
(1982) 06 KL CK 0023

High Court Of Kerala

Case No: O.P. No. 1344 of 1980

N. Chellappan Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: June 18, 1982

Citation: (1982) KLJ 454

Hon'ble Judges: S.K. Kader, J

Bench: Single Bench

Advocate: T.K. Kurikesu, for the Appellant;

Final Decision: Allowed

Judgement

S.K. Kader, J.

The only question that arises for determination in this Original Petition is whether the petitioner, a member of the Kerala Last Grade Service, now working as Hospital Attendant Grade I, E.S.I. Hospital, Ezhukone, Quilon District, who has been asked to retire as per the original of Ext. P9 dated 29-10-1979 and Ext. P11 dated 25-2-1980, is entitled to the benefit of rule 60(b) of the K.S.R. Part I. The petitioner was recruited through the Employment Exchange and appointed temporarily as Hospital Attendant Grade II in the E.S.I. Hospital. It is not disputed that the petitioner has been in continuous temporary service as Hospital Attendant Grade II from 23-12-1969, and his service was regularised as per G.O.(P) 43|77|GAD dated 8-2-1977. While so, the petitioner was informed by the Director of Health Service by his letter dated 29-10-1979, a true copy of which is Ext. P9, that the petitioner was one among the hospital attendant Grade II appointed on a temporary basis through the Employment Exchange between 1-4-1968 and 31-3-1971, that the temporary appointments made to the post of Hospital Attendants Grade II in between 1-4-1968 and 31-3-1971 through Employment Exchange have been regularised only with effect from 8-12-1977 in terms of G.O.(P) 43|77|GAD dated 8-2-1977, true copy of which is said to be Ext. P8, and that all those employees whose services are regularised after 7-4-1970, will retire on attaining the age of 55 years and therefore

the petitioner will have to retire on the date on which he attains the age of 55 years. Aggrieved by this, a representation was made by the petitioner to the Government on 11-12-1979, a true copy of which is Ext. P10. No reply was received by the petitioner from the Government; but he received a reply from the District Medical Officer, Quilon, stating that as per G.O.(P) 610|77|F in dated 7-10-1971 those last grade employees in service on 7-4-1970 alone are entitled to be in service till they attain the age of 60 years and that as the services of the petitioner was regularised on 8-2-1977 the petitioner is not entitled to the benefit given under the Government Order mentioned above.

2. The petitioner seeks to quash Ext. P9 and Ext. P11 on the ground that Exts. P9 and P11, which are executive orders, cannot override rule 60(b) framed under Part I K.S.R. It is clear from the rule that the petitioner, who was in service as a last grade servant on 7-4-1970, is entitled to the benefit conferred thereunder.

3. The stand taken by the counsel for the respondents is that those last grade officers whose services were regularised on or before 7-4-1970 alone can claim the benefit given under rule 60(b), that as the petitioner was only in temporary service on the relevant date he is not entitled to claim the benefit under the said rule.

4. The dispute centres round the interpretation of the word "service" appearing in rule 60(b) of Part I K.S.R. Admittedly, the word "service" has not been defined in the K.S.R. It is not disputed that the Kerala Service Rules, Part I, will not apply to a person employed in the contingent or work establishment. Chapter II of Part III K.S.R. deals with qualifying service. Rule 9 of Chapter II K.S.R. reads:

9. Beginning of service. -- (a) Except for compensation gratuity an employee's service does not qualify till he has completed 18 years of age;

(b) In other cases unless it be otherwise provided by special rule or contract, the service of every employee begins when he takes charge of the office to which he is first appointed

Admittedly, the petitioner is neither governed by any special rule, or contract referred to in rule 9(b). As stated earlier, it is common case, that the petitioner has been in continuous service from 23-12-1969. No doubt, from 23-12-1969 till he was regularised on 8-2-1977 he was in temporary service. The important question for further consideration is whether service mentioned in rule 60(b) includes temporary service also or in other words it excludes temporary service. A reading of the rule as a whole will clearly indicate that there is nothing in the rule to show or indicate that the word "service" mentioned therein excludes temporary service and that it applies only to permanent or regular service. If that is so, there can be no doubt that the petitioner herein, who was in service as last grade officer on 7-4-1970, could claim the benefit under rule 60(b). In *Bhaskaran v. State of Kerala*, 1981 KLT 633, a learned Judge of this Court, Khalid J., almost in a similar case, had occasion to consider the meaning of the word "service." In that case the dispute was

regarding the actual ranking of the petitioner in the seniority list. While fixing his seniority, the concerned authorities refused to take into consideration his service before he was regularised on 13-6-1957. The authorities took the stand that the services would be counted only after he was regularised on 13-6-1957 and not before. On a consideration of all the aspects, the learned Judge held that the only word used in "service" which means that the service of any kind would entitle the petitioner for being promoted if he has the requisite service to his credit.

5. A similar question came up for consideration before two other learned Judges, George Abraham Vadakkal J., in *Gopalan Nair v. Regional Deputy Director of Public Instruction*, 1980 KLT 845; and Chandrasekhara Menon J., in *Moosa v. A.E.O.*, 1975 KLT (SN) 34. In *Kunhikrishnan Nambiar v. State of Kerala*, 1964 KLT 704, a Full Bench of this Court observed that the word "service" by itself, without any qualification, would ordinarily comprise all service. On a careful consideration of all the aspects and on a careful reading of the relevant rule; it cannot be said that the word "service" used in rule 60(b) of Part I K.S.R excludes temporary service and means only permanent or regular service. As an officer in the Last Grade Service, the petitioner was admittedly in temporary service on 7-4-1970 and therefore he cannot be denied the benefit conferred under rule 60(b) of Part 1 K.S.R. Exts. P9 and P11, the two executive orders, cannot override, or modify, or amend rule 60(b), and has, in the context and circumstances of the case, to be interfered with.

In the result, the Original Petition is allowed, Exts. P9 and P11 are quashed and the first respondent is directed to dispose of the representation Ext. P10 made by the petitioner afresh in accordance with law and in the light of this judgment.