(2006) 02 KL CK 0039

In the High Court Of Kerala

Case No : W.A. No. 555 of 2004

Sarada APPELLANT

Vs

Deputy Director RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Citation : (2006) 1 ILR (Ker) 594 : (2006) 1 KLT 745

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.K. Ravindranath, for the Appellant; N. Raghuraj, A.V. Ravi and K. Amminikutty and Roy Chacko, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—The question that is posed for consideration in this case whether the Co-operative Societies registered under the Kerala Co-operative Societies Act, 1969 are free to fix different age for retirement of the employees.

2. A learned single Judge of this Court in Cochin Co-op. Hospitals Socy. Ltd. Vs. Reg. of Co-op. Socys. and Others, interpreting Rule 183(2) of the Co-operative Societies Rules, 1969 held that a Co-operative Society governed by the Co-operative Societies Act, 1969 has no right to prescribe the retirement age lesser or higher than what is prescribed therein. Another learned single Judge of this Court in WP(C). 20619 of 2003 against which this writ appeal has been preferred has taken the view that Rule 183(2) does not provide that in every case, the retirement age should be 58, which according to the learned single Judge is only the maximum age of retirement and consequently it is open to the Co-operative Societies to fix age for retirement of their employees.

3. The entire controversy is centred round the interpretation of Rule 183(2) of the Co-operative Societies Rules, 1969 which is extracted below for easy reference:

183. Age limit:-- (1) A candidate for appointment by direct recruitment must

have completed 18 years and must not have completed 37 years of age on the first day of April of the year in which the applications for appointment are invited:

Provided that the upper age limit shall be raised by 5 years in the case of candidates belonging to any of the Scheduled Castes/Scheduled Tribes or adult member of such caste/tribes and their children when such adult members are converted to other religions and by three years in the case of candidates belonging to any of the Other Backward Classes and by three years in the case of candidates who are ex-service men.

Provided further that in the case of applicants who are employees of Co-operative Societies for appointment in the Apex Societies and other Societies having one or more districts as area of operation, the maximum age limit shall be 50 years.

Provided also that in the case of applicants to the posts mentioned in Sub-rules (3) and (4) of Rule 185, the maximum age limit shall be 45 years.

(2) No employee shall be eligible to continue in the service of a society after the last day of the month in which he attains the age of 58 years.

Rule 183 deals with age limit. Rule 183 (1) says that a candidate for appointment by direct recruitment must have completed 18 years and must not have completed 37 years of age on the first day of April of the year in which the applications for appointment are invited. Rule 183(2) deals with the age of retirement which says that no employee shall be eligible to continue in the service of a society after the last day of the month in which he attains the age of 58 years. The question that is posed for consideration is whether a society could prescribe their own age of retirement but not beyond 58 years of age and can a society retire its employee at the age of say 45, 50, 55 and so on.

3. Counsel appearing for the appellant Sri. K.K. Ravindranath submitted that second respondent society had originally prescribed the age of retirement as 60 as per its bye-laws. Co-operative Societies Rules were amended prescribing that employees of all co-operative societies shall retire on attaining the age of 58 years as per Rule 183(2) of the Co-operative Societies Rules 1969. Consequently employees of the 2nd respondent Co-operative Society could continue in service upto 58 years of age for the last several decades. Bylaw was amended bringing the age of retirement at 55 years of age, which according to the petitioner, is vitiated by mala fide and was made for extraneous reasons so as to see that petitioner is ousted from service on attaining 55 years of age. Counsel submitted there is no justification in unsettling the age of retirement which was fixed as 58 years. Counsel further submitted second respondent was following Rule 183(2) for more than three decades and therefore there is no justification in reducing the age of retirement from 58 to 55. Counsel also made reference to the Kerala Cooperative Societies Employees Self Financing Pension Scheme, 1994 wherein also the age of retirement prescribed is 58 years. Counsel submitted there is no justification in reducing the age of retirement contrary to the provisions of the Co-

operative Societies Act as well as the Pension Scheme detrimental to the interest of the employees.

4. Sri. N. Reghuraj, Counsel appearing for the society contended that the society has got the freedom to fix the age of retirement. Referring to Rule 183(2) of the Co-operative Societies Rules counsel submitted statute has only fixed the maximum of age for retirement and it is always open to the Co-operative Societies in their wisdom to fix age of retirement. Consequently the amendment brought in by the Board of Directors of the Society fixing the age of retirement as 55 years as approved by the Registrar is perfectly legal and valid.

5. We may at the outset point out, before coming into force of the Co-operative Societies Act, 1969, the Co-operative Societies in the State were following different age of retirement for their employees, Some societies had fixed the age of retirement as 62, some 60, 58, 55, etc. in other words, there was no uniformity in the age of retirement of employees of various co-operative societies in the State. Societies had also followed different service conditions for their employees, not only for retirement, but even for appointment different qualification and eligibility criteria were laid down. Legislature felt the necessity of consolidating, amending and unifying the law relating to Co-operative Sector in the State with a view to provide for the development of the Co-operative sector in the State, by organizing the Co-operative Societies as self governing, democratic institutions, to achieve the objects of equity, social justice and economic development as envisaged in the directive principles of State Policy of the Constitution of India.

6. The Kerala Co-operative Societies Act, 1969 was accordingly enacted to consolidate, amend and unify the laws relating to Co-operative Societies in the State of Kerala. Rule making authority with this object in mind has prescribed Rule 183(2) stating that no employee shall be eligible to continue in the service of a society after the last day of the month in which he attains the age of 58 years. Intention of the rule making authority was evidently to unify the age of retirement. If freedom is given to Co-operative Societies to fix age for retirement on their own choice the purpose and object of the Co-operative Societies Act to unify the law would be defeated and societies could fix different age of retirement in respect of various Co-operative Societies in the State and that would bring back the situation that was prevalent prior to the coming into force of the Co-operative Societies Act, 1969.

7. We have already indicated that before 1969 various societies in the State had prescribed different age of retirement. Some societies fixed 65, some 60, some 58, some 55 and so on. If freedom is given to Co-operative Societies to fix age for retirement as they like, they could fix the age of retirement as 45,50,55 or 58 and again there will be inequality between various employees serving in various co-operative societies in the State not only in the matter of age of retirement, but disparity in the rate of pension also. Frequent changes in the age of retirement of employees in the Co-operative Sector and absence of uniformity

would cause frustration, resentment and inequality among the employees of the different Co-operative Societies.

8. Government of Kerala has framed the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994. The Scheme envisages establishment of a pension fund for payment of pension to the employees of the societies in the State. Clause 2(e) defines the date of retirement as the last day of the month in which the employee attains the age of 58 years or an earlier date on which he is permitted to retire by the appointing authority. Clause 2(j) defines super annuation pension which means pension sanctioned to an employee who retires on the last day of the month in which he attains the age of 58 years. If different age of retirement is fixed by the societies in the State, then there will be difference in the matter of payment of pension also to the various employees who retire from the Co-operative Societies, again creating inequality between employees in the Co-operative Sector.

9. We are of the view that the Legislature was envisaging a situation that all societies in the State should fix a uniform age of retirement, i.e. 58 years, which in our view would achieve the object and purpose of the Act, that is to consolidate, amend and unify the laws relating to Co-operative Societies in the State of Kerala. We are therefore of the view the Registrar of Co-operative Societies was not justified in approving the bye-law reducing the age of retirement from 58 to 55. Order of the Registrar granting approval to the bye-law is therefore set aside and we hold that all the Co-operative Societies in the State would follow a uniform age for retirement that is prescribed in Rule 183(2) of the Kerala Co-operative Societies Rules 1969, that is, 58 years of age.

10. We therefore set aside the judgment of the learned single Judge and affirm the decision of the learned single Judge in Cochin Co-op. Hospitals Socy. Ltd. Vs. Reg. of Co-op. Socys. and Others, .

Writ Appeal is therefore allowed and Ext.P2 approved by the 1st respondent would stand set aside so far as the age of retirement is concerned.

