

(1989) 11 KL CK 0008

In the High Court Of Kerala

Case No : W. A. No. 30 of 1989 and 696 of 1988

State of Kerala

APPELLANT

Vs

V. Rama Varmathirumulpat

RESPONDENT

Date of Decision : 20-11-1989

Acts Referred:

Citation : (1989) 2 KLJ 785

Hon'ble Judges : V.S. Malimath, C.J;K.A. Nayar, J

Bench : Division Bench

Advocate : Seemanandini, Government Pleader, for the Appellant; V. Sankara Raja, for the Respondent

Final Decision : Dismissed

Judgement

Malimath, C.J.—These two appeals are against the judgments of the learned single Judge in O.P. Nos. 7976/85 and 152/86. The learned single Judge has held that the respondent who retired from service on 31-3-1966 or attaining the age of. superannuation of 60 years as a High School Assistant, in addition to the pension which has been sanctioned in his favour is also eligible for gratuity under rule 12(c) of Chapter XXV11-A of the K.E.R. The learned single Judge has also taken the view that as the respondent has continued in service after the 55th year on 1-10-1964 and as he could not opt for Chapter XIV(C) of the K.E.R., he is entitled to the gratuity amount under the said provision. The correctness of the said view is challenged in these appeals. Clause (c) of rule 12 of Chapter XXVII-A reads as follows.

"No claim for compassionate gratuity to the families of teachers who die in harness shall be entertained "by the Government, However Government may" grant compassionate gratuity to the families of the teachers who died in harness while in service, whose death has taken place within three years prior to 1--10--1964, and to those who continued in service after the 55th year on 1-10-1964 and who could not opt for Chapter XIV (C) Kerala Education Rules, at the rate of half month"s pay for each year of qualifying service based on monthly

pay drawn by the teacher for the month of April each year."

The subject dealt with by this statutory provision is grant of compassionate gratuity to the families of teachers who die in harness. The first part of the rule states that the families of teachers who die in harness cannot claim compassionate gratuity. After stating this general rule an exception has been engrafted. It is firstly stated that compassionate gratuity may be granted to families of teachers who die in harness while in service, whose death has taken place within three years prior to 1-10-1964. The second category of families to whom compassionate gratuity can be paid is in respect of those who are teachers and who continued in service after the 55th year on 1-10-1964 and who could not opt for Chapter XIV (C) of the K.E.R. The families of teachers who answer both these categories would be entitled to compassionate gratuity after the teacher died in harness.

Compassionate gratuity is not contemplated to be given to the teacher who has retired from service and who has earned the benefit of pension. Compassionate gratuity contemplated by clause (c) of rule 12 is in favour of families of teachers who died in harness, satisfying one of the two alternate conditions specified therein. The rule does not contemplate, compassionate gratuity to the teacher who has retired on attaining the age of superannuation and is recipient of regular pension in accordance with the relevant rules. The view taken by the learned single Judge that the respondent is entitled to compassionate gratuity on the ground that he has continued in service after the 55th year on 1-10-1964 is not a sound and correct view" For the reasons stated above these appeals are allowed, the judgments of the learned single Judge in both the writ petitions to set aside and both the writ petitions are dismissed. No costs