
(1999) 06 KL CK 0028
In the High Court Of Kerala
Case No : W.A. No. 2520/98 B

State of Kerala and Others

APPELLANT

Vs

N.D. Joseph

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Citation : (1999) 2 KLJ 190

Hon'ble Judges : P.A. Mohammed, J; M.R. Hariharan Nair, J

Bench : Division Bench

Advocate : P.V. Asha, Govt. Pleader, for the Appellant; P.S. Nandan and B. Salu, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—The appeal is by the State. The challenge is with regard to the direction of the learned Single Judge in the judgment passed in O.P. No. 13771/97 that the present Respondent who is the Cleaner of a Bus should be allowed to continue in Government Service till the attainment of 60 years.

2. The case of the Respondent herein as Petitioner in the Original Petition was that on sponsoring by the Employment Exchange, he was appointed as Cleaner-cum-Conductor of a Bus of the Medical College, Kottayam by a Committee consisting of several members of the teaching staff on 5th February 1968; that the Bus in which he was employed actually belonged to the Government; that subsequently the Government created two posts of Drivers and two posts of Cleaners in the Medical College, Kottayam as per G.O. dated 25th June 1977; and that on request made to the Principal, Medical College for absorption in Government service and regularisation, his service was regularised with effect from 25th June 1977. Since the actual service was from 1968 onwards, it is contended that he has a right to continue in service by virtue of Rule 60 of Part I of K.S.R.

3. The normal retirement age of Government servants is on attainment of 55

years. This is made clear in Rule 60(a) of Part I K.S.R. Rule 60(b) is rather a proviso to the said main clause. It proceeds as follows:

(b) Officers in the Last Grade Service on 7th April, 1970 will retire on the afternoon of last day of the month in which they attain the age of 60 years provided that this benefit will be available to them only as long as they continue to be in the Last Grade Service as defined in Rule 12(16A).

To claim the benefit of Rule 60(b), it is essential that the employee concerned should have worked as a Last Grade Servant on 7th April 1970 under the Government. In the instant case, it is the admitted case of the Petitioner in the Original Petition that as on the said date, he was not working under the Government. Though recruited through the Employment Exchange, his appointment was made by a Committee consisting of some members of the staff of the Medical College. The Appellant has no case that he was getting salary from the Government during that period or at anytime until 25th June 1977. Infact, the post of Cleaner itself was created in the Medical College, Kottayam, only as per a Government Order issued on 25th June 1977. The Petitioner cannot claim to be in Government service on any day before the post itself was created. Maybe, he was working in the Bus as Cleaner and the nature of work did not change even after his regularisation in the service. Nevertheless, it is very obvious that the Petitioner was not a Government servant whether of the Last Grade Service or otherwise on any day before 25th June 1977 when alone the particular post was created and the service regularised. Since the Petitioner was not in Last Grade Service under the Government as on 7th April 1970, he is not entitled to the benefit of Rule 60(b) of Part I K.S.R. The learned Single Judge has gone wrong in conferring benefit of Rule 60(a) to the Petitioner merely because he was working in the Bus from 1968 onwards. The Respondent certainly is disentitled to have the benefits of the aforesaid provision.

The appeal is hence allowed and the judgment in O.P. 13771/97 is set aside.