

(2015) 09 KL CK 0052
High Court Of Kerala
Case No: W.P.(C) No. 10405 of 2009

Mathai M.V.

APPELLANT

Vs

Accountant General (A&E),
Tvm. and Others

RESPONDENT

Date of Decision: Sept. 22, 2015

Citation: (2015) 4 ILR Ker 682 : (2015) 5 KHC 106 : (2016) LabIC 68

Hon'ble Judges: A.V. Ramakrishna Pillai, J.

Bench: Single Bench

Advocate: Abraham Vakkanal, Senior Advocate, Paul Abraham Vakkanal, Bijimon C. Cherian, Dijo Sebastian and Sabu Jose, Advocates, for the Appellant; Sojan James Advocate Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

A.V. Ramakrishna Pillai, J.

The petitioner is a retired HSA from an Aided High School. He demitted his office on 31/03/2007. Though the petitioner claimed his qualifying service as 27 years and though it is stated so in the pension book, the first respondent has accepted it only as 26 years 5 months and 29 days and as the fraction service is one day short of 6 months, it was rounded to 26 years only. Therefore, the alleged shortage of one day has become crucial for pensionary benefits, which is, disbursed on the basis of qualifying service. Therefore, the petitioner was granted benefits of gratuity, commutation and pension for 26 years only. The basis of calculation, as to how the qualifying service is fixed as 26 years 5 months 29 days, is shown in Ext. P7. In Ext. P7, the qualifying service is short of one day only to claim the benefit of 27 years. The petitioner points out that the first respondent has committed a grave mistake in the above calculation, as the impact and effect of 6 leap years intervened during his service of 26 years, has been omitted to be considered. It is pointed out that on account of these 6 leap years he has gained 6 days extra service and if it is added to his service of 26 years 5 months and 29 days, which is the service reckoned in

ordinary years, his total qualifying service would be 26 years 6 months and 5 days. As per Rule 57 of Part III KSR, the fraction service of 6 months and above is to be rounded to next complete year and so, his total service would be 27 years and he is, thus entitled to get all benefits of gratuity, commutation and pension for 27 years; it is alleged. According to the petitioner, on correct calculation, the difference due as arrears in all counts alone, would be more than Rs. 50,000/- and the variation in monthly pension would come to Rs. 1300/-. Therefore, according to the petitioner, based on the mistake, the petitioner has now suffered substantial loss which is to be rectified and recovered. It is with this background the petitioner has come up before this Court. In the counter-affidavit filed by the first respondent, they have admitted that the petitioner demitted his office on 31/03/2007 as HSA of an aided High School. According to them, the petitioner's service commenced on 02/06/1980 and his date of superannuation is 30/11/2006. His gross service was computed as under, in tune with Rule 12(21) of Part I, KSR.

2. According to them, in terms of Rule 47 of Part III KSR, fraction of a year, if any, in the service would be rounded to the nearest completed year, i.e. fraction less than half year would be ignored and half year and above would be rounded to the next completed year. Therefore, according to them, in the light of the above, the service of the petitioner was rounded to 26 years and pensionary benefits were authorised by the office of the first respondent accordingly. They would further contend that there is no rule for treating a leap year as 1 year and 1 day. According to them, a leap year having 366 days is also reckoned as one year for qualifying service.

3. The petitioner filed a reply affidavit to the counter-affidavit filed by the first respondent.

4. I have heard the learned Senior Counsel for the petitioner and the learned Senior Government Pleader in the matter.

5. It is an admitted case that the petitioner's service commenced on 02/06/1980. It is also admitted that the date of superannuation was on 30/11/2006. According to the learned Senior Counsel, the calculation of qualified service is wrongly given as 26 years 5 months and 29 days, stating that the fraction is short of one day to complete six months. Therefore, the period of service is rounded to 26 years. According to the learned Senior Counsel, the calculation of qualifying service as 26 years 5 months and 29 days is incorrect even as per the provisions of the Kerala Service Rules. According to the learned Senior Counsel, the correct calculation of the petitioner's qualifying service on the basis of Rules in KSR is as under:

6. Therefore, according to the learned Senior Counsel, the total qualifying service even as per rules in KSR, is 26 years 6 months and 2 days. It is crucial to note that the same was the stand taken by the Headmaster of the school where the petitioner was working. Ext. P1(3) is the relevant page of the service of the petitioner wherein the headmaster has stated that the qualifying service was 26 years 6 months and 2

days.

7. As rightly pointed out by the learned Senior Counsel for the petitioner in the calculation made by the respondents, the impact of leap years has not been taken into account. This is a crucial aspect in this case as the benefit of 27 years is denied only for the shortage of one day. If it is 26 years and 5 months, it cannot be rounded to 27 years as per Rule 57 of Part III KSR. There would be one leap year in every four years. The leap year being relevant in the particular context of this case, a further probe into it is germane.

8. In Webster's Dictionary, the leap year has been defined as:

"a year in the Gregorian calendar having 366 days, with an extra day, February 29, intercalated to compensate for the quarter day difference between an ordinary year and astronomical year."

9. In the new Millennium Dictionary, the leap year has been given the meaning as:

"every forth year when February has 29 days."

10. In Black's Law Dictionary, the day which is added in every 4th year, is noted as "Bissextile" and the meaning of it is given as under:

"The day which is added every fourth year (leap-year) to the month of February, in order to make the year agree with the course of the sun."

11. Therefore, the leap year with an extra day, comes in every four years and in 26 years, there were six leap years and therefore, the petitioner gained a minimum of 6 extra days. Therefore, I see valid force in the argument advanced by the learned Senior Counsel for the petitioner. Over and above the calculation arrived at that the petitioner's service is 26 years 5 months and 29 days which is done based on ordinary years, there would be six extra days where the petitioner is worked in the school. As the shortage in the petitioner's qualifying service is only one day to complete 26 years and six months, the six extra days accumulated to his credit on account of the intervening six leap years during the service period assumes importance and the same is crucial to calculate his total qualifying service.

12. It is also relevant to note that if the qualifying service is taken as 27 years, the gratuity and commutation of pension would be Rs. 7944 and Rs. 13,704 respectively. In addition to that, there would be a difference in monthly pension which would come to Rs. 1300/-. The learned Senior Counsel invited my attention to Ext. P9 and submitted that in the case of another lower primary teacher, viz. Smt. A.M. Gracy who demitted her office from St. Antony's UPS, Nedungapra, Perumbavoor, her broken service of 545 days (4 spells) was directed to be counted for sanction vide the first respondent's letter dated 19/07/2001. It was pointed out that on that basis, the aforesaid Gracy submitted a petition dated 27/09/2001 before the AEO, Perumbavoor, a copy of which is produced and marked as Ext. P9 for revising her

pension and accordingly, her broken service in years was counted.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result this writ petition is allowed. Exts. P2, P3 and P7 are quashed insofar as the qualifying service of the petitioner for pensionary benefits is mistakenly calculated therein as 26 years only.

The respondents are directed to fix the qualifying service of the petitioner as 27 years taking into account these six extra days more which accumulated to his credit by virtue of six leap years and to pay him all benefits viz. Pension, gratuity, commutation of pension etc. and arrears on that basis within a period of three months from the date of receipt of a copy of this judgment.