
(1992) 09 KL CK 0033
In the High Court Of Kerala
Case No : W.A. 824 of 1992

State of Kerala and Others

APPELLANT

Vs

Babu Peter

RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(2), 320
Personnel and Administrative Reforms Rules — Rule 34, 46, 6(2)

Citation : (1992) 09 KL CK 0033

Hon'ble Judges : M. Jagannadha Rao, C.J;P. Krishnamoorthy, J

Bench : Division Bench

Advocate : V.K. Beeran, A.A.G, for the Appellant; K.S. Madhusoodanan, for the Respondent

Final Decision : Allowed

Judgement

1. This writ appeal raises a question under the "Dying in Harness Scheme" issued by the State of Kerala. The appeal is preferred by the State against the judgment of the learned single Judge in O. P. No. 6316 of 1988, dated 16th August 1991 allowing the writ Petition along with certain other writ Petitions. We have today allowed the connected writ appeals Nos. 464, 486 and 590 of 1992 arising out of the other original petitions, allowed by the same common judgment. But as the point arising in this appeal is slightly different, though certain general principles are common, we have thought it fit to deal with this appeal separately.

2. The writ Petitioner Respondent, Sri Babu Peter was born on 28th May 1961. He is the son of late K.M. Pathrose, who died in harness on 7th July 1970 while working as Lecturer in Physical Education "in the Maharaja's College, Ernakulam. At that time, the Petitioner was a minor and he attained majority on 28th May, 1979. The Petitioner's mother was a P. D. teacher but she retired from service on 31st March 1984. The Petitioner having become a major on 28th May 1979 initially applied on 31st July 1979-before his mother's retirement--for

employment under the scheme then in force. His mother submitted another application on his behalf on 13th October 1980. But the Director of Collegiate Education through whom the application has to be submitted, declined to forward the applications by his letter Ext. P-1 dated 24th September 1982 on the ground that on account of the Petitioner's mother's employment the family income was above Rs. 6,000 per annum, that being the then ceiling.

3. If the matter had ended there, there would have been no problem. But, after the Petitioner's mother retired from service on 31st March 1984, he filed a fresh application Ext. P-2 on 22nd September 1986 seeking condonation of delay by the Chief Minister, as provided in Clause 30 of the G. O. (P) No. 64/86/GAD, dated 28th February 1986, stating that his mother has since retired and that taking her income after retirement, i.e. pension etc., the same was only Rs. 6560 which was within the enhanced; ceiling prescribed in Clause 15 of G.O. (P) No. 34/87/P and ARD, dated 17th December 1987 for the cases of Government servants dying on or after 1st January 1982. Petitioner relies on the note below Clause 15 which gives to minors, three years from the date of attaining majority in cases where the Government servant died or after 1st July 1983 to seek the job, without any ceiling on family income. He questions the validity of the cut off date 1st July 1983. In the present case, the Petitioner became a major on 28th May 1979 and could apply before 28th May 1982 and he could seek extension of time under Clause 35 of the 1987 G.O. by the Chief Minister to enable him to apply later. If such extension is granted, he could claim the benefit Of note to Clause 15 of G.O. (P) 34/87/P and ARD, dated 17th December 1987 provided the date 1st July 1983 in the note to Clause 15 is struck down so that there would be no income limit.

4. The new applications were rejected by the Government under Ext. P-4 dated 19th July 1988 stating that the Petitioner's request "cannot be complied with as per the existing rules". The Petitioner also relies on the judgment in O.P. No 130 of 1987 dated 6th January 1987 of a learned Single Judge of this Court which is said to be similar in the sense that after rejection of the application once on the basis of the then income of the family, the fresh application filed after retirement of the mother from service was directed to be considered. It is stated that as per Ext. P-6 dated 23rd February 1987, Government accepted the second application of the same claimant.

5. A counter affidavit has been filed by the Government stating that the application was once rejected, that the subsequent application for relaxation of the time limit of three years was rejected by the Chief Minister as it was decided not to exercise the discretion in the case of the Petitioner, as such cases are likely to become precedents. Clause 15 of the 1987 G. O. cannot be invoked as the ceiling of Rs, 9000 per annum would apply only to cases of Government servants dying on or after 1st January 1982. The case of the Petitioner " is different from the one covered by Exljs. P-5, P-6. The date 1st July 1983 introduced in the note to clause ,15 is valid The O.P. is liable to be dismissed.

6. The Petitioner filed a reply affidavit contending that the Chief Minister" ought to have granted extension of time under Clause 35 of the 1987 G O., that the case of the Petitioner is similar to the case covered by Ext. P-5, P-6 and. that the date 1st July 1983 was also bad.

7. The following points arise for consideration;

(1) Whether, in" a case where the Government servant died on 7th July 1970 and the minor son attained majority on 28th May 1979 and his application dated 31st July 1979 was rejected by the Director of Collegiate Education on 24th September 1982, on the ground that the family income, including the mother's salary, exceeded the then ceiling limit of Es. 6000 per annum, a second application could be submitted by the same applicant once again claiming benefit of a latter G.O. contending that the cut off date in such latter G.O. was bad?

(2) Whether the cut off date mentioned in the note to Clause 15 of G.O. (P) Na 34/87/P and ARD, dated 17th December 1987 is bad as offending Article 14 of the Constitution of India ?

(3) Whether clauses 29 and 30 of the previous G.O. (P) 64/86/ GAD, dated 28th February 1988" permits reconsideration of the Petitioner's case?

(4) Whether the rejection of the second application by the Government by issuing Ext. P-4 is bad and whether this Court could issue to apply the judgment in a connected O.P. No. 136/1987, dated 6th January 1987 in the case of one K.J. Joemon ?

Point No. 1: From the facts stated above, it will be noticed that the- Petitioner's father died on 7th July 1970 while in service. At that time Petitioner was a minor and he became a major on 28th May 1979 and applied on 31st July 1979 within one year of his attaining majority. Such an application was permissible as per G.O. (Ms.) No. 46/79/GAD, dated 16th January 1979, which in Clause (c) permitted minors to apply within one year of attaining majority. The maximum income under the scheme should not exceed Rs. 4200 per annum.

8. The income limit was increased to Rs. 6000 per annum by G.O. (Ms.) 67/81/ GAD, dated 3rd March 1981 as follows:

The maximum annual income limit of the family of the applicant for eligibility for appointment under the scheme will be enhanced from Rs. 4200 to Rs. 6000 (Rupees six thousand only) exclusive of the family pension. This enhanced income limit will be applicable to all cases where applications could legitimately be made on or after 16th June 1979.

The income of the family of the Petitioner was above Rs. 6000 per annum and therefore whether the limit was Rs. 4200 or Rs. 6000 per annum, the Petitioner was not eligible and the Director declined to forward the Petitioner's application to the Government and rejected the same at his level by order dated 24th September 1982. This was because the Petitioner's mother was employed at

that time.

9. Once the Petitioner was found ineligible as per his application dated 31st July 1979 (made within one year of his becoming major as per the scheme) on the ground that the family income (including his mother's salary) was more than Rs. 7000 per annum and was rejected on 24th September 1982, the claim of the Petitioner, in our view, comes to an end. Petitioner cannot take advantage of his mother's retirement on 31st March 1984 and seek to rely on a later G.O. (P) 34/ 87/P and ARD, dated 17th December 1987, and that too by questioning the validity of the cut off date 1st July 1983 in the note to Clause 15 of the said G.O., relying on Nakara's case (AIR. 1983 S.C. 130).

10. The right to claim employment on the basis of the death of a Government servant accrues soon after the death of the Government servant. If the relative/ dependent eligible in the order of priority is a major, he has to apply within the time limited, be it one year or three years. If on the date of his application, the verification of the family income shows that the same is in excess of the ceiling, the application is liable to be rejected on the ground that the applicant is not eligible on the date of the application, unless of course the eligibility criterion is altered in his favour between the date of application and the date of the order and the said criterion is applicable to pending cases also. Once the applicant is held ineligible on the date of application as well as on the date of the order, the matter comes to an end. The fact that thereafter, be it months or years after the rejection, the family income has come down, does not result in reviving the rejected application. The applicant cannot therefore seek to present a fresh application for appointment on the basis of a later G. O. consolidating the earlier G. Os. and in addition relaxing the income limit, unless such relaxation is - applicable to cases already rejected and has the effect of making such applicants eligible over again.

11. In the present case, the Petitioner's application, dated 31st July 1979 stood rejected on 24th September 1982 by the Director. Clause 15 of the new G.O. (P) 34/87/P and ARD, dated 17th December 1987 reads as follows:

"Income limit:

15. (i) The maximum income of the family of a Government servant who died in harness on or after 1st January 1982 should not exceed Rs. 9,000 per annum to make a dependent eligible for the employment assistance. In cases where the Government servants died prior to 1st January 1982 the income limit applicable will be Rs, 6,000.

(it) In respect of Government servants dying in harness on or after 1st July 1983 the employment assistance under the scheme will, be given without considering the annual income of the family of the applicant,

Note.-This benefit of giving employment assistance under the scheme without reference to income limit will however be available to, the minor dependents of

Government servants who died prior to 1st July 1983 and who become eligible for making their application for employment assistance on or after 1st July 1983, on attaining majority or within the permissible period of three years after attaining majority.

12. It will be noticed that the above G. O. came into force nearly eight years after the Petitioner's former application and nearly five years after the rejection of the first application. The right accrued to the Petitioner on the death of his father in 1970, nearly 17 years earlier. The income ceiling applicable to his case was the one in force on the date of his application several years thereafter. The case did not fit into the income ceiling and was rejected. We fail to see how it could get revived unless of course, a latter G. O. issued several years later, has the effect of benefiting such rejected "cases and contain provisions for giving a fresh chance by way of revival. In W.A. Nos. 464, 486 and 590 of 1992 in which we have delivered judgment today, we arrived at the same conclusion on a consideration of the judgments of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , Indian Ex-Services League and others Vs. Union of India, State Government Pensioners' Association v. State of A. P. AIR 1988 S.C. 1907, Krishena Kumar and Others Vs. Union of India and others, State of Rajasthan v. Rajasthan Pensioners' Samaj AIR 1991 S.C. 1748 and All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, We have there dealt with cases of subsequent revision of pay scales, changes in gratuity or provident fund schemes coming into force with effect from a date after the date of retirement of the Government servant in question. We have stated that once an officer's salary crystallises and he retires or his gratuity or provident fund crystallises and he retires, the benefit of any changes in the schemes thereafter cannot be taken advantage of when such changes come into effect from a date after the retirement of the Government servant by resort to Article 14 of the Constitution of India, unless of course the changes in the schemes are themselves expressly retrospective so as to attract the cases of those who had already retired. On the same analogy, the case of an applicant like the Petitioner comes to an end once" his case has been considered and rejected on the basis of the income ceiling in force at the time of his earlier application. Merely, because the income ceiling is relaxed several years thereafter, simultaneously stating that it would only be applicable to cases of Government servants dying on or after a cut off date, the cases of Government servants who died several years" anterior to such cut off date do not get revived, nor can be contend that such cut off diate is arbitrary and that the new scheme so to be made applicable to cases already rejected. Point No. 1 is decided accordingly.

13. Point No. 2: In view of our decision on Point No. 1 that cases rejected do not revive, this point does not, in fact, arises. We shall however point out that this point need not be gone into for- yet another reason. The Petitioner has challenged the cut off date 1st July 1983 referred in the note to Clause (15)" of the G.O. dated 17th December 1987 which deals with the procedure in the case

of applications by quondam minors. The Petitioner submits that the date 1st July 1983 has no rationale behind it and is to be struck down in view of Ndkara's case (i). The Petitioner's case is that the date 1st July 1983 in the note as well as in Clause 15(ii) is liable to be struck down as violative of Article 14 and the absence of income ceiling, should be applicable even to cases of deaths of Government servants before 1st July 1983. In fact, the cut off date 1st July 1983 is a date subsequent to the date of rejection of the earlier application .(viz., 24th September 1982).

14. We are of the view, that this question does not fall for consideration for yet another reason, namely that there is no challenge to the other date 1st January 1982 in Clause 15(i) and unless that clause is also challenged, the Petitioner's case cannot be said to be-governed by a "no-ceiling on income rule".

Point No. 2 is disposed of accordingly.

15. Point No. 3": Considerable reliance was placed on clauses 29 and 30 of the previous G.O., namely, G.O. (P) 64/86/GAD, dated 28th February 1986 to contend that a fresh reconsideration of the Petitioner's case is permissible. We shall first take up Clause 29 which reads as follows:

clause 29: Cases once rejected at Government level on valid grounds including applications, if any, submitted earlier by the other dependents of the same Government employees died in harness, will not be reconsidered under the scheme.

The argument is that the previous application of 1979 was rejected by the Director and not by the Government and therefore fresh application to the Government is permissible. We may state that the clause is intended to state that reconsideration is not permitted if the matter is once rejected at Government level and is not intended to create a fresh right of application if the rejection was not by Government earlier- It is stated before us that the procedure is to send the application to Government through proper channel (i.e. the department where the deceased Government servant has previously worked) so that the facts could be verified. In the present case, the Director found that the then family income exceeded the then Ceiling limit of Rs. 6000 per annum. The said rejection has not been challenged either in 1982 or even now. It is not the Petitioner's case that the said rejection is wrong. If the rejection at the Director's level or the level of the head of the concerned department is based on a proper consideration of the facts and provisions of the scheme and the decision is not challenged, that would conclude the question of "eligibility". If it is the Petitioner's case that the first application of 1979 is not rejected at Government level, he can only seek a disposal of that application by the Government and not file a fresh application unless of Course the family income ceiling applicable in 1979, when the said application was submitted, has now been relaxed in 1986 so as to breathe life into the Petitioner's rights in 1979. Fresh reconsideration of a new application is therefore not permissible as long as the income ceiling position

in 1979, when the application was first submitted, has not been altered.

16. It is however argued that the income ceiling is applied to cases where the Government servant died on or after 1st January 1982 and the Petitioner's application of 1970 was pending¹ till 24th September 1982 and therefore Clause 15(i) of the G.O. dated 17th December 1987 applies- We are unable to see how Clause 15(i) of the G. O. dated 17th December 1987 could help, even if the Petitioner's application of 1979 was pending on 1st January 1982, which is the cut off date" referred to in Clause 15(i)- The income limit of Rs. 9,000 is applicable only to cases where the death of the Government servant occurred on or after 1st January 1982. In fact, the second part of. Clause 15(i) clearly states that so far as Government servants dying on or after 1st January 1982 is concerned, the income ceiling limit of Rs. 6,000 will continue to apply. In the writ petition, there is no challenge to the validity of the cut off date 1st January 1982 in Clause 15(i) of the G. O. dated 17th December 1987 but the challenge is restricted to the cut off date 1st January 1983 in the note to Clause 15(ii) dealing with the case of minors. Therefore, the argument based on Clause 29 of the 28th February 1986 G. O. read with Clause 15(i) of the 17th December 1987 G.O., even if permissible, does not stand.

17. Coming to Clause 30 of the 28th February 1986 G.O. referred to above, the clause reads as follows:

clause 30: Cases involving relaxation of provisions of the scheme should be routed to the Minister concerned and the Chief Minister through Additional Chief Secretary as laid down in Rule 34 of the Rules of Procedure and Rule 6(2) of the Government Secretariat Instructions and placed before the Council as per Rule 46 of the Rules of Business.

We are of the view that relaxation by the Chief Minister under this 1986 G. O. is only, in respect of limitation and period of service as provided in clauses 17(d) and 12. Each of these clauses expressly provides for relaxation by the Chief Minister. So far as the income limit is concerned, the relevant Clause 10 of the 1986 and 6 G. O. does not contain any provision for relaxation by the Chief Minister. Hence Clause 30 of the 1986 G. O. does not help. We hold point No. 3 accordingly.

18. Point No. 4: It is argued that in the case one other applicant covered by Exts. P-5, Exts. P-6 whose case was rejected earlier on the ground of income ceiling limit (the mother being employed) his case was reconsidered pursuant to a judgment of this Court in Ext. P-5, namely, O.P. No. 136 of 1987-N dated 6th January 1987 and a consequential order Ext. P-7 was passed reconsidering the case of the applicant after the retirement of his mother from service. It is argued that under Clause 35 of the G.O. dated 17th December 1987 the Petitioner's case must have been allowed to be considered by the Council of Ministers in view of Clause 35 of the G.O. dated 17th December 1987, which now permits relaxation of conditions other than age and qualification, at cabinet level.

19. Clause 35 of the G.O. dated 17th December 1987 reads as follows":

35. No relaxation of age limit and qualifications shall be allowed on any account under the scheme. If at all any relaxation in respect of condition other than age and qualification is to be ordered in view of any exceptional grounds that may be ordered only at council level. In such cases the advice of the Personnel and Administrative Reforms (Rules) Department should be invariably obtained before proposals are made before the Council of Ministers.

Now the second application filed by citing Exts. P-5, P-6 has been rejected by the Government as per Ext. P-4 dated 19th July 1988. That would, as stated in the counter-affidavit, mean that the Government was not prepared to relax the condition under clause. 35. Further, in view of our decision on Point Na 1, the judgment of the learned Single Judge covered, by Ext. P-5 i.e., in O.P. No. 126/1987-N dated 6th January 1987 must be held to be wrong. It is accordingly overruled. But we may add that this cannot affect the case already decided in favour of the Petitioner in that O.P- as per Ext. P-6 order of the Government. If Ext. P-5 judgment, is not correct, there is no question of remitting the matter again to the Government by quashing Ext. P-4 order for the purpose of relaxing the condition in relation to ceiling limit on income and applying the principle in Ext. P-5 and the consequential order in Ext. P-6. There can also arise no question of discrimination because we have overruled Ext. P-5 judgment. We hold accordingly on Point No. 4.

20. For the aforesaid reasons, the O. P. is liable to be dismissed,

21. Before parting with this case,. we have to observe that the dying in harness scheme is a social welfare measure and no doubt has its own rightful place in our social welfare approach to the problems arising in the families of public servants. But, the scheme must be one which gives substantial relief to the family soon after or within reasonable period of the death of the bred-winner. The scheme was introduced in 1970 and has passed through several amendments and re-"laxations as to income and other conditions. The rules contain extensive powers of relaxation of conditions by the Council of Ministers or the Chief Minister. With all the amendments, it has, in our view, now degenerated into a scheme for recruitment rather than remaining as a social welfare measure.

22. It must be remembered that appointment on the basis of "descent" is normally bad in view of Article" 16(2) of the Constitution and if we have to treat the dying in harness scheme as a social welfare measure and as a permissible exception to Article 16(2), the State cannot make it a hotchpotch of exceptions and" relaxations at various levels reaching upto the topmost seat of power in the Government. A look at the nearly 70 amendments over the last 22 years shows that there is no consistency in ,the policy of the Government. Again, while the scheme is intended to provide immediate assistance to a bereaved family, the scheme does not, in cases of minors in the family provide it when it is actually required, but seeks to do so after several years when perhaps the family is out of

the woods. The scheme is now looking more like a scheme for succession to property. We are unable to And any logic-in the total deletion of the ceiling-limit as to income of the family. It is not known on what basis an affluent family could be placed on the same footing as a family in dire need. The scheme as it now obtains in the latest order in G.O. (P) Na 20/92/P and ARD, dated 10th April 1992, without any income ceiling limit, appears to us to be rather farcical. The scheme itself is an inroad into the fundamental right to equal opportunity under Article 16 of the Constitution and is in derogation of the Public Service Commission recruitment under Article 320 of the Constitution of India. It also affects the reservation quota adversely. It is time the Government thinks of coming forward with a real scheme for helping the families of those dying in harness rather than treat the scheme as a scheme of recruitment with powers of relaxation vested in the highest seat of power. We are compelled to make the observations having regard to the existing situation. We are, however, not to be understood as being against providing employment under the "Dying in Harness Scheme" itself. We are for a scheme which is more realistic in its aim to help a poor family in distress rather than creating a hereditary right to employment and the benefit should reach the family immediately or within reasonable time of the death of the Government servant.

With the above observations, the writ appeal is allowed and the original petition is dismissed. There will be no order as to costs.