
(1964) 04 KL CK 0002
In the High Court Of Kerala
Case No : A.S. No. 905 of 1960

V.K. Namboodiri

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-04-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 16, 259(2)
Pensions Act, 1871 — Section 4

Citation : AIR 1965 Ker 185

Hon'ble Judges : T.K. Joseph, J; T.C. Raghavan, J

Bench : Division Bench

Advocate : T.K. Narayana Pillai, for the Appellant; M.U. Issac, for No. 1 and C.M. Kuruvilla, Govt. Pleader (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Raghavan, J.—In this appeal the plaintiff contests the correctness of the decision of Madhavan Nair J. in a suit withdrawn from one of the subordinate courts under Article 228 of the Constitution and disposed of by him.

2. The appellant held the permanent rank of Major in the State Forces of the erstwhile State of Travancore until its integration with the State of Cochin. Thereafter he continued as a Major in the Forces of the T. C. State. When the Constitution came into force on 26th January 1950, under Article 259(2) of the Constitution the Armed Forces of the T. C. State became part of the Armed Forces of the Union of India. Then the Indian Army Services Selection Board screened the Officers of the T. C. State Forces and the appellant was graded as "unacceptable" to the Indian Army. The Army Head-Quarters issued orders on the basis of this grading, directing the release of the appellant from the army, whereupon he filed O. P. No. 67 of 1950 before the T. C. High Court. Pending the writ petition the authorities cancelled the release order and the appellant was reinstated. Thereafter, the Union Government issued a communication to the

Commander-in-Chief of India conveying the sanction of the President to the relinquishment of commissions and termination of services of some of the Officers of the T, C. State Forces including the appellant. In pursuance of that communication the appellant was granted leave for one year from 31st March 1951 to 31st March 1952 and thereafter he was released from the army.

3. O. P. No. 67 of 1950 was dismissed by the T. C. High Court, The present suit, was then filed claiming damages and compensation for wrongful termination of employment and also claiming that the appellant was entitled to pension of Rs. 400/-per mensem under the Indian Army Rules as amended by the revised Indian Pay Code, instead of the pension of Rs. 103.6.0 actually granted to him. Our learned brother, Madhavan Nair J., dismissed the suit.

4. In appeal the learned counsel of the appellant contends that though the appellant's service in the Indian Army was during the pleasure of the President and as such the President was entitled to terminate the same, there was really no order of the President terminating his service. This contention is devoid of any merit, because the entire pleading has proceeded on the basis that the President issued the order, but it was not a valid exercise of his pleasure and the exercise was not bona fide. Therefore this contention has to be rejected.

5. The next contention is that the appellant's fundamental rights under Articles 14 and 16 of the Constitution were violated. The argument is that when Majors of the Indian Army were not subjected to any selective test after they were commissioned once, the screening by the Selection Board of the Majors of the T. C. State Forces was violative of Arts. 14 and 16. This question was considered in O. P. No. 67 of 1950; and the view expressed in that writ petition was reiterated by Madhavan Nair J. also. The provision in Article 259(2) to the effect that the Armed Forces of the States would form part of the Armed Forces of the Union does not ipso facto enable the members of the State Forces to hold the same ranks in the Armed Forces of the Union. They had to be accepted as conforming to Indian Army standards and had to be absorbed and integrated in the Armed Forces of the Union. Therefore, the grading by the Selection Board was no discrimination. Similarly, the discrimination, if it could be called discrimination, as between those "acceptable" and those "unacceptable" was inevitable in any selection. Really, it was not discrimination. Thus, there is no force in this contention either.

6. Our learned brother proceeded on the assumption (of course, without deciding it) that the appellant became a member of the Indian Army on 26th January 1950 by virtue of Article 259(2) of the Constitution. But, we wish to point out that what Article 259(2) states is only that the Armed Forces of the States shall form part of the Armed Forces of the Union. That does not mean that the members of the State Forces immediately become eligible for or entitled to all the benefits available to the members of the Armed Forces of the Union, like salary, pension, etc. Therefore, by virtue of Article 259(2) of the Constitution the appellant did not become entitled to the salary, pension, etc., of a Major in the

Armed Forces of the Union. The result is he cannot claim arrears of salary on the basis of the salary of a Major in the Indian Army. He cannot also claim damages or compensation, since his release was under orders of the President. It is equally clear that no question of granting a declaration that the appellant is entitled to benefits as contemplated by the Indian Army Rules can also arise in the case.

7. The next question is whether the appellant is entitled to enhanced pension under the Indian Army Rules. Madhavan Nair J. has held that u/s 4 of the Pensions Act of 1871 this question is not cognizable by a civil court. There are several decisions to support this view, e.g., Shaukat Husain Beg Mirza Vs. State of Uttar Pradesh and Another, , Rajah Yenumula Suryanarayana Murthy Dora and Another Vs. State of Madras (Now Andhra Pradesh) and Another, Baldeo Jha and Others Vs. Ganga Prasad Jha and Others, and M. Sajjanam Vs. State of Madras, .

8. But the learned advocate of the appellant draws our attention to the decision of the Punjab High Court in Gurdip Singh v. Union of India, AIR 1962 Punj 8. In that case the appellant was a member of the State Forces of the erstwhile Patiala State. The State had Army Service Rules, which had statutory force. The appellant was retired from service and was granted a pension of Rs. 101/- per mensem under the Army Service Rules of the State. He claimed Rs. 223/- per mensem in the suit and the Union of India resisted the claim on the authority of the Pensions Act. The Division Bench of the Punjab High Court held that the Army Service Rules of the Patiala State had statutory force and under those rules the jurisdiction of the civil court was not displaced and the Pensions Act did not apply. We fail to see how that decision can apply to the case before us. In this case the appellant was granted pension under the T. C. Rules and what he is now claiming is enhanced pension under the Indian Army Rules. Firstly, as already pointed out, he has not become eligible for the salary, other emoluments and pension of the Indian Army personnel merely because Article 259(2) stated that the T. C. State Armed Forces became part of the Armed Forces of the Union. Secondly, if the Indian Army Rules applied, then the Pensions Act has perforce to apply. Therefore, his claim for enhanced pension cannot also be sustained.

9. Ultimately, we confirm the decision of Madhavan Nair J. and dismiss the appeal with costs of the 1st respondent, the Union of India