

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WA.No. 949 of 2014 () IN WP(C).33341/2010

AGAINST THE JUDGMENT IN WP(C) 33341/2010 of HIGH COURT OF KERALA
DATED 07-03-2014

APPELLANTS/RESPONDENTS IN WPC:

1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN 695 001.

2. THE SECRETARY
GENERAL EDUCATION(G) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001

3. THE PRINCIPAL SECRETARY
DEPARTMENT OF FINANCE , GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

SRI.P.FAZIL, SR. GOVERNMENT PLEADER

RESPONDENT/PETITIONER IN WPC:

E.K. VARGHESE, CARMEL-ALAYAM, MUTHAMMAVU,
ORUMANYUR, THRISSUR-680512

R1 BY ADV. SRI.T.SANJAY
R BY SRI.N.JAMES KOSHY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

"CR"

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

W.A.No.949 of 2014

Dated this the 3rd day of December, 2015

JUDGMENT

Antony Dominic, J.

The respondent herein had worked as Teacher and Headmaster in aided schools in the State for the period from 6.7.1953 to 25.3.1968. Thereafter he resigned from service and his own representation Ext.P2 shows that the resignation was for better prospects. By Ext.P2 dated 14.8.1999, he applied for pension. This was followed by various representations claiming pensionary benefits and all these representations were rejected on the ground that as per Rule 29(a) of Part III KSR, a person who has resigned from service will have to forfeit his past service. It was in such circumstances, he filed the writ petition with a prayer to declare that Rule 29(a) of Part III KSR is unconstitutional and also to quash orders rejecting his claim for pension. Consequential directions for the grant of pension were also sought for. In the writ petition the respondent also placed

reliance on Exts.P7 and P8, whereby, according to him, two similarly situated persons were granted pension and contended that he was also entitled to be treated on par with them and granted pensionary benefits on that basis.

2. The appellants filed counter affidavit resisting the claim of the respondent, mainly placing reliance on Rule 29(a) of Part III KSR. They also justified Exts.P7 and P8 as orders passed in two deserving cases which were incomparable to the case of the respondent. By the judgment under appeal, the learned single Judge held that Rule 29(a) of Part III KSR is violative of Article 14 and hence unconstitutional. Consequently, the orders rejecting the claim of the respondent were quashed and the appellants were directed to reconsider the claim of the respondent under rule 11 of Part III KSR duly advertent to the observations in the judgment and with reference to Exts.P7 and P8. It is this judgment, which is under challenge before us.

3. We heard the learned Government Pleader appearing for the appellants and the learned counsel appearing for the respondent. While according to the learned Government Pleader,

Rule 29(a) is perfectly constitutional and the view taken by the learned single Judge is illegal, the learned counsel appearing for the respondent sought to justify the conclusions of the learned single Judge.

4. We have considered the submissions made. Part III KSR contains the rules governing grant of pension to Government servants. Among the various conditions, which govern the grant of pensionary benefits , one of the conditions incorporated by the Government is Rule 29(a), which provide for forfeiture of past service in the case of resignation or dismissal or removal from public service. This rule reads thus:

29. Resignation and Dismissals.— (a) *Resignation of the Public Service or dismissal or removal from it, entails forfeiture of past service.*

(b) *Resignation of an appointment to take up another appointment the service in which counts is not resignation from public service.*

Note:- *The break between the two appointments should not exceed the joining time admissible under the service rules plus the public holidays.*

5. The Kerala Service Rules are framed by the Government of Kerala in exercise of the powers conferred under Article 309 of

the Constitution of India and therefore is in the nature of law. The only ground on which the rule is held unconstitutional is that it is violative of Article 14 of the Constitution of India, inasmuch as according to the respondent, a person who has resigned from service after long and unblemished service is equated with persons who are dismissed from service or removed from service for misconducts committed while in service. This according to the respondent is discriminatory, attracting the vice of Article 14 of the Constitution of India.

6. We are unable to accept this logic. Rule 29(a) is intended to provide for forfeiture of past service of persons, in whose case there is premature cessation of service. Such cessation can occur for various reasons including death, resignation, dismissal and removal from service. Therefore, the latter three categories of persons, in whose case the cessation of employment is for reasons attributable to the employee concerned, have been equated in Rule 29(a) only for the limited purpose of providing that in all the three cases there would be forfeiture of past service. Such a provision, to our mind, cannot suffer from the

vice of discrimination or treatment of unequals as equals attracting Article 14 of the Constitution of India.

7. We also find that the validity of the rule has already been upheld by this Court in ***Mohammed V. State of Kerala*** (2007 (3) KLT 605), where in paragraph 4 it has been held thus:

4. Learned counsel for the petitioner, at the outset, stated that the challenge to the vires of R.29 in Part III KSR is not pressed. That apart, R.29 of Part III KSR which provides that resignation, dismissal or removal entails forfeiture of past service, is one, by which, any benefit linked with and relatable to past service is automatically denied. It has been so held by the division Bench of this Court in Chandrasenan V. State of Kerala (1999 (3) KLT 357). The denial of benefits linked with and relatable to past service to a public servant, whose conduct and service lead to his removal or dismissal from service or if he resigns from service is neither unreasonable nor arbitrary. The said Rule, on the face of it, is not ultra vires the Constitution of India or the Kerala Public Services Act, 1968.

It was without noticing this judgment, the learned single Judge has decided the matter. Therefore for having disposed of the matter, without noticing a binding precedent, the judgment

under appeal is *per in curium*.

8. It is also seen that a Division Bench of this Court had occasion to consider the validity of rejection of claim for pensionary benefits in a similar case and the Bench in its judgment in ***Chandrasenan Vs. State of Kerala*** (1999 (3) KLT 357) upheld the denial of pension.

9. It is also noticed that a similar provision is incorporated in the Central Civil Service Pension Rules vide rule 26 which provide that resignation from a service or post entails forfeiture of past service. This rule was considered by the Supreme Court in the judgment in ***Union of India and others Vs. Braj Nandan Singh*** (2005 (8) SCC 325) and the order denying pension to a person who resigned from service has been upheld by the Apex Court. Similar rule has been incorporated in the pension regulation framed by the Reserve Bank of India vide regulation 18, which provide that resignation or dismissal or termination of an employee from service shall entail forfeiture of his entire past service and consequently, shall not qualified for pension. Considering this provision, the Apex Court held in paragraphs 9

and 10 of its judgment thus:

9. In D.R.Venkatchalam V.Dy. Transport Commr. it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the guise of interpretation.

10. The above position was highlighted by this Court in Maulavi Hussein Haji Abraham Umarji V. State of Gujarat.

10. In its judgment in ***Ghanashyam Das Relhan Vs. State of Haryana*** (2009 (14) SCC 506), a similar clause contained in rule 4.19 was considered by the Apex Court and an order declining pension to a person who was resigned from service was upheld. Our attention was also invited to the judgment of the Apex Court in ***Union of India Vs. Madhu*** (2012 (2) KLT 558) rendered in the context of rule 19 of the BSF rules which provided that pensionary benefits were not admissible on resignation. In this judgment, the Apex Court held that such employees who resigned from service are not eligible for pensionary benefits. The judgment rendered by a learned

single Judge of this Court in ***Prabhakaran N.T. Vs. Additional Secretary to Government, Co-operative (A) Department and others*** (2009 (2) KHC 165) was also referred to us, where it was held that in terms of Rule 29(a) of Part III KSR, resignation entails forfeiture of past service.

11. In the light of the above statutory provisions, and in the light of proviso to rule 1 of Part III KSR, which provide that, it is open to the Government to frame rule providing that service of any class of employees serving under them does not qualify for pension and as Rule 29 (a) has been framed in exercise of the power conferred on the State under the proviso to rule 1 (a), the claim of the respondent could only have been declined.

12. However, the learned counsel for the respondent, invited our attention to the judgment in ***Asger Ibrahim Amin Vs. Life Insurance Corporation of India*** (Civil Appeal No.10251 of 2014) rendered by the Apex Court in the context of the provisions of the LIC of India Staff Regulations. That was a case where the Deputy General Manager, had resigned from service and interpreting the provisions of the rules, the Apex

Court finally held that his cessation of employment should be treated as one of voluntary retirement and on that basis the benefit of pension should be granted.

13. We have gone through the full judgment and noticed that the aforesaid conclusion of the Apex Court has been arrived at entirely in the light of the provisions contained in the rules under consideration and therefore reasoning in that judgment cannot be called in aid to either invalidate Rule 29(a) or to overrule the objection based on Rule 29(a) of Part III KSR.

14. There is another difficulty for the respondent in this case. As we have already stated that respondent was a teacher and later Headmaster of an aided school. In so far as aided schools are concerned, provision has also been incorporated in Chapter XIV (C) KER vide rule 62, which reads thus:

62. Consequences of resignation- The premature resignation from the school entails forfeiture of past service and of any retiring allowance to which the teacher who prematurely resigns would otherwise have been eligible.

15. Therefore by force of this rule, resignation entails forfeiture of past service and a resigned teacher would not be

eligible for any retiring allowances. This provision of the rule has not been challenged by the respondent.

16. For the aforesaid reasons, we are unable to sustain the judgment of the learned single Judge declaring Rule 29(a) unconstitutional. We noticed from the judgment of the learned single Judge that after declaring Rule 29(a) unconstitutional, the learned single Judge remitted the matter to the Government for consideration of the claim of the respondent, in the light of rule 11 and in the light of Exts.P7 and P8. Rule 11 overrides only the provisions of rule 10 of Part III KSR and does not override the provisions of Rule 29(a). Therefore having upheld the validity of Rule 29(a) which results in the forfeiture of past service rendered by the respondent, we cannot order that the claim should be considered under rule 11.

17. Be that as it may, Exts.P7 and P8 are the two orders that are relied on by the respondent and it is on that basis, he claims that he is entitled to parity in treatment. It is true that those are two cases where ineligible persons were ultimately granted pension and this was as a result of these orders. Though

these cases, according to the Government, are unique and distinguishable, still it is a matter to be reconsidered. Therefore, we uphold that part of the judgment of the learned single Judge directing reconsideration of the claim of the respondent in the light of Exts.P7 and P8. Orders shall be passed at any rate within six months on receipt of a copy of this judgment.

Writ appeal is allowed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc

true copy

PA to Judge