(1987) 10 KL CK 0051

High Court Of Kerala

Case No: None

Govindan Kutty		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: Oct. 12, 1987

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (1988) 2 LLJ 380

Hon'ble Judges: V.S. Malimath, C.J; V. Bhaskaran Nambiar, J

Bench: Division Bench

Judgement

Malimath, C.J.

The appellant, who was a Chauffeur, was due to retire on attaining the age of 55 years he being governed by Rule 60(a) of Part I of the Kerala Service Rules, hereinafter referred to as "the Rules". He made a representation to the State Government to continue him in service till he attains the age of 60 years; in relaxation of the Rules. This request was made on the ground that two of his juniors who were also Chauffeurs and were similarly situated having been given the benefit of extension he should also be given the same benefit. This request was acceded to and an order was made giving extension of service to the appellant till he attains the age of 60 years, by exercising the power of relaxation of the rules, by order dated 25th June 1984. It is thereafter that the State Government made the impugned order Ext. P 2 dated 22nd July 1987 cancelling the earlier order granting extension to the appellant. It is the said order that was challenged by the appellant in the O.P. The learned single Judge having declined to interfere the said judgment is challenged in this appeal.

2. We have to address ourselves to the principal question whether this is a case in which this Court should interfere and whether the appellant has made out a case for interference under Article 226 of the Constitution. It is necessary to bear in mind that what was given to the appellant was by way of concession by Ext. P 1, which

concession has since been cancelled by the subsequent order Ext. P 2. Rule 60(a) which prescribes 55 years as the age of superannuation however gives power to the State Government to relax the said provision and give extension on public grounds which has to be recorded in writing by the State Government. It is therefore obvious that the order of relaxation Ext. P 1 should have stated the public ground on which extension is given to the appellant. All that is stated in the said order is that two of his juniors have been given such benefit and that therefore the State Government considers that the appellant should also be allowed the same benefit. We have no hesitation in taking the view that the grounds stated in the order Ext. P 1, namely, that the appellant''s juniors having been granted such a benefit and therefore the appellant also should be granted the same benefit cannot be regarded as a public ground as contemplated by Rule 60(a) of the Rules. What is required to be examined in granting relaxation is the facts and circumstances in each case and to ascertain whether there are public grounds justifying grant of extension to that particular person. If the exigencies of service required continuance in service of a particular government servant beyond the date of superannuation, the State Government can state that as a ground and exercise the power of relaxation.

3. Smt. Usha, the learned Counsel for the appellant, submitted that the State Government was justified in granting the extension because it would be discriminatory against the appellant to deny him the benefit of relaxation when the same benefit has been granted in favour of the appellant''s juniors. The question of seniority does not arise in the matter of granting relaxation. As already stated it has to be decided with reference to the relevant facts existing at the relevant point of time with reference to the person whose services are sought to be extended. If we examine the case in broader perspective of Article 14 of the Constitution we fail to see how the ground of discrimination could be made out in a case like this. In these days of acute unemployment where there are large number of unemployed persons waiting for employment it is obvious that if the power under Rule 60 is not properly exercised in accordance with the intendment of these Rules, those unfortunate unemployed persons would stand discriminated against on their opportunities for public employment being denied to them. Hence Article 14 cannot be examined in the narrow context of comparing the benefit which the appellant may or may not receive which the appellants juniors have received. When the State exercises the power of relaxation it has to exercise it fairly and reasonably having regard to Article 14 so that it does not act arbitrarily or unreasonably against those unemployed persons who are waiting for public employment. We have therefore no hesitation in taking the view that the ground stated that the juniors of the appellant having been granted the benefit of extension that benefit also should be given to the appellant is no public ground to grant the benefit in favour of the appellant. If that is the correct position in law it follows that what has been done by Ext. P 2 is to set right the mistake that has been committed by passing Ext. P 1 order. The fact that Ext. P 2 does not expressly state that they are correcting the mistake committed in Ext. P 1

but only stated that they are cancelling the order already passed, does not in any way affect the order or decision. It is obvious that when the order in granting extension was not based on any policy and if the State Government says that it has taken a policy decision not to give extension, we should understand the decision as the State proposing to retrace its steps and correct the mistake. Whatever that may be, when the appellant is seeking relief under Article 226 of the Constitution and when we are satisfied that the granting of such relief would perpetuate enforcement of an illegal order, we should at any rate decline to interfere under Article 226 of the Constitution. Hence, we see no good ground to interfere. The writ appeal fails and is dismissed.