

(2012) 07 KL CK 0045
In the High Court Of Kerala
Case No : W.A. No. 1249 of 2012

V. Rajagopalan

APPELLANT

Vs

University of Calicut and Others

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 3 KLJ 347

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : P.C. Sasidharan, for the Appellant; Santhosh Mathew, SC and Liju V. Stephen, GP, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—This Writ Appeal is filed against the judgment of the learned Single Judge declaring that the appellant is not entitled to the benefit of Ext. P3 notification issued by the State Government increasing and uniformly fixing the retirement age of all Government servants and also teaching and non teaching staff of aided educational institutions including private colleges from 55 to 56 years. Appellant while working as a Selection Grade Lecturer in one of the private colleges affiliated to the Calicut University was selected for appointment as Dean of Students Welfare of the University in the year 2002. After five years' service in that post the University appointed Appellant as Controller of Examinations on 31.7.2007. Admittedly the appellant was entitled to all the service benefits ever since he joined the service as a Lecturer in the college and on retirement he will be getting pensionary benefits with continuity of service with effect from the date he joined service as Lecturer. Appellant's case is that even though University Statute of the Calicut University specifically provided the retirement age at 55 years to teachers of private colleges affiliated to the University and also for the Controller of Examinations and Registrar of the University, when Government extended the retirement age uniformly for all

Government servants including aided college teachers and non teaching staff, the benefit should accrue to the appellant who was the Controller of Examinations in the University. However the University strictly following the provisions of the University Statute on retirement of the Registrar made the appellant retire from the University as Controller of Examinations on 31.5.2012. The learned Single Judge upheld the decision of the University, against which appeal is filed. We have heard Sri. P.C. Sasidharan, advocate appearing for the appellant, Sri. Santhosh Mathew, Standing Counsel for the Calicut University and Senior Government Pleader appearing for the Government. The challenge is against the constitutional validity of the statute on retirement age of the Controller of Examinations of the Calicut University, and in support of this, the counsel for the appellant pointed out the discriminatory treatment meted out only to two officials of the University namely the Controller of Examinations and the Registrar but at the same time University granted the benefit of extension of retirement age by one year granted by Ext. P3 Government order which granted to all the teachers in private colleges affiliated to the University and also to the non teaching staff of the University including heads of the departments. As a result of this all other except Appellant and the Registrar would retire only at the age of 56. We have already noticed that the appellant's eligibility for appointment as Dean of the students welfare and later as Controller of Examinations in the University itself is based on his service in an affiliated private college in the capacity of Selection Grade Lecturer. Admittedly even though the appointment by the University was in various non teaching posts, the appellant is given continuity of service from where he started service in the aided college affiliated to the University as Lecturer. In other words if he continued as Lecturer, he would have become Professor and would have got the benefit of Ext. P3, that is extension of retirement age granted to all teaching staff of aided college affiliated to the University. It is in this context we have to consider the challenge made by the appellant against the constitutional validity of statute 36 of the Calicut University First Statute 1977 which prescribes the age of retirement of the Controller of Examinations at 55 years. Standing Counsel for the University submitted that besides the Controller of Examinations clause 24 of the said Statute prescribes the age of retirement of the Registrar of the University also at 55 years. Contention raised by the Standing Counsel for the University is that so long as the University statute is not amended with regard to the age of retirement the appellant is not entitled to the benefit of Ext. P3 whereunder the Government uniformly extended the retirement age of Government servants in the State and also teaching and non teaching staff of the aided schools and colleges to 56 years. Counsel for the petitioner refers to clause 3 of Calicut University First Statute 1976 which deals with Pension, Provident Fund, Gratuity, Insurance and age of retirement of the teaching staff of private colleges affiliated to the University wherein it is specified that the retirement age of the teaching staff is 55. In spite of fixation of retirement age under the statute for private college teachers at 55 years the benefit of extension of 56 years granted under Ext. P3 Government order without any amendment of the statute is extended to college

teachers. Standing Counsel for the University justified the benefit of extension of retirement age to college teachers in violation of the above provision of the University Statute, by referring to Ext. P3 itself wherein the Government has specifically extended the age of retirement of teachers and staff of aided educational institutions in the State. However on going through Ext. P3 what we notice is that the amendment contemplated by the Government under clause 4 for implementation of Ext. P3 is only amendment of the KSR. It is in this context we have to consider as to what was the intention of the Government in issuing Ext. P3. Obviously the Government felt that wherever special Rules and Statute provide for retirement age of employees whose salary is paid by the Government at par with the provision in the Kerala Service Rules, the amendment of the KSR will serve the purpose of extension of retirement age of all such employees. It may be noticed that in Chapter II of the Calicut University First Statute 1976 pertaining to Pension, Provident Fund, Gratuity, Insurance and retirement age etc. of the private college teachers KSR with amendment from time to time is expressly made applicable. Similar provision is in Chapter 4 of the Calicut University First Statute 1977 where clause 2 makes KSR applicable to non teaching staff. Admittedly by virtue of these provisions KSR is made applicable to teaching and non teaching staff of University and also to private colleges affiliated to the University. As a result of this all employees teaching and non teaching of affiliated colleges under the University and all non teaching staff of the University also got the benefit of extension of retirement age from 55 to 56 under Ext. P3 order of the Government except Controller of Examination and also Registrar. It is in this context we have to consider the maintainability of the appellant's challenge against clause 36 of Chapter 2 of the First Statute 1977 which fixes the retirement age of the Controller of Examinations at 55 years. Standing Counsel for the University and also Government Pleader has relied on the decision of the Supreme Court in Indian Institute of Technology Vs. Raja Ram Verma and Others, and also two decisions of this court reported in Prakasan M.P. And others v. State of Kerala and another, 2010(4) KHC 292 : 2010 ICO 1382 and M.M. Mathai Vs. Elizabeth Xavier and Others, , in support of their contention Article 14 has no application to make uniform retirement age for the Controller of Examinations at par with other non teaching staff of the University. We notice that the judgment of the Supreme Court was on entirely different facts wherein the Supreme Court was considering the parity of retirement claimed by the Registrar in relation to the teaching staff of the Indian Institute of Technology. So far as the Kerala decisions are concerned, this court only held that the retirement age is the policy decision of the Government. We notice from the facts stated above that if the appellant continued as a Lecturer he would have become a Professor and probably Principal and would have retired on superannuation at the age of 56 based on Ext. P3 order issued which applies to all teaching and non teaching staff of aided private colleges affiliated to the University. Admittedly his appointment by the University as Dean for students welfare in 2002 and later as Controller of Examination in 2007 through direct recruitment is with continuity of service ever since he starts his carrier as Lecturer in a private college affiliated to

the University. Further under the provisions of the University statute above stated KSR is made applicable to teaching staff of private colleges under the University and also to the staff and non teaching staff of the University. Contention raised by the Standing Counsel for the University is that the provisions of the KSR will apply to the University Statutes only in regard to matters which are not expressly provided in the statute. Therefore according to him, when clause 36 of Calicut University First Statute 1977 specifically provides for the retirement age of the Controller of Examinations, without an amendment of the Statute the retirement age increase made by the Government under Ext. P3 cannot be applied. In this regard we have already referred to clause 3 of the Calicut University First Statute 1976 dealing with Pension, Provident Fund, Gratuity, Insurance etc. wherein the retirement age of the teaching staff of the private colleges affiliated to the University is fixed at 55 years under the statute. Defence put forwarded by the Standing Counsel for the University and the Government Pleader is that the Government wanted to override the said provision by Ext. P3 wherein retirement age of aided college teachers is extended to 56 years. We are unable to accept the logic and reasoning put forwarded by the Standing Counsel for the University and also by the Government Pleader because if the retirement age fixed under the specific provisions of the statute is applied for the Controller of Examination and for Registrar of the University it equally applies to the private college lecturers until amendment is made to the Statute. Admittedly as a matter of fact every private college teaching and non teaching staff in Kerala irrespective of the University to which the college is affiliated retire at the age of 56 based on Ext. P3. We do not find any justification in the contention raised by the Standing Counsel for the University that the amendment is required with regard to the increase of retirement age in so far the Controller of Examinations and Registrar of the University are concerned, whereas without amendment to University Statute benefit of Ext. P3 can be granted to staff of affiliated colleges under the University. In this context we have to consider whether the Government intended the discrimination brought out by the University in the case of only the Controller of Examinations and the Registrar of the University.

2. As already stated in our view the Government extended the retirement age uniformly to all Government employees and teaching and non teaching staff of the educational institutions in the State which is very clear from Ext. P3. The position of appellant as Controller of Examinations in the University is unique. If clause 3 of the University statute on retirement of private college Lecturers stands amended by Ext. P3 order of the Government, we see no reason why Ext. P3 does not apply in relation to the Controller of Examinations as well as Registrar of the University for whom also the University Statute fixed the same retirement age of 55 years as in the case of College Lecturers. Standing Counsel for the Calicut University refers to Ext. R1(6) which is an order passed by the Chancellor of the Kannur University wherein he has stated that the retirement age of the Registrar will be in accordance with the University Statute. However it

is seen that the Chancellor's order is not with reference to Ext. P3 order of the Government on increase in retirement age of the private college teachers and Government staff but on another order of retirement with reference to the end of the financial year. The appellant's counsel has relied on Ext. P5 order issued by the Registrar of the University seeking a clarification from the Local Fund Audit on Ext. P3 with regard to retirement age of the Controller of Examinations. The Local Fund Audit informed the University that it is for the Government to clarify and not by them. We are in perfect agreement with the view of the Local Fund Audit because the matter can be clarified only by the Government and not by the Local Fund audit. Strangely the University has not sought clarification from the Government and according to the Standing Counsel clarification was not sought because writ petition was filed before this court. We do not think the Government can discriminate only two staff members of the University namely the Controller of Examinations and the Registrar of the University while granting benefit of Ext. P3 to all others in the University. Obviously the retirement age of Government Employees in Kerala for several decades was 55 and therefore when the University statute was made it only followed the retirement age of Government servants and fixed the same retirement age for private college teaching and non teaching staff and also to University staff. We therefore see no reason why only for the Controller of Examinations and also the Registrar the amendment of the University Statute is required to extend the benefit of Ext. P3. We are of the view that after Ext. P3 is issued, provisions of the University statute on retirement age that remains in conflict with Government order on uniformity of the retirement age of teaching and non teaching staff of the private colleges and also staff of University will not survive. We therefore declare that the retirement age of 56 years under Ext. P3 applies to the Controller of Examinations also. We direct the University to restore the appellant to service immediately. The period he was kept out will be treated as leave under eligible category.

The writ appeal is allowed.