

(1980) 02 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 266 of 1979

The Assistant Educational Officer

APPELLANT

Vs

K. Velayudha Kurup

RESPONDENT

Date of Decision : 07-02-1980

Acts Referred:

Kerala Service Rules, 1958 — Rule 60

Citation : (1980) 02 KL CK 0005

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; M.R. Parameswaran, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—The School Education Department represented by the Assistant Educational Officer, Kilimanoor has preferred this writ appeal against the judgment of a learned Single Judge of this Court allowing O.P. No. 791 of 1979 and quashing the order Ext. P-1 dated 23rd February 1979 passed by the Assistant Educational Officer declaring that the writ Petitioner must be considered to have retired from service as Headmaster, Madavoor Government Lower Primary School on 11th November 1978 and directing the Petitioner to hand over charge of all school records forthwith to the Senior Assistant of the school and also to refund the pay and allowances drawn by him from 12th November 1978.

2. The writ Petitioner (Respondent before us) was working as the Headmaster of a Government Lower Primary School at Madavoor. He was due to attain the age of 55 years on 11th November 1978. The Petitioner applied for commuted leave for the period from 12th October 1978 to 19th November 1978 and the leave was sanctioned to him as per an order, dated 29th October 1978 passed by the Assistant Educational Officer. On the expiry of the leave, the Petitioner rejoined duty on 20th November 1978 and continued to work in the school by virtue of

the provision contained in Rule 60, Clause (c) of Part I of the Kerala Service Rules, which lays down that the teaching staff of all educational institutions who complete the age of 55 years during the course of an academic year shall continue in service till the last day of the month in which the academic year ends.

3. Early in February, 1979 the Petitioner put in an application for being allowed to surrender the earned leave available to his credit and encash the salary payable for the said period. In reply to the said application the Petitioner received a bombshell in the shape of the order Ext. P-1 impugned in this case, whereby he was informed by the Assistant Educational Officer as per ruling No. 2 under Rule 60 of Part I of the Kerala Service Rules the Petitioner was not eligible to avail of any leave other than casual leave beyond the date of superannuation and since the Petitioner had availed of commuted leave after the date of superannuation, it had to be considered that the Petitioner had retired from service on 11th November 1978. On this basis the Petitioner was directed by Ext. P-1 to hand over charge of all the school records to the Senior Assistant at once and also to refund the pay and allowances drawn by him for the period subsequent to 12th November 1978. The Petitioner thereupon came upto this Court challenging the legality and validity of Ext. P-1 and praying that it should be quashed.

4. The learned Single Judge allowed the writ petition and quashed Ext. P-1 holding that the Petitioner's case was governed by Clause (a) of Rule 60 of Part I of the Kerala Service Rules and the date of his compulsory retirement should therefore be reckoned only as the last date of the month in which he attained the age of 55 years, namely 30th November 1978 and since the Petitioner had not applied for leave or gone on leave subsequent to the said date, the provisions of ruling No. 2 relied on by the Assistant Educational Officer were not attracted to the case and the action taken under Ext. P-1 was therefore illegal.

5. In this appeal filed by the department it is contended by the learned Government Pleader that Clause (a) of Rule 60 is only a general provision and since the cases of the teaching staff of all educational institutions are dealt with by the special provisions contained in Clause (c) of the said rule, the general provision contained in Clause (a) can have no application to the teaching staff of the educational institutions. On this basis it is submitted that the reasoning given and conclusion reached by the learned Single Judge cannot be regarded as correct or tenable.

6. On behalf of the Respondent (writ Petitioner) it is submitted before us that even if it is to be assumed that it is Clause (c) of Rule 60 that governs the Petitioner and not Clause (a), the view taken by the Assistant Educational Officer that the Petitioner's case comes within the mischief of ruling No. 2 appearing under Rule 60 is incorrect, since the Petitioner had not applied for any leave other than casual leave during the period while he was continuing in service beyond the date of superannuation, and hence the conclusion reached by the learned Single Judge is perfectly right, though the reasoning given in the judgment of the learned Single Judge may be based on Clause (a) of Rule 60.

7. We find there is force in the submission made by the learned Government Pleader that Clause (a) of Rule 60 of Part I of the Kerala Service Rules has no application to the teaching staff of educational institutions. Clause (a) is only a general provision, the applicability of which will stand excluded in respect of the teaching staff by reasons of the existence of a special provision made in respect of them in Clause (c) of the said rule. With respect, therefore, we hold that the assumption made by the learned Single Judge that the case of the writ Petitioner was governed by Clause (a) of Rule 60 was not correct.

8. However, as rightly pointed out by the Counsel for the Respondent (writ Petitioner), the conclusion reached by the learned Single Judge can be supported on a totally different ground. We consider it necessary for the purposes of this case to go into the contention urged before us on the side of the Respondent that the latter part of the ruling No. 2 appearing under Rule 60 makes a serious inroad into the right conferred on teaching staff by Clause (c) of Rule 60 and is hence invalid, since in our opinion the impugned order Ext. P-1 cannot be supported even on the basis that ruling No. 2 is valid. Even if it is assumed that it was within the competence of the State Government to lay down by an executive order the principle incorporated in ruling No. 2. The writ Petitioner's case did not fall within the purview of the said ruling, since the Petitioner had not applied for any leave other than casual leave during the period of his service beyond the date of superannuation. A reading of ruling No. 2 makes it very clear that the said rule will get attracted only if an application for leave is made by the concerned teacher subsequent to the date of his superannuation and the ruling only states that on such event happening the teacher shall be retired from service from the date of such application for leave. In the case before us the application for commuted leave was filed by the Petitioner on 12th October 1978, whereas the Petitioner was to attain the age of 55 years only on 11th November 1978. To such a case the consequence of forfeiture of service beyond the date of superannuation indicated in ruling No. 2 is not at all attracted. Hence, the Assistant Educational Officer was wholly in error in thinking that the Petitioner had incurred a forfeiture of his service beyond the date of his superannuation under the said ruling. The action taken against the Petitioner under Ext.P-1 was therefore clearly illegal and without jurisdiction.

9. In the result, we uphold the judgment of the learned Single Judge quashing Ext. P-1, though on different grounds, and dismiss this writ appeal. The parties will bear their respective costs.