
(2010) 07 KL CK 0066
In the High Court Of Kerala
Case No : W.A. No. 1348 of 2006 (E)

Varghese K.P.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Kerala Service Rules, 1958 — Rule 60

Citation : (2010) 2 KLJ 770

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Shaji P. Chaly, for the Appellant; T.B. Remani, G.P., for the Respondent

Judgement

P.S. Gopinathan, J.—Both these appeals are preferred against the judgment of the learned single Judge dated 14.3.2006 in W.P. (C) No. 24591 of 2005. W.A. 1348 of 2006 was filed by the petitioner and the other appeal was preferred by the official respondents. Hereinafter the parties are referred to as they are arrayed in the writ petition. Petitioner was appointed as a P.D. teacher in U.P.S. Thuruthikara (an aided school) during the academic year 1963-64. While so, he was selected for training. After training, he rejoined the school on 8.6.1965. Later, he was thrown out for want of post and had to work as a protected teacher. Thereafter, his service was regularised in Government school. While so, he was superannuated in December, 1996. In view of the special provision in Rule 60(c) of the Kerala Service Rules, he continued in service till 31.3.1997, the last day of the academic year. In the meanwhile., pay revision orders were issued by the Government implementing pay revision with effect from 1.3.1997. His claim for revision of pay and consequential benefits was rejected by the authorities. It is in this background, though late, the writ petition was filed with the following reliefs:

(i) Declare that the training period in the case of the petitioner as certified in Ext.P2 is liable to be reckoned for granting increments in the light of Ext.P3 G.O.

and direct to refix the pay accordingly;

(ii) to issue a writ of mandamus or such other appropriate writ or order directing the respondents to grant all the benefits of pay revision implemented with effect from 1.3.1997 to the petitioner as well and to disburse the arrears in respect of the service/retirement benefits within a specified time;

iii) Declare that the respondents are liable to disburse the arrears to the petitioner with reasonable interest - at the rate to be specified by this Honourable Court;

iv) Issue such other appropriate writ or direction as found to be just and proper by this Honourable Court.

2. Learned single Judge found that the claim for pay revision and consequential benefits is covered by the decision of this Court in Accountant General Vs. Neelakantan Nair, . Accordingly, the second relief was granted. The first relief was declined for the reason that it is highly stale. Third relief sought is a consequential one and the, 4* one is not specific. ;

3. Assailing the judgment so far it declines the first relief the petitioner has preferred W.A. No. 1348 of 2006. Assailing the judgment so far it granted second relief, the respondent State and officials had come up in appeal.

4. We have heard the learned Government Pleader Smt. T. B. Remani and Adv. Sri. S.P. Chaly appearing for the petitioner. Annexures I, II and III Government Orders, namely G.O.(P) No. 536/05/Fin. dt. 15.12.2005, G.O.(P) No. I557/200/Fin. dt. 15.5.86 and G.O.(P) No. 331/06/Fin. dt. 10.8.2006 produced along with the appeal preferred by the respondents would show that as against the order in Accountant General's case (supra) (WA 3951/01), there were civil appeals before the Supreme Court wherein the above decision was confirmed by the Apex Court. Annexure-I order dated 15.12.2005 was issued whereby the entitlement of pensionary benefits following pay revision orders after the superannuation and during the extended period of service was taken away. By Annexure-II dated 15.5.1986, it was ordered that in case of teaching staff of educational institutions, including Principals of Colleges, who were allowed to continue beyond the age of 55 years till, the end of the academic year, their extended service will not count for pension. In fact ignoring Annexure-II order, Accountant General's case was decided. However, by Annexure-III dated 10.8.2006, Rule 60(c) was amended with retrospective effect from 15.5.1986. Consequently, Rule 60 (c) as amended by Annexure-III prevailing as on the date of retirement of the petitioner reads as follows:

60(c)- The teaching staff of all Educational Institutions (including Principals of Colleges) 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 1[But the extended period of service will not count as qualifying service for pension and the pay received during the period will not be reckoned

for computing average emoluments or pensionary benefits or commuted value of pension.] 2[They shall be entitled to the benefits of increments and promotion which fall due, before the last day of the month in which they attain the age of 55 years. But they shall not be eligible for increment or promotion during the period of their service beyond such date.] [They shall also not be eligible for the benefits of pay revision effective from a date after the date of superannuation, under Sub-rule (a) of Rule 60.] 4[If they are on leave on the day they attain the age of 55 years and fail to rejoin duty on the first working day immediately after the date of superannuation they shall be retired with effect from the date of superannuation under Sub-rule (a) of Rule 60.] But in cases where officers coming under this rule are under suspension on the date of superannuation or thereafter but before the closing day of the academic year, they shall be retired from service on the date of superannuation or on the date of suspension whichever is later.

(Para 2 omitted as not relevant in this case)

The petitioner has not challenged the legality or validity of the amendment brought to Rule 60(c) by Annexure-III with retrospective effect. Hence, we do not propose to examine the legality of the amendment, but declare that as on the date of retirement of the petitioner, the Rule applicable is as above.

5. A reading of the above amended Rule valid as on the date of the retirement of the petitioner would show that the petitioner is not entitled to have the pension and other retirement benefits calculated by reckoning the revised pay that came into effect after the superannuation. In the above circumstances, the Rule declared by this Court in the Accountant General's case (*supra*) and affirmed by the Apex Court as far as the retiral benefits following pay revision that came into effect after superannuation is no more a good law because of the amendment brought by Annexure-III. Therefore, because of the specific bar introduced by Annexure-III amendment, we find that the writ petitioner is not entitled to count the extended period of service as qualifying service for pension and the pay received will not be reckoned for computing average emoluments or pensionary benefits or commuted value of pension. The respondents would succeed in their appeal.

6. It is not disputed that the writ petitioner had undergone training while working in an unaided school in 1963 or 1964. Though he joined the school after training, he was thrown out for want of vacancy. Later, he was absorbed in State service. There is no case that his salary, increment or grade was determined after reckoning the training period as service. There is no case that at any time before the institution of the writ petition he had made any representation requesting the authorities to reckon the period of training while in the aided school service to count for service benefits. The writ petition was filed more than three decades after the so-called training. Now, it is more than four decades. In the above circumstances/ we find that the learned single Judge was right in declining that relief as it is highly stale. We find no merit in the appeal preferred by the writ

petitioner.

In the result, W.A. 1348 of 2006 is devoid of merits. It is dismissed. Other appeal would stand allowed. The judgment of the learned single Judge, so far as it directs the respondents to fix the pensionary benefits of the writ petitioner after reckoning the revised pay, would stand set aside. No costs.

1 Sentence inserted by G.O.(P) 331/2006/Fin. Dated 10th August 2006 published as RO No. 591/ 2006 in Kerala Gazette Extraordinary No. 1317 dated 11th August 2006.

This amendment shall be deemed to have come into force on 15th May 1986.

2 Second and third sentences of the first paragraph of Sub-rule (c) substituted by G.O.(P) 109/82/Fin. Dated 8th March 1982 Published as SRO No. 553/82 in Kerala Gazette No. 17 dated 27th March 1982. Before substitution the original sentences ran as follows:

They shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years. But they shall not be eligible for promotion to another post during the period of such extension.

This amendment shall come into force with effect from 8th March 1982.

3 Sentence inserted by G.O.(P) 331 /2006/Fin. Dated 10th August 2006 published as SRO No. 591/ 2006 in Kerala Gazette Extraordinary No. i 317 dated 11th August 2006.

This amendment shall be deemed to have come into force on 15th December 2000.

4 Sentence substituted with effect from the 20th August 2006 by G.O.(P) 331/2006/Fin. dated 10th August 2006 published as SRO No. 591/2006 in Kerala Gazette Extraordinary No. 1317 dated 11th August 2006.

Prior to substitution the sentence ran as follows:

If they are on leave on the day they attain the age of 55 years and if there is no prospect of their returning to duty before the closing day of the academic year for vacation they shall be retired with effect from the last day of the month in which they attain the age of 55 years.