

**Mathai Vs. Assistant Educational Officer**

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**Court :** Kerala

**Decided On :** Apr-03-1968

**Reported in :** (1969)ILLJ220Ker

**Judge :** V.P. Gopalan Nambiyar, J.

**Appellant :** Mathai

**Respondent :** Assistant Educational Officer

**Judgement :**

**V.P. Gopalan Nambiyar, J.**

1. The writ petition, as amended, seeks to quash Exs. P. 1, P. 2, R. 3 and R. 4. The details and nature of these exhibits will be referred to presently. The petitioner was an assistant teacher of the M.T.L.P. School, Naranammoozhy. His date of birth is 6 December 1910. By reason of the benefits conferred in the first instance on Government servants by G.O. No. 324 of 1966 and extended later to others, the petitioner was entitled to continue in service till completion of the age of 58 years. After the age of superannuation was thus raised, the petitioner had opted for the benefit of Chap. XIV-C of the Kerala Education Rules. Thereafter, by G.O. No. 176 of 1967, dated 4 May 1967, the age of superannuation in regard to the Government servants was reduced from 58 to 55. This was followed in other departments including private-aided institutions like the one where the petitioner was employed. Government Order No. 176 of 1967, contained a provision by

which persons continued in service beyond 55 years of age were to retire on 4 August 1967. The next relevant Government Order to be noticed is G.O. No. 231 of 1967, dated 29 May 1967. The same allowed teachers a period of three months to opt for being governed by the rules in Chap. XIV-B of the Kerala Education Rules. The said period was also available for a re-exercise of option by those who had already opted to be governed by the rules in Chap. XIV-C. Those who within the period of three months thus exercised their option to be governed by the rules in Chap. XIV-B were allowed to continue in service till the attainment of 60 years of age. The petitioner did not re-exercise any such option.

2. On 20 June 1967, the petitioner applied for leave on half-pay for a period of two months from 26 June to 25 August 1967. In anticipation of leave being granted, a substitute seems to have been appointed for this period, and she functioned till 25 August 1967. After the expiry of the petitioner's leave, the petitioner rejoined on 28 August 1967 (26 and 27 August 1967 being holidays) and continued till 26 October 1967. It would appear that on the petitioner's leave application dated 20 June 1967, the Assistant Educational Officer passed orders only on 18 September 1967, granting leave to the petitioner only for 39 days and directing that he is to retire on 3 August 1967. The Assistant Educational Officer's order itself was communicated to respondent 3, the manager of the school, on 23 October 1967 and he served Ex. P. 1 communication on the petitioner on 24 October 1967, informing him that his leave has been sanctioned from 25 June to 8 August 1967, and further that as per -rule 62 of Chap. XIV-A of the Kerala Education Rules, the petitioner had to retire from service with effect from 3 August 1967. Exhibit P. 2 dated 23 October 1967 is a copy of the communication by respondent 2, headmaster, to the petitioner, informing him of the Assistant Educational Officer's proceedings on his leave application and that the petitioner's services were to terminate on 3 August 1967. Exhibit R. 3 is a copy of the relieving order, by the headmaster, relieving the petitioner from service on 25 October 1967, and Ex. R. 4 is a copy of the communication by the headmaster to the Assistant Educational Officer informing him that the petitioner has been relieved from service.

3. On the above facts, the petitioner's counsel contended that the order retiring him from service on the basis of Rule 62 of Chap. XIV-A of the Kerala Education

Rules cannot be sustained. The said rule runs as follows:

62. Retirement.-A teacher who completes the age of retirement during the course of an academic year but not within one month from the date of reopening shall continue in service till the close of the school for the midsummer vacation. But if he is on leave on such date with no prospect of returning to duty or on leave from the commencement of the academic year to the date of superannuation, he may be retired on the due date. If the teacher applies for any leave other than casual leave during the period of his continuance under this rule beyond the age of retirement, he shall be retired forthwith.

The argument of the petitioner's counsel was that the teacher who is referred in the concluding sentence of the rule is, and could only be, one who falls within the opening part thereof and the petitioner being one who would not fall within the opening part of the rule cannot be relieved from service on the strength of the concluding sentence. It appears to me that there is no substance in the argument. The petitioner who had completed the age of 55 years was allowed to continue till the attainment of 58 years by reason of the increase in the age of superannuation. While he was thus continuing in service, as a result of the lowering of the age of superannuation, the petitioner had to retire on 3 August 1967. This seems sufficient to attract the opening part of Rule 62 of Chap. XIV-A and to hold that the petitioner is one who completed the age of retirement during the course of the academic year. Whether he did so within one month from the date of reopening or not and the consequence thereof, will be dealt with separately.

4. It was argued by the petitioner's counsel that the retirement in August was not within one month of the reopening, and therefore in any event even under the opening part of Rule 62, the petitioner was liable to be continued in service till the close of the school for the midsummer vacation, namely, 31 March 1968. Thus put, the argument is well-founded. But it does not seem to carry the petitioner, far. Even if he is liable to be continued in service till the closing of the school for the midsummer vacation, that is subject to the provision in the closing part of the rule. By reason of the said provision, if the teacher applies for leave other than casual leave during the period of his continuance under this rule beyond the age of

retirement, he shall be retired. In the present case, as already noticed, the petitioner applied for leave on half-pay for two months from 26 June to 25 August 1967. The period of leave fell beyond the age of retirement as reflexed. The concluding part of Rule 62 of Chap. XIV-A is therefore attracted, and the order retiring or relieving the petitioner from service is well-founded.

5. Even if Rule 62 of Chap. XIV-A had no application at all to the petitioner, I would not, for the mere reasons that the said rule was quoted in Ex. P. 1 interfere in these proceedings with the petitioner's order of retirement when the petitioner has admittedly no right to continue in service beyond 3 August 1967.

6. The petitioner's counsel then raised an argument that he was deprived of the benefit of the option to be governed by the rules under Chap. XIV-B of the Kerala Education Rules within the period of three months as provided by G.O. No. 231 of 1967, as he was quite unaware of the said Government Order which allowed time for the exercise or re-exercise of option with the resultant benefit of being allowed to continue in service till the attainment of 60 years. This was hotly controverted by respondents 2 and 3 and in Para. 3 of the counter-affidavit filed by these respondents it has been alleged that G.O. No. 231 of 1967 was received in their school on 16 June 1967 before the petitioner entered on leave, and was read out to the assistant teachers of the school including the petitioner, and the contents were made known to them. It has also been stated that G.O. Nos. 176 and 231 of 1967 were published or otherwise made known. I am unable to see also any obligation laid on respondents 2 and 3 to make known the contents of this Government Order to the petitioner. If the petitioner was unaware of the Government Orders and was therefore unable to exercise the option granted thereby, within the time-limit specified therein, that might conceivably have been a ground for approaching the proper authorities for extension of time to allow the exercise of the option, but, not certainly for interference in these proceedings.

7. It was contended by the petitioner's counsel that he is entitled to continue in service till 31 March 1968, by reason of G.O. No. 191 of 1967 (Finance), dated 23 June 1967. Counsel for respondents 2 and 3 raised the contention that the said Government Order applied only to teaching staff in educational institutions under

the Government management who are governed by the provisions of the Kerala Service Rules and had no application to teachers like the petitioner in private-aided institutions. No plea based on this Government Order was raised by the petitioner in the writ petition and the respondents had no opportunity of stating their case in regard to the applicability or otherwise of the provisions of the Government Order. In the circumstances, I must decline to pronounce in these proceedings on the petitioner's right if any, based on the provisions of the above Government Order.

8. On the contentions raised by the petitioner's counsel, I see no ground to interfere with Exs. P. 1, P. 2, R. 3 and R. 4. I dismiss this writ petition without any order as to costs.

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