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Accountant General Vs. Kunjamma

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Court : Kerala

Decided On : Jul-24-2003

Reported in : 2003(3)KLT345

Judge : Jawahar Lal Gupta, C.J.,; J.B. Koshy and; A.K. Basheer, JJ.

Acts : Kerala Service Rules - Rule 60; Kerala Education Rules, 1959 - Rule 62

Appeal No. : W.A. No. 3952 of 2001

Appellant : Accountant General

Respondent : Kunjamma

Advocate for Def. : N.N. Sugunapalan and; George Abraham, Advs.

Advocate for Pet/Ap. : Roy Chacko, Government Pleader

Disposition : Appeal dismissed

Judgement :

Jawahar Lal Gupta, C.J.

1. Are the teachers who had continued in service till March 31, 1997 or thereafter under Rule 60(c) of the Kerala Service Rules or Rule 62 of Chapter XIV-A of the Kerala Education Rules entitled to the benefit of the pay scales as revised w.e.f. March 1, 1997? This is the short question that arises for consideration in this

bunch of Writ Appeals. The learned Single Judge has answered this question in the affirmative and held that the benefit is admissible to the teachers. The State challenges the order.

2. On November 25, 1998, the Government had revised the scales of pay of various categories of employees. A copy of the notification has been produced before us at the hearing. Admittedly, the revision was made with retrospective effect fromMarch 1, 1997. It is on account of this retrospective revision that the issue regarding the admissibility of the benefit to the persons who had retired on March 31, 1997 or thereafter has arisen for consideration.

3. The matter was placed before a Division Bench of this Court. One of us (Honourable Koshy, J.) was a member of the Division Bench. At the hearing, learned counsel for the State had placed reliance on the decision of the Division Bench in Krishna Panicker v. State of Kerala, 2002 (1) KLT 889, to contend that the benefit was not admissible. The Bench considered the matter. It was noticed that a Division Bench had taken a different view in Sirajudeen v. Director of Public Instruction, 1994 (1) KLT 361. Thus to resolve the conflict in judicial opinion, the matter was referred to a Full Bench.

4. Learned counsel for the parties have been heard. Mr. Roy Chacko, learned Senior Govt. Pleader appearing for the appellants has contended that under Rule 60(c), a member of the teaching staff retires on attaining the age of 55 years. He is granted extension to continue in service till the end of the academic year. During the period of extension, he is not entitled to the benefit of increment or promotion. Such being the express language of the rule, the teacher cannot claim a higher benefit viz., the revised scale. He has placed firm reliance on the Division Bench judgment in Krishna Panicker's case. The claim as made on behalf of the appellants has been controverted by Mr. George Abraham, learned counsel appearing for the respondent teachers. He submits that a teacher is entitled to be paid his salary at the prevailing rate of pay. The provisions of Rule 60(c) of Chapter VIII of the Kerala Service Rules and Rule 62 of Chapter XIV-A of the Kerala Education Rules have to be read together and harmoniously construed. Acceptance of the appellants' plea would lead to discrimination between persons

who are similarly placed. Still more, those working in private institutions would get the benefit of the higher scales while those in Government schools shall be denied a similar relief.

5. The short question is:- Does the rule deny the benefit of the revised scale of pay to a teacher who had attained the age of 55 years prior to March 31, 1997 but continued in service till then or even thereafter? Inevitably, a brief reference to the statutory provisions is essential.

6. The Service Rules are admittedly statutory. Chapter VIII deals with retirement from service Rule 60 provides for the age of superannuation. A person retires from service on the afternoon of the last day of the month in which he attains the age of 55 years. In the case of civil servants, the competent authority is entitled to retain an employee in service in public servant up to the age of 60 years. In rare cases, extension beyond the age of 60 years is also permissible. The Members of the judicial service ordinarily retire on attaining the age of 60 years. Similarly, even the Officers in the last grade service who were in service on April 7, 1970 are entitled to continue till the age of 60 years. Clause (c) particularly deals with the teachers. Clauses (a) and (c) of Rule 60 provide as under:

'60.(a). Except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of Government on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

60.(c). The teaching staff of all educational institutions (including Principles of Colleges) who complete the age of 55 years during the course of an academic year shall continue in service till the last day of the month in which the academic year ends. They shall be entitled to the benefits of increments and promotion, which fall due, before the last day of the month in which they attain the age of 55 years. But they shall not be eligible for increment or promotion during the period of their service beyond such date. If they are on leave on the day they attain the age of 55 years and if there is no prospect of their returning to duty before the closing

day of the academic year for vacation they shall be retired with effect from the last day of the month in which they attain the age of 55 years. But in cases where officers coming under this rule are under suspension on the date of superannuation or thereafter but before the closing day of the academic year, they shall be retired from service on the date of superannuation or on the date of suspension whichever is later.

If, however, the day on which the teaching staff (including Principles of Colleges) attain the age of 55 years falls within the period of one month beginning with the day of re-opening of the institutions they shall cease to be on duty with effect from the date of such re-opening and they shall be granted additional leave from the date of reopening to the last day of the month in which they attain the age of 55 years. They shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years.

If they are eligible to continue in service till the close of the academic year under the 1st paragraph of this sub rule they shall be granted additional leave from the date of closing for vacation till the last day of the month when the date of closing is earlier than the last day of the month.

The additional leave granted under this sub-rule will not be counted against the eligible leave and will count for pension. During the period of leave they will draw leave allowance at the same rate as the pay and allowances they would have drawn if they were on duty'.

There is an Explanation with the rule. It is necessary to notice the provision, as there is no dispute that the respondents were holding the posts of teachers. They were working in the Government schools or the institutions getting aid from the State.

7. Appendix X, which appears at page 355 of the Hand Book on Kerala Service Rules deals with the commutation of pension. Note 2 to Rule 5A provides as under:

'Note 2:- Date of retirement, on superannuation means the date on which the Government Servants quit service on superannuation. In the case of extension of service, the date of expiry of such extension shall be reckoned as the date of retirement on superannuation'.

8. Both the above noted provisions are applicable to teachers working in Government Schools. In respect of the teachers working in aided schools, the relevant provision is contained in Chapter XIV-A of the Kerala Education Rules. Rule 62 provides as under:

'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 mid-summer 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.

Provided that in cases where the academic year is extended beyond the 31st day of March in any year a teacher to whom this rule is applicable shall retire on the last day of March itself.

9. A perusal of the above provisions shows that a civil servant retires on the afternoon of the last day of the month in which he attains the age of 55 years. Similarly, a teacher should also normally retire on completing the age of 55 years. But in their case, the date of retirement is postponed 'till the last day of the month in which the academic year ends.' Thus, even if a person is due to retire on, say January 31, he will continue in service till the last day of the academic year, viz., March 31. In other words, the normal date of superannuation in case of a teacher is the last day of the month in which the academic year ends. By virtue of Note 2 to Rule 5 A of Appendix X, the date of retirement on superannuation in case of such a teacher shall be the last day of the month in which the academic year ends. Such being the position, an employee, a teacher or a person holding any other post, should be normally entitled to the salary sanctioned for the post at the

relevant time. The employee should be entitled to get the pay, which the post carries.

10. Mr. Roy Chacko, however, submits that Clause (c) of Rule 60 of the Kerala Service Rules contains an inherent embargo on the right of the employee to get the benefit of the revised scale. He points out that under the rule, the teacher is not entitled to the benefit of any increment. He is also not entitled to any promotion. Thus the benefit of revision of pay scale should also not be admissible.

11. We are unable to accept this contention. It is undoubtedly true that a teacher in a Government school is not entitled to the benefit of increment or promotion during the extended period of service. The Rule categorically provides that the teacher 'shall not be eligible for increment or promotion during the period of their service beyond' the date of superannuation. However, on a plain reading of the rule, it is clear that whatever limitation the rule making authority wanted to place, it has expressly provided for it in the provision. We cannot read an additional condition in the rule. We cannot add to the words of the provision and say that the benefit of revised scale of pay shall not be admissible to a teacher. Secondly, a perusal of Rule 62, which admittedly applies to the teachers in the Aided School, clearly shows that even the restriction regarding release of increment and grant of promotion has not been placed on the rights of the employee. Thus, the teachers in the aided schools shall be entitled to the benefit of increment etc. for the service rendered after attaining the age of 55 years. As a corollary, even the other benefits shall also ensue. Now, if the teachers working in private schools are entitled to all the benefits, there appears no justifiable reason to deny a similar benefit at least in the matter of revision of pay scale to those working in Government Schools. It is the admitted position that the salaries to the persons working in aided schools are paid by the Government. Thus, in the case of a teacher working in an aided school, the Government shall give the benefit of the revised scale of pay even when the teacher is continuing in service beyond the age of 55 years. Such being the position, we find no justifiable reason to deny a similar benefit to the persons working in Government Schools. Acceptance of the contention raised on behalf of the appellants would not only lead to an anomalous situation but may even invite the criticism of the provision of Rule 60(c) being violative of Article 14 of the

Constitution. The Court normally avoid an interpretation, which would render the 'rule' unconstitutional. Adopting this yardstick, we read Rule 60(c) to mean that it does not deny the benefit of revision of pay scale to the teachers.

12. There is another aspect of the matter. Admittedly under Clause (a) of Rule 60, an employee can be allowed to continue in service up to and even after the age of 60 years. It is true that the normal age of retirement is 55 years. However, the Government has reserved to itself the power to grant extension in public interest. In case of Clause (a), there is no embargo regarding the grant of benefit of revised scale of pay to the civil servant who is granted extension beyond the age of.55 years. Resultantly, in case of persons who were granted extension beyond February 28, 1997, the benefit of the scale of pay as revised from March 1, 1997 shall be admissible. Why should it be denied to only a teacher? There appears to be no rationale for treating a section of the employees viz., the teachers differently from the others.

13. Faced with this situation, Mr. Roy Chacko has placed reliance on the decision of the Division Bench in Krishna Panicker's case (supra). The Bench on consideration of the matter had taken the view that 'if a member of the teaching staff of the educational institution is to superannuate during the middle of the academic year, it would adversely affect the interest of the pupils. It is with that intention that the provision in Rule 60(c) was made. This reasoning of the Bench is absolutely correct. That is clearly the rationale of the rule. However, despite this, the Bench took the view that if the claim of the teacher was accepted 'there will be two sets of Government Employees and teaching staff of institutions that is, those who retire from service beyond 55 years and those who retire at the age of 55 years and that will be arbitrary. The Government employees and teaching staff of educational institutions governed by the Kerala Service Rules will have to retire at the age of 55 years'. With respect, we find that this reasoning is not well founded. Admittedly, the plain language of the rule enables the Government to extend the service of an employee beyond the age of superannuation, viz. 55 years. In this context, it deserves notice that a person may attain the age of 55 years on, say February 2. Yet, he is allowed to continue in service till the afternoon of the last day of the month. Still further, even on the last day, he may not be relieved of his

duties. He can be granted extension beyond 55 years. In case of a teacher, he has to continue in service till the end of the academic year. Thus, the scheme of the rule is that even though the age of superannuation has been fixed at 55, the employee retires on the last day of the month in which he attains that age. In case of teachers as well as other employees, extension beyond 55 years is permissible. The teachers normally retire on the last day of the month in which the academic year ends. This provision does not create any artificial classification of the employees. It does not create two categories of employees. In fact, all the employees are treated alike. The rule making authority has reserved a power in favour of the competent authority so as to enable it to continue with the services of an employee including a teacher beyond the age of superannuation in public interest. Still further, under Rule 5A (Note 2) as noticed above, in case of extension, the actual date of retirement is reckoned as the date of retirement on superannuation. Thus, the reasoning and rationale adopted by the Division Bench does not appear to be tenable. Resultantly, we are unable to accept the correctness of the view taken by the Bench. It is, consequently, overruled. In fact, it appears that a contrary view has been taken in Sirajudeen's case, 1994 (1) KLT 361 and Raghu v. State of Kerala, 1992 (2) KLT 63. Though the question had arisen in a different context, yet we find that the reasoning of the decision in the two cases viz. Sirajudeen and Raghu was correct.

14. In view of the above, the question was posed at the outset is answered in favour of the respondents. It is held that Rule 60(c) does not debar a teacher from the benefit of the revised scale of pay. The rule as laid down in Krishna Panicker's case is not good law. It is overruled.

15. It may be added that there are some teachers who, in the normal course of events, would have continued in service till March 31,1997 or even thereafter. In their case, the benefit of the revised scale of pay would also be automatically applicable.

16. No other point has been raised.

In view of the above, we find no merit in these appeals. These are, consequently, dismissed. However, the parties are left with their own costs.

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