted to retire only on completion of 60 years are governed by Chapter III of the Statutes. They are entitled to pension and not gratuity if they have qualifying service of ten years or more; they are entitled to gratuity and not pension if they have qualifying service of less than ten years but not less than five years. Chapter III of the Statutes does not make applicable to those teachers the provisions relating to D.C.R.G. in the Rules. It is therefore clear that D.C.R.G. is not payable in the case of private college teachers who opted to be governed by Chapter III of the Statutes.

10. Petitioners'' claim fails. The Original Petition is dismissed, but without costs.