

Kallavva Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Feb-19-1998

Reported in : ILR1998KAR2497; 1999(3)KarLJ564

Judge : H.L. Dattu, J.

Acts : Karnataka Municipalities (Conditions of Service) Rules, 1972 - Rule 48; Mysore Panchayats and Taluk Boards Employees (Recruitment and Conditions of Service) Rules, 1962 - Sections 15; [Constitution of India](#) - Articles 148 and 309; Karnataka Municipalities (Conditions of Service) (Amended) Rules, 1987 - Rule 5

Appeal No. : Writ Petition No. 1922 of 1990

Appellant : Kallavva

Respondent : State of Karnataka and Others

Advocate for Def. : Sri B. Veerappa, High Court Government Pleader

Advocate for Pet/Ap. : Sri T.N. Raghupathy, Adv.

Judgement :

ORDER

1. Pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant is the view of the Supreme Court. Since this right

is frustrated and her claim is rejected by the State Government by their impugned order dated 11-10-1989, a retired old lady, who has abundant richness in her poverty is before this Court questioning the correctness or otherwise of the aforesaid order.

2. Brief reference may be made to the circumstances leading up to passing of the impugned order referred to above in order to appreciate the circumstances under which the impugned order came to be made as well as ground of attack levelled against the said order.

3. Petitioner was initially appointed as a scavenger in the Town Panchayat, Chikodi. In the service registers her date of birth is noted as 27-4-1913. She ought to have retired from service on 27-4-1968, on attaining the age of superannuation but her services came to be continued by the Town Panchayat. On 17-2-1973, the Town Panchayat, Chikodi had been converted to Town Municipal Council, Chikodi. The services of the petitioner was also transferred to the said Municipal Council and the council continued the services of the petitioner as Poura Karmika and she was retired only on 31-10-1978. There seems to have arisen some controversy about the eligibility of the petitioner for pensionary benefits, Representations made by her and the recommendations of the authorities of the district for sanctioning pensionary benefits remained undecided in the State Government for nearly 10 years and it was ultimately rejected by the State Government by their order dated 11-10-1989. Disturbed by these events petitioner is before this Court inter alia seeking the following reliefs:

(a) To quash the communication/order of the State Government in No. HUD: 62: MLR: 88, dated 11-10-1989.

(b) To direct the respondents to pay to the petitioner superannuation pension as per law and all arrears up-to-date.

(c) To quash communication dated 27-2-1990 issued by second respondent and the order made by the first respondent dated 22-3-1990.

4. The relevant rules which require to be noticed for the purpose of this case is Rule 15 of the Mysore Panchayats and Taluk Boards Employees (Recruitment and Conditions of Service) Rules, 1962. The said rule speaks of retirement of panchayat or a Taluk Board employee. The rule is as under:

'Rule 15. Retirement from service,-- No employee of a panchayat or a taluk board shall be retained in the service after he has attained the age of 55 years:

Provided that nothing contained in this rule shall apply to the re-employment, in public interest, with the previous sanction of the Deputy Commissioner in the case of panchayat, or the Divisional Commissioner, in the case of a Taluk Board for a period not exceeding one year at a time, of persons who have retired from service under the Panchayat or Taluk Board, as the case may be or under the Central or State Government or of any local authority'.

5. 1962 Rules are statutory in character. Rules mandate that the employee of a Panchayat or Taluk Board shall positively retire after attaining the age of superannuation. Proviso is an exception to the main rule. It authorises the re-employment of the retired person in public interest for a period not exceeding one year at a time to Panchayats and Taluk Boards. The Panchayat can reemploy a retired employee with the previous sanction of the Deputy Commissioner.

6. In the instant case, petitioner ought to have retired from the services of Town Panchayath, Chikodi on 27-4-1968, but her services were continued by the Panchayath till the Panchayat was converted into Town Municipal Council. Obviously, the Panchayat must have re-employed her in the public interest. The Deputy Commissioner of the District whose prior sanction was required to continue her services does not take exception to her continuance in service. In fact, he recommends her case for sanction of pensionary benefits. By this act, it can safely be said that the panchayat had continued the services of the petitioner from year to year with the sanction of the Deputy Commissioner as is required under Rule 15 of the Rules, 1962.

7. The Town Panchayat, Chikodi was converted into Town Municipal Council on 17-2-1973. Her services came to be handed over to the Municipal Council. The

definition of an employee under the Karnataka Municipalities (Conditions of Service) Rules, 1972, as amended by Rules 1987 includes person absorbed in the service of Municipal Council. Rules 1972 provide for compulsory retirement of an employee working in Town Municipal Council. The said rule finds a place under Chapter VI of the rules. The same reads as under:

'48. Date of compulsory retirement: (1) the date of compulsory retirement of an employee is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Municipal Council for a period of one year and if the employee is physically fit he may be re-employed for a period of one year, with sanction of Government. Such re-employment shall not exceed five years in total'.

8. An analysis of the said rule makes it explicitly clear that an employee of the Municipality shall retire on the date when he attains the age of 55 years and he may be continued in service for a period of one more year with the sanction of the Municipal Council, if the employee is physically fit. He may be re-employed for one more year with the sanction of the Government and at any rate such re-employment shall not exceed 5 years in total. A strict construction has to be given to these statutory rules since they are framed in exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution. A close look at the petitioner's case does not fit into these rules. But Sri T.N. Raghupathy, learned Counsel for the petitioner submits that after the petitioner's service was absorbed in the Town Municipal Council, the petitioner worked for several years, but even it is curtailed to one year from the date of absorption of her service, the Town Municipal Council could extend the same without the previous permission of the State Government. The submission of the learned Counsel is very attractive but in my view, has no substance in view of the clear language employed in Rule 48 of the Rules, for the reason the day on which her services were absorbed, she had attained the age of 55 years and her services could not have been continued one more year by the Town Municipal Council without previous sanction of the State Government. Continuation of her services beyond the period prescribed is contrary to Rule 48 of the Rules and the said rule will not come to the aid of the petitioner. But State Government realising that some of the

municipalities had retained the services of the employees even beyond the age of superannuation, even though the old rules mandated that the employee will be retired from service on attaining the age of 55 years, have issued Government Order in No. HUD 454 MLR 79, dated 5th November, 1979 regularising the services rendered by the Municipal employee beyond 55 years treating it as extension service. It is useful to extract the said Government Order. It reads as under:

'3. The employees whose services were continued beyond the age of fifty-five years and who retired subsequently may be grouped into the following categories:

(i) Those who were continued in service under the old rules and who have attained the age of 55 years before the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972 came into force from 22-5-1972.

(ii) Those who were continued in service beyond fifty-five years by granting extension of service under Rule 48 of the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972.

(iii) Those who were continued beyond the age of fifty-five years in good faith.

4. The question as to whether such service continuous beyond fifty-five years, have to be treated as re-employee or extension of service was earlier examined and orders regularising such service as re-employment were issued in G.O. No. HUD 454 MLR 79, dated 5th November, 1979,

5. It is brought to the notice of Government that treating the service beyond fifty-five years as re-employment in the case of the type mentioned above will cause hardship to the retired employees while settling their pension claims, and therefore the matter is reconsidered.