
(2014) 03 KL CK 0049
In the High Court Of Kerala
Case No : W.P. (C) No. 33341 of 2010

Varghese

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 2 ILR 163 : (2014) 1 KHC 814 : (2014) 2 KLJ 557 : (2014) 1 KLT 1077 : (2014) LabIC 1928 : (2014) 2 LLN 470

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : N. James Koshy and T. Sanjay, Advocate for the Appellant; Sunil Cyriac, Spl. Government Pleader, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—The petitioner is aggrieved by the denial of pension and pensionary benefits to him by the respondents though he had worked in aided schools in the State from 6.7.1953 to 25.03.1968. Inter alia, the petitioner has also challenged the constitutionality of R. 29(a) Part III K.S.R. The petitioner worked in two aided schools of Kannur and Wayanad Districts from 6.7.1953 to 25.3.1968. He has resigned from service due to family problems. Representations sent by the petitioner were rejected by the respondents vide Exts. P4, P6, P9, P11 and P13 on the ground that as per R. 29(a) Part III K.S.R., a person who resigned from service will have to forfeit his past service. Though the petitioner had pointed out the fact that similarly situated persons were given pension and other benefits vide Exts. P7 and P8, the respondents have, in a highly discriminatory manner, rejected the prayer of the petitioner for grant of pension and other benefits. Therefore, the petitioner also challenges the constitutionality of R. 29(a) Part III K.S.R., which disallows payment of pension for past service if a person resigns from service. The petitioner alleges that he worked in the remote district of Wayanad during a very difficult period and; he had a very good track record, which is vouchsafed by the Manager of the School, where he last worked. He is very much aggrieved of the denial of pension and pensionary benefits. Thus, he has come up before this Court.

2. In the counter affidavit filed by the respondent State, they contended that the petitioner left the service on resignation and; therefore, he forfeited his past service as stipulated in R. 29(a) part III Kerala Service Rules. They maintain the stand that Exts. P7 and P8 are not identical to the case of the petitioner. They also maintain the stand that R. 29(a) Part III K.S.R. is constitutionally valid, legal and just. Therefore, they prayed for the dismissal of the Writ Petition.

3. I have heard the learned counsel for the petitioner and the learned Special Government Pleader in the matter.

4. Admittedly, the petitioner was working in aided schools in Kannur and Wayanad Districts from 06.07.1953 to 25.03.1968. It is an admitted fact that he had resigned from service. The legal bar, pointed out by the respondent State in granting pension and pensionary benefits to the petitioner, is R. 29(a) Part III K.S.R., which reads as follows;

29. Resignation and Dismissals.--(a) Resignation of the Public Service or dismissal or removal from it, entails forfeiture of past service.

5. According to the petitioner, the aforesaid rule is unconstitutional, illegal and ultra-vires. The respondent has no case that any proceeding was initiated against the petitioner or was to be initiated at that stage, which was the reason for resignation by the petitioner. No misconduct or dereliction of duty, while he was on duty, was alleged against him. In such a case, whether it can be stated that the resignation in the case of the petitioner entails forfeiture of past service? R. 29(b) makes it clear that resignation of an appointment to take up another appointment the service in which counts is not resignation from public service. It is not clear if a person, against whom no proceeding is pending or allegation is pending, submits resignation if he wants to take rest in his life or is suffering from ailment, whether resignation would amount to forfeiture of past service. If a case, where the resignation is not because of any departmental proceeding or any allegation, is equated with the case of those dismissed or removed from service, it will render two unequal as equal and would be violative of Art. 14 of the Constitution of India. Therefore, to uphold R. 29(a) Part III K.S.R. as not violative of Art. 14 of the Constitution of India, it is to be held that the resignation will entail forfeiture of past service only in those cases where a person submits resignation because of any allegation or proceedings which otherwise would have attracted punishment like dismissal or removal from service. Here, in this case, the petitioner has served for about 15 years as Headmaster of two aided schools in two northern districts, one of which is educationally backward. The petitioner had taken up the challenge at the time when none dared to go to such places and to work successfully for about 15 years. To club his meritorious service along with those persons, who dismissed from service as per R. 29(a), is arbitrary, unconstitutional and unjust.

6. It was argued by the learned Special Government Pleader that even if R. 29(a) Part III K.S.R. is annulled, the petitioner is not entitled to get pension. In support

of the argument, the learned Special Government Pleader invited my attention to R.32, which classified the pensions, as well as Rr. 33, 42, 55 and 56, which deals with compensation pension in such cases. It is true that the petitioner will not come under that category. That is only because of the fact that as per R. 29(a) Part III K.S.R., the right of persons, who have resigned from service, to get pension has been taken away.

7. It is crucial to note that R.5 of Part III K.S.R. states that compassionate pension can be granted to persons, who are dismissed from service for inefficiency and for other reasons, in deserving cases. However, in the case of the petitioner, who has resigned from service with excellent track records, pension is rubbed off for no sensible reason. Therefore, R. 29(a) Part III K.S.R. to the extent that it denies pension to a person like the petitioner, who has resigned from service, is unconstitutional and illegal.

8. The learned counsel for the petitioner invited my attention to Exts. P7 and P8, where identically situated persons were granted all benefits including pension by the respondents. Ext. P7 is the true copy of the order dated 16.05.1991 granting pension to Sr. M. Prisea. Ext. P8 is the true copy of the order dated 05.06.2007 granting pension to Sri. U.K. Antony of Sacred High School, Thiruvambady, Kozhikode. Though the petitioner approached the respondents by filing representations pointing out gross discrimination meted out by him, the same went into deaf ears. It was strenuously argued by the learned Special Government Pleader that wrong relief granted to other persons would not be a reason to extend the same to the petitioner. But, I am not inclined to accept the said submission. R. 11 empowers the Government to consider individual cases. There is no reason why the petitioner's case should not be considered in exercise of powers conferred under R. 11 in the light of what has been stated above. On a consideration of the entire facts and circumstances stated above, this Court is of the definite view that the petitioner is entitled to succeed. Therefore, the Writ Petition is allowed. It is hereby declared that R. 29(a) Part III K.S.R. is unconstitutional and ultra-vires insofar as it denies pension to the persons like the petitioner, who resigned from service not on account of any disciplinary proceedings or intended disciplinary proceedings. Exts. P4, P6, P9, P11 and P13 orders are quashed and; the matter is remitted back to the 1st respondent for considering the case of the petitioner in exercise of powers conferred under R. 11 Part III K.S.R. in the light of what has been stated in this judgment and with reference to Exts. P7 and P8 after affording the petitioner an opportunity of being heard. This exercise shall be completed within a period of three months. To facilitate an early disposal, it shall be open to the petitioner to produce a copy of this judgment along with the copies of Exts. P7 and P8 before the 1st respondent within a period of one month.