

Subramanian Vs. State of Kerala

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Court : Kerala

Decided On : Jan-24-2006

Reported in : 2006(1)KLT967

Judge : Kurian Joseph, J.

Acts : Kerala Service Rules - Rules 33, 90, 90(1) and 90(2)

Appeal No. : O.P. No. 34949 of 2002

Appellant : Subramanian

Respondent : State of Kerala

Advocate for Def. : Rajasree, Government Pleader

Advocate for Pet/Ap. : Rajit and; Ranjit Babu, Adv.

Judgement :

Kurian Joseph, J.

1. Whether a pensioner can be denied family pension is one of the interesting questions arising for consideration in this case. Petitioners were recruited through the Employment Exchange on a provisional basis for appointment under the Small Farmers Development Agency on 12-3-1976. The SFD A was abolished in the year 1982 and the District Rural Development Agency was formed. Petitioners

were transferred to DRFA. Though the petitioners continued uninterruptedly they were not given the benefits due to the regular employees except the stagnation increment. In the matter of regularisation the petitioners approached this Court in O.P.No. 20212/1996 and consequently they were regularised in service in the Rural Development Department as per Ext. P2 Government order dated 29.9.1998. Since the service benefit were not granted, the matter was again taken up before this Court leading to O.P. No. 24923/1999. The Government thereafter issued Ext.P3 government order dated 23-12-2000, purportedly redressing the grievance of all the provisional employees of DRDA. It is significant to note that altogether there were only 21 such employees. It will be profitable to extract the operative portion of Ext. P3 regarding the benefits conferred on the employees-

(i) The 21 provisional hands including persons retired will be deemed to have been regularised in the services of the respective District Rural Development Agencies. They will continue as regular employees.

(ii) The date of regularisation will be the date of joining duty of each employment or appointment through Employment Exchanges.

(iii) All service benefits including leave, Travelling Allowance, Pay revision, increment and Grade Promotion as per Part I & II KSRs will have effect from 29-9-1998 only ie. the date of the original order.

(iv) The pensionary claims will be settled as per Rules as Part III KSRs. But Rules regarding family pension (Rule 90 Part III KSRs') will not be extended to these provisional hands now regularised.

(v) DA on pension will be paid to these employees.

(vi) The expenditure towards salary and pensionary benefits will be met from the Administrative Expenditure of DRDAs.

2. It may be noted that Government passed Ext. P3 order in continuation of Ext. P2 order wherein a policy decision was taken in the matter of regularisation. It will be profitable to refer to the relevant portion in Ext. P2 also so as to gather the intention of the Government.

3. Government have carefully considered the views expressed by the Kerala Public Service Commission in the matter. The provisional hands continuing in DRD As have put in a service ranging from 12 to 20 years and have crossed the age limit for entry into any other cadre. For want of regularisation of their service, they are not eligible for pension and allied benefits. Having examined all the relevant aspects in a humanitarian angle, Government are pleased to issue the following orders overruling the advice of the Kerala Public Service Commission.

It may be seen from Ext. P2 that the Government was aware of the fact that for want of regularisation, the petitioners and similarly situated employees were not eligible for pension and allied benefits. Ext. P3 Government order dated 23-12-2000 dealt with the pension and allied matters. Despite such a generous intention the benefits were granted only subject to restrictions referred to above. The reason for such restrictions are stated at paragraphs 16 and 17 of the counter affidavit which reads as follows :

16. It is also submitted that since the appointments of the petitioners were made without following the normal procedure or assessing suitability, KSR, in toto cannot be extended. It is stated that in the G.O. (MS) 356/2000/LSGD dated 23-12-2000 that rules regarding family pension (Rule 90 Part III KSR) will not be extended to these provisional hands now regularised.

17. The argument of the petitioner to allow him all service benefits from the date of entry in service as temporary hand will not stand at any cost. If regularisation is given effect from the date of appointment these regularised provisional hands will have to be given seniority over PSC recruited regular employees of Rural Development and this may jeopardise the interest of the latter. In the above circumstances the O.P. is devoid of merit and liable to be dismissed with costs.

In the matter of family, except that the same is not granted, no reason whatsoever is stated either in the impugned order or in the counter affidavit.

3. Liberalised Family Pension scheme known as Contributory Family Pension was introduced with effect from 1-4-1964. Rule 90 of Part III KSR deals with the same. Rule 90(I) reads as follows:

90 (1) The Contributory Family Pension Scheme introduced with effect from the 1st April 1964 is applicable to all regular employees on pensionable establishments under the Government governed by the Kerala Service Rules.

(a) who were in service on 1-4-1964 and had not opted out of it. The note under Rule 90(1) provides as follows:

Note:- All employees of the State Government who were in service on or after the 30th September 1977 or who retired from service on or after the date shall be entitled to the benefit of Liberalised Family Pension. Sub-rule (2) of Rule 90 carves out certain categories who are not eligible to the benefits.

Sub-rule (2) reads as follows:

(2) The scheme is not applicable to:

(a) Persons who retired on or before 31-3-1964 but were re-employed on that date or thereafter.

(b) Persons paid from Contingencies.

(c) Workcharged staff.

(d) Casual labourers.

(e) Contract officers, and

(f) Military pensioners who retired from military service on or after 1-1-1964, re-employed in State Service provided the families of such re-employed military pensioners are eligible for family pension from the Defence Department.

Petitioners have been regularised in service under the Rural Development Department and admittedly they were conferred with all the benefits with effect from 29-9-1998. Therefore, both by express inclusion as per Note under Rule 90 (1) and by express non-inclusion under Rule 90 (2) of Part III KSR the petitioners as well as the similarly situated employees covered by Exts. P2 and P3 are entitled to the benefit of family pension. The benefit conferred by KSR cannot be

taken away by an executive order, otherwise than as permitted under the Rules. The Rules do not permit the Government to deny the benefit of family pension to a pensioner who satisfies the requirements of Rule 90 (1) and (2). Pension and family pension are two sides of the same coin. Family pension is to the family of the pensioner and that benefit is part and parcel of the pension under Rule 90; the only difference being that the beneficiary is the family of the pensioner. There is no point in denying family pension to a pensioner who is otherwise eligible and entitled to be treated as a pensioner under Part III of KSR. There will hence be a direction to the respondents to grant the benefit of family pension to the petitioners as well as other employees covered by Exts. P2 and P3 government orders. There is no need to drag the other employees who are not before this Court for the above purpose.

4. As far as the service benefits restricting the same from 29-9-1998 is concerned, in view of the stand in the counter affidavit that if the benefits are granted retrospectively 'the same might affect the directly recruited regular hands, learned Counsel for the petitioner submits that they are more interested in getting the service benefits without affecting the regular recruits. In other words it is submitted that the Government in terms of Ext. P2 ought to have granted the benefits of the disposal service for the purpose of pension and other benefits excluding seniority. If as a matter of fact, the service from the date of the provisional service is reckoned for the purpose of pension, there is no point in denying the eligible benefits without affecting others. In this context it is also to be noted that under Rule 33 of Part I the provisional service prior to 1 -10-1994 is liable to be counted as qualifying service. These are some of the aspects which require consideration. Petitioners may move the Government. In case such an attempt is made, in view of the stand taken in the counter affidavit the matter will be considered by the Government with notice to the petitioners and appropriate orders in accordance with law in the matter shall be passed within another four months.

The Writ Petition is disposed of as above.