

(2015) 09 KL CK 0135

In the High Court Of Kerala

Case No : W.A. No. 617/2010 in W.P.(C) 13604/2009 and W.P.(C) Nos. 15957, 18723/2010, 14717/2011, 24454/2013, 15115 of 2014

University of Calicut and Others

APPELLANT

Vs

M.P. Kannan

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Calicut University Act, 1975 — Section 2(27), 2(28)

Citation : (2015) 09 KL CK 0135

Hon'ble Judges : T.R. Ramachandran Nair, J;K.P. Jyothindranath, J

Bench : Division Bench

Advocate : Santhosh Mathew, SC, for the Appellant; T. Krishnan Unni, and R. Ramadas, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J—All these matters relate to a common a issue, viz. with regard to the retirement age of teachers/employees under the Universities of Calicut, Kerala and Cochin University of Science and Technology. W.A. No. 617/2010 is filed from the judgment in W.P. (C) No. 13604/2009. The writ petitions were posted along with the said appeal and we heard learned counsel on both sides.

2. Heard Shri Santhosh Mathew, learned Standing Counsel for the Calicut University, Shri T. Krishnanunni, learned Senior Counsel appearing for the first respondent in the writ appeal and some of the petitioners in the writ petitions and learned counsel Shri S.P. Aravindakshan Pillai, appearing for the petitioners in W.P. (C) No. 15115/2014 and 24454/2013.

3. In all these cases the common contention raised by the University teachers is that they are entitled to continue till the end of the academic year, even after attaining the age of 60 years, in the light of Rule 60(c) of Part I of Kerala Service Rules ("K.S.R." for short). The contra argument raised by the learned Standing

Counsel for the University is that in the light of the specific provision under the University First Statutes fixing the age of retirement as 60 itself, Rule 60(c) of Part I K.S.R. has no application.

4. First we will consider the facts in W.A. No. 617/2010. The writ petitioner, while holding the post of Professor in the Department of Chemistry, attained the age of 60 years on 12.5.2009. On attaining the said age, he was compulsorily retired from service. He filed the writ petition seeking a declaration that he is entitled to continue in service till the end of the academic year 2009-2010, i.e. upto 31.3.2010 on the basis of Exts. P1 and P2 orders.

5. Ext. P. 1 is a proceedings of the University issued by the Vice Chancellor, applying the provisions of Rule 60(c) of Part I K.S.R. in the case of teachers of the University who retire on superannuation at the age of 60 years. The specific case of one Dr. Karunakaran who was in the Department of Malayalam as Professor, was dealt with therein. Ext. P. 2 is the copy of G.O. (P) No. 158/09/Fin. dated 31.4.2009 issued by the Government fixing a uniform date of retirement of Government employees and teachers, in that year.

6. The salient components of Ext. P. 2 are the following:

"(a) All Government employees and teachers who attain the age of 55 years during the course of the financial year will continue in service till the end of that financial years. The date of retirement of Government employees and teachers will be 31st March every year. However, in the case of teachers in those institutions where the academic year closes on a date subsequent to 31st March, they will be allowed to continue till the last day of the month in which the academic year closes. (b) The extended period of service of Government employees and teachers will be reckoned for all service benefits such as pay revision, DA revision, increment, higher grade, promotion, accrual of leave and for pensionary benefits."

The Government employees and teachers, who attain 55 years in a financial year, can continue till 31st of March. As regards teachers, if the academic year closes after 31st March, they will be allowed to continue till the last day of the month in which the academic year closes.

7. Learned Standing Counsel for the University, is relying upon Statute 9 of Chapter III of Calicut University First Statutes, 1977 which reads as follows:

"9. Applicability of certain Rules to University Teachers: - Subject to the provisions of the Act and the Statutes issued thereunder the Kerala Service Rules, the Kerala State and Subordinate Service Rules and the Kerala Government Conduct Rules for the time being in force and as amended from time to time shall mutatis mutandis apply to the teachers of the University, with such modifications as the context may require and the expression "government" in those Rules shall be construed as a reference to the "University.

Provided that the age of retirement of teachers of the University shall be 60."

By the said provision, certain provisions of Kerala Service Rules, Kerala State and Subordinate Service Rules and Kerala Government Servants Conduct Rules as amended from time to time have been made applicable to the teachers of the University. The proviso is important for the purpose of this case which has fixed the age of retirement of the teachers of the University as 60. The main part of the rule will show that subject to the provisions of the Act and the Statutes issued thereunder, the provisions of K.S.R. and Kerala State and Subordinate Service Rules have been made applicable to the teachers of the University.

8. Learned Standing Counsel for the University submitted that the age of retirement being 60, the specific rules of Kerala Service Rules fixing the age of retirement and allowing continuance till the end of the academic year cannot have any application here. It is submitted that the specific provisions of the Statute will govern the rights of parties. Learned Standing Counsel relied upon a judgment of this Court in W.P. (C) Nos. 30297/09 and 32304/09 rendered by one of us (T.R. Ramachandran Nair, J.) and the judgment in Writ Appeal No. 2813/2009 confirming the same.

9. A similar question was considered in the common judgment in W.P. (C) Nos. 30297/09 and 32304/09. The issue raised therein was in regard to the interpretation of the same Government Order, (Ext. P. 2 herein) as applicable to the teachers of the Kerala Agricultural University. A reading of the judgment will show that therein Section 42(4) of the Kerala Agricultural University Act, 1971 fixed the retirement age of teachers as 60 years. An identical provision like the Statute herein was also there, viz. Clause 4 which provided that "subject to the provisions of the Act and the Statutes and Ordinances the conditions of service applicable to Government servants contained in the Kerala Service Rules and Kerala State and Subordinate Service Rules shall mutatis mutandis be applicable to the University employees." After considering the amendment made to Rules 60(a) and 60(c) of Part I K.S.R., it was held as follows:

"As far as the petitioners are concerned, their retirement age is governed by Section 42(4) of the act. Even going by clause 4 of the Statute, the applicability of the provisions of K.S.R. and K.S. & S.S.R. is subject to the provisions of the Act. Therefore, there cannot be any dispute that the provisions of the Kerala Agricultural University Act will prevail. Even though the Executive Committee has taken a resolution to extend the retirement age to 31st March and requested the Government to take appropriate action, so far nothing has materialised to effect the amendment of the various provisions. Hence, the petitioners cannot get any right as such for continuance upto 31st March of the year unless the Government takes such a decision and implements it. Therefore, as on today, as the same has not been implemented by way of proper amendment to the Act, the petitioners cannot seek for a direction for enabling them to continue till 31st March 2010."

10. The above common judgment was upheld by a Division Bench in W.A. No. 2813/2009. The Division Bench held therein as follows:

"Since their date of retirement is governed by a plenary statutory provision in the Kerala Agricultural University Act, 1971 and they were never governed by Rule 60(a) of Part I K.S.R., the above claim made is plainly untenable and the learned Single Judge rightly dismissed the writ petition."

The Division Bench was informed that as far as certain other employees and officers of the University are concerned, they were granted the benefit of amendment to Rule 60(a) of Part I K.S.R. and they were normally retiring at the age of 55. It was held by the Division Bench that even if somebody is wrongly granted a benefit, the same will not enure to the benefit of the appellants and they have to stand on their own rights. It is submitted by the learned Standing Counsel Shri Santhosh Mathew that the situation herein is squarely covered by the above judgments.

11. Learned Senior Counsel appearing for the first respondent in the writ appeal, Shri T. Krishnanunni invited our attention to the relevant provisions of the University Act and the First Statutes. Section 2(27) of the Calicut University Act defines "teachers" in affiliated colleges or recognised institutions and Section 2(28) defines "teacher of the University". In the Calicut University First Statutes, 1977, Statute 2 gives definitions and Statute 2(1)(a) provides that "academic year means" a period of 12 months commencing from the 1st day of June. The proviso states as follows:

"Provided that in the case of teachers who are granted extension of service till the end of the academic year, the academic year shall mean the period of ten months commencing from the first day of June."

It is submitted that for teachers who are granted extension of service, they can continue for a period of ten months from the 1st day of June. Chapter IV of the University First Statutes was also referred to, to show that therein provisions are there for non teaching staff. Statute 2 deals with the applicability of K.S.R. in respect of the non teaching staff. In the Calicut University (Conditions of Service of Teachers and non-teaching staff) First Statutes 1979, "academic year" is defined under Statute 2(1)(a) which means a period of 12 months commencing on the 1st day of June and the proviso is also noticeable which reads as follows:

"Provided that in the case of teachers who are granted extension of service till the end of the academic year, the academic year shall mean a period of ten months commencing from the first day of June."

Statute 39 provides for applicability of KSR and Kerala Treasury Code to the teachers. The effect of these Statutes also will have to be considered, according to the learned Senior Counsel.

12. It is pointed out that the respondent in the Writ Appeal attained the age of 60 on 12.5.2009. Learned Senior Counsel further invited our attention to Ext. P. 1 which is an order passed by the University under the orders of the Vice Chancellor. He submitted that when the said order has been issued pursuant to a

decision of the Syndicate in its meeting held on 4.9.1997 to apply Rule 60(c) of Part I K.S.R. to the teachers of the University, the benefit cannot be denied to the respondent. It is therefore submitted that as far as the respondent is concerned, he was eligible for the benefit under Exts. P. 1 and P. 2. and the view taken by the learned Single Judge is perfectly justified.

13. Learned counsel Shri S.P. Aravindakshan Pillai submitted that as far as the retirement age is concerned, it has been fixed as 60 by the First Statutes, but what is relevant here is regarding the applicability of Rule 60(c) of Part I K.S.R. The teachers are allowed to continue till the end of the academic year with the avowed object of continuity of the teaching faculty, for the benefit of the students. It is therefore submitted that for this reason also, the teachers are entitled for the benefit of Rule 60(c) of Part I K.S.R.

14. In reply, Shri Santhosh Mathew, learned Standing Counsel for the Calicut University submitted that even as far as the respondent is concerned, if at all Ext. P. 2 will apply, he will get the benefit only upto 31.5.2009. It is also submitted that Rule 60(c) has not been incorporated by the University, in any form. He also relied upon the judgment of a learned Single Judge of this Court in *Koshy v. State of Kerala* (1989 (2) KLT 877) to contend that Rule 60(c) of Part I K.S.R. will not apply to teachers who are to retire on completing the age of 60 years.

15. In the above decision, the provisions under the Kerala Agricultural University Act were considered. Therein also, the question arose was of a similar nature, viz. as to whether a Professor and Head of the Department of Kerala Agricultural University who retires at the age of 60, is entitled to continue in service till the last date of the month in which he completes the age of 60 years or till the last day of the month in which the academic year during which he completes the age of 60 years, expires. Therein, the petitioner attained the age of 60 on 20.10.1989 and he contended that he is entitled to continue till the last day of the month of the academic year 1989-1990. Reliance was placed on Rule 60(c) of Part I K.S.R. In paragraph 6, after referring to Rule 60(c) of Part I K.S.R., it has been held as follows:

"6 This provision can apply only to those members of the teaching staff who are to retire from service on completing the age of 55 years. According to me, this provision has nothing to do with those members of the teaching staff who are to retire on completing the age of 60 years the legislature must be presumed to have been aware of this provision in the KSR when they passed Act 27 of 1986. They did not think it fit to make any change to R. 60(c). It means that the benefit of that Rule is not extended to persons who retire on completing the age of 60 years. Accordingly I am of the view that a member of the teaching staff who is to retire on completing the age of 60 years is not entitled to continue in service till the last day of the month in which the academic year ends. I am fortified in this conclusion because of the specific provision contained in the latter part of R. 60(a) which provides that a Government servant must not be retained

after the age of 60 years except in very special circumstances. There cannot be any "very special circumstances" for retaining a teacher in service even after he completes the age of 60 years."

16. The retirement age of teachers of University has been fixed as per Statute 9 of Chapter III of the Calicut University First Statutes, 1977 itself, as 60 years. Therefore, the question will be whether the main clause of Statute 9 of the Statutes will rope in Rule 60(c) of Part I K.S.R. Statute 9 relating to the applicability of Kerala Service Rules, is "subject to" the provisions of the Act and the Statutes. Therefore, wherever the age of retirement is provided under the Statutes that will govern. Otherwise, under Rule 60(a), the age of retirement will be 55. Rule 60(c) of Part I K.S.R. is concerned with a specific situation where teaching staff of educational institutions who complete the age of 55 years during the course of the academic year, can continue till the last day of the month in which the academic year ends. When we come to the amendments pursuant to Ext. P. 2, it can be seen that it will not envisage that persons whose retirement age is 60, can continue in service till the end of the academic year. Therefore, the view taken in Koshy's case (1989 (2) KLT 877) also is relevant in the context of this case. In the judgment of this Court in W.P. (C) Nos. 30297/09 and 32304/09 and in the judgment in the writ appeal filed against the same, the similar provisions have been considered. Of course, therein the plenary provision was in the Act itself whereas herein the same is in the First Statutes. There cannot be any dispute that the First Statutes will prevail. The retirement age being 60, the teachers cannot continue beyond the age of 60, as the First Statutes does not provide any such extension. Rule 60(a) of Part I KSR was never applied to teachers of the University.

17. The University, in their counter affidavit, has stated that Ext. P. 1 order was issued long back and cannot have any application herein. In the additional counter affidavit filed, it is stated that the Government, by Ext. R1(a) also, clarified that the order Ext. P. 2 will apply only to employees whose retirement age is 55 years. The same is also relied upon to contend that as the age of retirement being 60 in these cases, Ext. P. 2 Government Order will not apply. As regards Ext. P. 1, the stand therein cannot be correct in the light of the views taken by us already.

18. Therefore, for continuing upto the end of the academic year, there should have been a provision under the relevant First Statutes itself. Even under the amended rules of Part I K.S.R., viz. Rule 60(a), the retirement age is shown as 55 years only. The benefit is given to such persons who attain 55 years of age during the financial year, to continue till 31st of March. In that view of the matter, we do not agree with the view of the learned Single Judge that the respondent in the writ appeal was entitled to continue till 31.3.2010.

19. From among the writ petitions, W.P. (C) Nos. 24454/2013 and 15115/2014 are filed by Professors working in different departments in Calicut University. They also rely upon the very same provision under Rule 60(c) of Part I K.S.R.

and the judgment in W.P. (C) No. 13604/2009 which is challenged in W.A. No. 617/2010. The University has given a reply as per Ext. P. 7 produced in W.P. (C) No. 24454/2013, in answer to the request of the petitioner therein for granting permission to continue, that the said claim cannot be acceded to, in the light of Statute 9 of Chapter III of the Calicut University First Statutes, 1977. In W.P. (C) No. 15115/2014 the replies given by the University have been produced as Exts. P. 13 and P. 14. The interpretation given by us that Statute 9 will govern, will be applicable to these cases also.

20. W.P. (C) No. 15957/2010 is filed by a Lecturer (Selection Grade) in the Department of German, University of Kerala. Therein, Statute 10 of Chapter III of the Kerala University First Statutes making applicable K.S.R. to the teachers of the University of Kerala, is relied upon. The provision is relied upon to contend that Rule 60(c) of Part I K.S.R. will apply. It is contended that even though in Statute 10 the retirement age is 60 years, the petitioner is entitled to get the benefit of the amended rule. Even though he filed a representation as per Ext. P. 2, the University replied as per Ext. P. 3 rejecting the request for continuance up to 2011. The petitioner relies upon the judgment in W.P. (C) No. 13604/2009.

21. In the statement filed by the University, the very same contentions have been raised. It is pointed out that Statute 10 clearly specifies that the applicability of K.S.R. and K.S. & S.S.R. are subject to the Kerala University Act and Statutes. Unlike K.S.R. where the retirement age is 55 years, Statute 10 gives the benefit of enhanced age of retirement up to 60 years and it will be binding. It is also stated that as per Amendment No. 192, Statute 10 of Chapter III of the Kerala University First Statutes has been amended to the effect that those teachers with date of birth as Second of July or thereafter shall continue in service till the last day of the month in which the academic year ends and the same cannot be altered by any provisions of the KSR. The date of birth of the petitioner being 15.6.1950, he is not eligible to get the benefit of the said amendment also.

22. In W.P. (C) No. 18723/2010, the petitioner is a Professor and Head of the Department of Hindi, Cochin University of Science and Technology. His date of birth is 12.6.1950. Statute 11 of Cochin University of Science and Technology First Statutes is the provision relevant therein. The same provides that subject to the provisions of the Act and the Statutes issued thereunder, the K.S.R. and the Kerala Government Servants Conduct Rules as amended from time to time shall apply to the teachers of the University. It is also stated that the age of retirement of the teachers of the University shall be 60. However, they shall be allowed to continue till the last day of the month in which the academic year ends, if they complete the age of 60 on the 2nd day of July or later during the course of an academic year. The petitioner relies upon the Government Order dated 4.7.2009 amending Rules 60(a) and 60(c) of Part I K.S.R. He also relies upon the judgment in W.P. (C) No. 13604/2010.

23. In the counter affidavit filed by the University, it is averred in paragraph 3

that the University has adopted G.O. (P) No. 154/2009/Fin. dated 24.4.2009 as per University Order dated 29.4.2009 stipulating that teachers who attain the age of superannuation in April, May and June, are not allowed to continue for the next academic year (Ext. R1(b)). It is contended that the petitioner is not entitled to continue beyond the age of superannuation, i.e. 31.5.2010.

24. W.P. (C) No. 14717/2011 is filed by the petitioner who was working as Assistant Professor (Selection Grade) in the Department of Library and Information Science, University of Calicut. The date of birth of the petitioner is 15.5.1951. Reliance is placed on Ext. P. 2 Government Order dated 24.4.2009 as well as Rule 60(c) of Part I K.S.R. and the judgment in W.P. (C) No. 13604/2010. The view taken by us as far as the Calicut University First Statutes will govern thee W.P. (C) Nos. 14717/2011, 24454/2013 and 15115/2014 and therefore the petitioners are not entitled for any reliefs.

25. In respect of the petitioners in W.P. (C) Nos. 15957/2010 and 18723/2010 also, the Statute provides for the age of retirement as 60 years and the amendments made by the respective Universities to their Statutes will not apply to the petitioners therein also. Both the Universities have taken the stand that the date of birth of the petitioners and the consequent date of retirement will be prior to July. It is also contended that the age of retirement as far as the respective Statutes will govern them. Therefore, the petitioners herein are also not entitled to the benefit of G.O. (P) No. 154/2009.

Thus, the writ appeal is allowed and the writ petitions are dismissed. No costs.