

(2009) 03 KL CK 0098

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8780 of 2006

State of Kerala and Others

APPELLANT

Vs

Sheela, S. and Others

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 62, 63

Kerala Lok Ayukta Act, 1999 — Section 12, 12(2), 12(5)

Citation : (2009) 03 KL CK 0098

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : N. Manoj Kumar, Spl. Government Pleader Finance, for the Appellant; P. Gopalakrishnan Nair, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Whether the teachers, who are continuing in service in the Government/Aided Colleges or Schools even after attaining the age of superannuation of 55 years till the end of the academic year, by virtue of Rule 60(c) of Part I, K.S.R. or Rule 62 of Chapter XIV "A" of the K.E.R., have got a vested right to count the extended period of service also taking into account the revision of salary they obtained during the extended period of service, for the purpose of computing the terminal benefits is the common question involved in all these cases.

2. There are two groups of cases. The First set of cases is filed by the State challenging the positive order passed by the Lok Ayukta, Thiruvananthapuram directing the Government to pay the retirement benefits including the DCRG, Commutation of Pension etc., on the basis of the revision of pay which came into effect from 1-3-1997. Apart from challenge on merits, the State has also got a contention that the impugned orders were passed by the Lok Ayukta beyond its competence and jurisdiction. The Second set of cases is filed by the Petitioners mainly challenging the Government Order GO.(P) 536/2005/(155)/Fin. dated 15-12-2005, whereby it was declared that the Petitioners would not be entitled

to get the benefits of the Pay Revision implemented with effect from 1-3-1997 for computing the pension and other retirement benefits; simultaneously challenging the consequential order issued by the Government rejecting the claims put forth by the Petitioners in this regard. Some of the Petitioners have also challenged the amendment brought out by the Government to the Rules [Rule 60(c) of Part I, K.S.R. and also Rule 62 of Chapter XIV "A" of the KER] and also the amendment adding Notes "6 to 9" beneath the Note 5 to Rule 62(c) of Part III K.S.R. The common contention of all these Petitioners is that their right to get the revised pay, which was brought into effect from 1-3-1997, (they having retired from the service only on closure of the academic year on 31-3-1997, though they had crossed the age of superannuation attaining the age of 55 years on or before 28-2-1997), stands covered in view of the decision rendered by a Full Bench of this Court reported in *Accountant General v. Kunjamma* 2003 (3) KLT 343, which position has been upheld by the Supreme Court as per the decision in *State of Kerala v. Neelakandan Nair* 2005 (3) KLT 717 (S.C.) while dismissing the SLP filed by the State.

3. The facts in brief: On the basis of the revision of Pay Scales brought into effect from 1-3-1997, some of the Petitioners had approached this Court seeking for the benefits of the revised rate for Commutation of Pension, DCRG etc. and a learned Single Judge of this Court had allowed the same, which was subjected to challenge by the State in W.A. No. 1432 of 2005, but ended in failure. The decision rendered by the Division Bench was sought to be reviewed by the State by filing R.P. No. 960 of 2005, mainly contending that the rule position had undergone substantial change with retrospective effect from 15-5-1986, by virtue of the amendment brought out. The Division Bench of this Court held that the amendment of the rule was not a ground to call for any interference in the Review Petition (presumably for want of any error apparent on the face of the records) and the Review Petition was dismissed; which led to filing of SLP before the Supreme Court. After considering the relevant facts and figures highlighted by the State, the SLP was allowed; the impugned verdicts passed by this Court in the Writ Appeal as well as in the Review Petition were set aside and the matter was remanded for fresh consideration.

4. In the meanwhile, some other Petitioners had already approached the Lok Ayukta, projecting their grievances in the form of a complaint and seeking for interference. Observing that the "Government Order" dated 15-5-1986 relied on by the State to deny the benefits to the teachers could in no way amend or modify the relevant "Rules" (as they existed at that point of time), the Lok Ayukta answered the position in favour of the complainants. But instead of submitting a report to the Government, as contemplated under the relevant provisions of the Lok Ayukta Act, a positive order/direction was given to compute and give the benefits to the complainants and to file the "action taken report", sustainability of which has been subjected to challenge by the State in the First set of Writ Petitions.

5. The cases already pending before this Court seeking for similar benefits along with the Writ Petitions challenging the amendment and referred to Division Bench and the Writ Appeal remanded by the Apex Court for fresh consideration came up before a Division Bench of this Court, where all the relevant aspects were dealt with in detail. After exhaustive analysis of the facts and circumstances, in the light of relevant Rules and judicial precedents rendered by the Apex Court and by this Court governing the field, the final verdict was passed on 16-2-2009 in W.P. (C) 1905 of 2007 and connected cases, explaining the scope of amendment of the relevant Rules brought out and the applicability of the decision already rendered by a Full Bench of this Court in 2003 (3) KLT 345 and by the Apex Court in 2005 (3) KLT 717. The amended rule position as discussed therein is extracted below for convenience of reference:

Now, we will refer to the amendments, which are relevant for the decision of this case. As per S.R.O. No. 591/2006 dated 10-8-2006, in Rule 60(c) of Part I KER, the following sentence was added as the second sentence of it:

But the extended period of service will not count as qualifying service for pension and the pay received during the period will not be reckoned for computing average emoluments or pensionary benefits or commuted value of pension.

This amendment was given effect from 15-5-1986 which is the date of GO.(P) 360/86/Fin. As per S.R.O. No. 7/2007 dated 5-1-2007, Rule 62 of Chapter XIV A of the KER was amended, adding the following proviso:

Provided further that the extended period of service beyond the actual date of superannuation of the teacher shall not be reckoned as qualifying service for promotion, increment and pension, and the provisions of Sub-rule (c) of Rule 60 of Part I of the Kerala Service Rules shall apply to the teacher.

This amendment was brought into force from 15-5-1986. By S.R.O. No. 241/2007 dated 2-3-2007, four Notes as Notes 6 to 9 were added under Note 5 to Rule 63 of Part III of the KSR. Note 9, which is relevant in this case, reads as follows:

In respect of teaching staff of educational institutions who continue in service till the last day of the month in which the academic year ends by virtue of Rule 60(c) of the Kerala Service Rules, Part I, the term "retirement" means superannuation, i.e., the last day of the month in which one completes the age of 55 years/60 years as the case may be.

Referring to the relevant aspects it was observed by the Division Bench that, if the amendments are valid, the Petitioners are not entitled to count the service rendered by them between the date they reached the age of superannuation and 31-3-1997. It was further held that under such circumstances, they are also not entitled to reckon the revised salary they received for the month of March, 1997 for the purpose of computing the terminal benefits (emphasis is supplied).

6. After meticulous analysis of the rival contentions, it was held in paragraph No.

7 of the said verdict that the challenge raised against the amendment, mainly based on the alleged existence of a vested right in that regard, could not be accepted. But, the contention of the Petitioners/Teachers is that "the date of retirement" dealt with by a Full Bench of this Court having attained finality by virtue of the decision rendered by the Apex Court in 2005 (3) KX.T. 717, it is liable to be taken as 31-3-1997. The aforesaid decision would bind the State as well, assert the Petitioners. Obviously, the subject-matter of issue involved in the case considered by the Full Bench of this Court and taken up before the Apex Court is very much reflected from paragraph No. 2 of the decision in 2005 (3) KLT 717, which is extracted below:

2. Point of controversy in all these appeals is whether teachers superannuating during a particular academic year but continuing in service by virtue of Rule 62 of Chap. XIV (A) of the Kerala Education Rules, 1959 (in short "the K.E.R") are entitled to the benefit of pay revision coming into effect during such extended period.

This clearly shows that the question of payment of pensionary benefits was never a subject-matter of challenge either before the Full Bench or before the Apex Court and it was in the said circumstances that the SLPs filed by the State against the verdicts in W.A. 1432 of 2005 and R.P. were allowed and the matter was remanded for fresh consideration in the light of the relevant rule position and the dictum contained in the above judgments.

7. After re-considering the matter, it was held by the Division Bench of this Court, [as per the judgment dated 16-2-2009 in W.P. (C) 1905 of 2007 and connected cases] that the contention raised by the teachers with reference to their "date of retirement" (to be reckoned as 31-3-1997) could not be accepted, in view of the amendment to Rule 63 of Part III K.S.R. by virtue of which, it was specifically provided that the "date of retirement" of teachers would be the date of superannuation. The above amendment was brought into retrospective effect from 15-5-1986, sustainability of which has been upheld by the Division Bench in the above judgment itself. As such, the said question is no more open to challenge in the present Writ Petitions.

8. Apart from the absence of merits in the cases filed by the concerned teachers before the Lok Ayukta, it is also relevant to note that the impugned orders passed by the Lok Ayukta are beyond the competence and jurisdiction, in so far as the Lok Ayukta has given positive orders directing the Government to give the benefits and to file the "action taken report". The scope of jurisdiction of the Lok Ayukta as contemplated u/s 12 is only to submit a Report by way of "recommendation" to the competent authority and the duty cast upon the competent authority is to send the "action taken report" as provided under Sub-section (2). If the Lok Ayukta is not satisfied with the "action taken report" submitted by the competent authority, the only course available to the Lok Ayukta is to make a "special report" upon the case to the Governor and also to inform the competent authority concerned as provided under Sub-section (5). In

other words, absolutely no power is vested with the Lok Ayukta to adjudicate the issue and to pass any positive orders/instructions as having done in the instant cases.

In the above facts arid circumstances, the impugned orders passed by the Lok Ayukta are not correct or sustainable and hence are set aside. The Writ Petitions filed by the State are allowed and the Writ Petitions filed by the others/Teachers are dismissed as devoid of any merit. The parties shall bear their costs.