

Narayanan Naboodiri and ors. Vs. CochIn Devaswom Board and anr.

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Court : Kerala

Decided On : Aug-10-1978

Reported in : (1979)IILLJ446Ker

Judge : Bhaskaran, J.

Appellant : Narayanan Naboodiri and ors.

Respondent : CochIn Devaswom Board and anr.

Judgement :

Bhaskaran, J.

1. Petitioners Nos. 1 to 3 are stated to be hereditary Archakas of Vadakkunnathan Temple and Anthikatt Temple, and the 4th petitioner is the holder of a hereditary post called 'Adichuthali Kazhagam' (Cleaning the inside portion of the temple for poojas and performance) in Vadakkunnathan temple falling within the Trichur group under the 1st respondent, the Cochin Devaswom Board, Trichur. The 2nd respondent is the Devaswom Assistant Commissioner, Trichur. The petitioners have-come up to this Court with this petition under Article 226 of the Constitution for the issue of a writ of certiorari for quashing Ext. P 2 series of notices issued to them. There is also a prayer for the issue of a writ of mandamus directing the respondents not to enforce the Service Rules framed by the 1st respondent on the petitioners till the disposal of the original petition.

2. It is an admitted case that the petitioners were over 60 years of age at the time when the writ petition was filed. By Ext. P 2 series of notices dated 23.12.1975, each of the petitioners was informed that in terms of Rule 4(1) of the Service Rules of the Employees of the Cochin Devaswom Board his service would be terminated from the date of the issue of the notice and that he would be entitled to receive the benefits as provided under Rule 7(3) of the Rules.

3. Sri C.M. Devan, the counsel for the petitioners, submitted that Rule 4(1) sought to be applied to the case of the petitioners is not applicable to them inasmuch as they are really governed by Rule 2 which, after enumerating certain categories of employees, stated that the [rules would, not be applicable to them as also to those persons who were specially engaged. I do not find the 'Archakas' among the enumerated categories, though the 4th petitioner may fall within the category of 'Adichuthalikar'. The submission of the counsel for the petitioners is that petitioners Nos. 1 to 3 would also fall within those categories inasmuch as they could either be included in the Mesanthikar or Keezhsanthikar. What Rule 4(1) lays down is that no person below the age of 18 or above the age of 60 would be kept in the service of Devaswom under any circumstances. Exhibit P 2 series of notices are purported to have been issued under Rule 4(1) of the Rules.

4. We may, for the purpose of this case assume, without deciding, that it is Rule 2 that is applicable to all the petitioners; that, however, does not solve the main problem concerning the petitioners, as, even on that assumption, they have to show how this Court will be justified in interfering with an order in the nature of Ext. P 2 or in directing the respondents to allow them to continue in service even after they have attained the age of sixty. After all, the Devaswom is the employer, and it would be open to it to have the age limit fixed for retirement from service. It would appear that the contention of the petitioners is that the tenure of their employment is, by custom, for life. Whatever that be, I do not find that it is for this Court to prescribe the age of retirement or to interfere with the decision of the Board that its employees will have to retire at a certain age. In this connection the decision of the Supreme Court in *Bachhanidhi v. State of Orissa* : AIR 1972 SC843 , throws some light. It has been in paragraph 7 stated as follows:

It is manifest that the appellant could not enforce a contract of employment in an application under Article 226 of the Constitution. The appellant did not rely on any rule of the management of the institution that the appellant would continue in service as long as the appellant was physically fit and mentally alert. The appellant alleged a custom to that effect in the petition. Custom of such a nature cannot be enforced in an application under Article 226.

5. One other contention raised by Mr. Devan related to the quantum of the gratuity that is being granted to the petitioners under Ext. P 2 series of notices, which is stated to be in accordance with Rule 7(3) of the Rules which provides that employees retiring from service on attaining superannuation, fixed at the age of 60, will be paid gratuity at the rate of 15 days basic salary for every completed year of service subject to a maximum amount equivalent to 15 months basic salary. According to him this is directly in contravention of the provisions contained in Section 4(2) of the Employees Payment of Gratuity Act. 1972, (Act 39 of 1972) which provides:

4(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

The term 'wages' has been defined in Section 2(s) as follows:

'Wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance;

The grievance of the petitioners is that dearness allowance, etc., which the petitioners have drawn as part of their wages have not been taken into account when the rate of gratuity is fixed under Rule 7(3) of the Rules.

6. The question, however, is whether the Gratuity Act is applicable to the petitioners who are employees under the 1st respondent. It has been made clear

in the Act that its terms, as per Section 1(3), are made applicable to:

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

No notification issued by the Central Government under Section 1(3)(c) referred to above, has been brought to my notice. Therefore, Section 1(3)(c) would not apply. Obviously and undisputedly, Section 1(3)(a) will not be applicable. It has not been shown how it would be an establishment within the meaning of Shops and Establishments. Therefore, Section 1(3)(b) also does not apply. Almost identical provisions are contained in Section 1(3) Clauses (a) to (c) of the Kerala Industrial Employees' Payment of Gratuity Act, 1970, (Act 6 of 1970). From the name of the Act it appears to me that the act is applicable to industrial employees, and as far as I could see there is nothing to hold that Devaswom employees are industrial employees. Section 1(3) reads as follows:

(3) It shall apply in the first instance to-

- (a) any factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (Central Act 63 of 1948);
- (b) any plantation as defined in Clause (f) of Section 2 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) which admeasures 10.125 hectares or more or in which ten or more persons are employed on the date of the commencement of this Act;
- (c) any establishment as denned in Clause (8) of Section 2 of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960);

(d) any establishment as defined in Clause (h) of Section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966) where ten or more persons are employed;

(e) any motor transport undertaking as defined in Clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961):

Provided that the Government may, after giving not less than two months' notice of its intention so to do, by notification in the Gazette, apply the provisions of this Act to any other factory, plantation, establishment or undertaking to which the provisions of this Act as such do not apply.

No notification by the Government under the clauses stated above has been brought to my notice. Under Section 2(8) of the Kerala Shops and Commercial Establishments Act, 1960 'establishment' has been defined as a 'shop or a commercial establishment' and it has not been shown as to how the Devaswom is a shop or commercial establishment. There is, therefore, no merit in the contention relating to the quantum of gratuity offered in Ext. P 2 series of notices.

7. For the foregoing reasons I find no merit in this writ petition. Accordingly it is dismissed without any order as to costs.