State Of Kerala And Anr vs P.V. Neelakandan Nair And Ors on 11 July, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3066, 2005 (5) SCC 561, 2005 AIR SCW 3489, 2005 LAB. I. C. 3120, 2005 (3) SERVLJ 130 SC, 2005 (5) SCALE 424, (2005) 3 KER LT 717, 2005 (5) SLT 380, 2005 (7) SRJ 117, (2005) 5 KHCACJ 383 (SC), (2005) 3 SERVLJ 130, (2005) 3 JCR 214 (SC), (2005) 4 ESC 537, (2005) 34 ALLINDCAS 385 (SC), 2005 (2) UJ (SC) 1040, 2005 UJ(SC) 2 1040, ILR(KER) 2005 (3) SC 611, 2005 (34) ALLINDCAS 385, 205 (4) ESC 537, 2005 SCC (L&S) 698, (2005) 8 SERVLR 234, (2005) 4 SUPREME 719, (2005) 5 SCALE 424, (2005) 3 LAB LN 738, (2005) 3 SCT 633

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Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:
Appeal (civil) 3603-3605 of 2005

PETITIONER:
State of Kerala and Anr.

RESPONDENT:
P.V. Neelakandan Nair and Ors.

DATE OF JUDGMENT: 11/07/2005

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:

JUDGMENT ARIJIT PASAYAT, J.

Leave granted.

Point of controversy in all these appeals is whether teachers superannuating during a particular academic year but continuing in service by virtue of Rule 62 of Chapter XIV (A) of the Kerala Education Rules, 1959 (in short the `KER') are entitled to the benefit of pay revision coming into effect during such extended period.

Detailed reference to the factual aspect is unnecessary as the basic feature in each of the appeals is that the concerned teachers were to retire on the date of attaining the age of superannuation. The said date in each case fell within academic year. In view of the provisions contained in Rule 62 of

Chapter XIV (A) of the KER they continued till the last date of the month in which the academic year ends. Undisputedly the academic year in each case came to end on 31st March of the concerned year. The age of retirement in each case is 55 years, but benefit of continuance in service is granted till the end of the academic year. In each case, the concerned teachers were to superannuate on attaining the age of 55 on various dates between July, 1996 and March, 1997. i.e. during the course of academic year 1996-97. Irrespective of their due date of superannuation, they were allowed to continue in service by virtue of Rule 62 of the Chapter XIV(A) of KER. They retired from service on 31.3.1997. The Government of Kerala (Finance Department) by G.O. No. 3000/98/Fin dated 25.11.1998 had issued orders on acceptance of the recommendations of the Pay Revision Committee 1997 that the existing scales of Pay will be revised and the revised scales will come into force with effect from 1.3.1997. Writ petitions were filed by the concerned teachers claiming benefit of the pay revision and for fixation of pensionary benefits on the basis of the revised pay. The Writ Petitions were allowed by several judgments passed by learned Single Judges. The State preferred Writ Appeals before the Division Bench. When the matter was placed before a Division Bench, it was noted that there appeared to be conflicting views expressed by different Division Benches. The matter was, therefore, referred to a Full Bench, which by its common judgment affirmed the view that the revised pay scale was to be given. Subject matter of challenge in the appeals arising out of SLP(C) Nos. 17525-17527 of 2003 is the said common judgment. In the connected appeals the said judgment of the Full Bench was followed and the State's appeals were dismissed.

In support of the appeals, learned counsel for the appellant-State and its functionaries submitted that the High Court has failed to notice that though continuance is permitted, it was clearly stipulated in the Rule 60(C) (Part I) of the Kerala Service Rules. (in short the `Service Rules') that the benefit of increment or promotion was not to be granted during the period of service beyond the date of superannuation. It was submitted that though Rule 60(c) of the Service Rules does not specifically refer to pay revision, it has to be read into the said rule as it is clearly a case of casus omissus.

In response, learned counsel for the respondents submitted that the language of the provision is clear and, therefore, the view taken by the High Court cannot be faulted.

In order to appreciate the rival submissions the relevant rules needs to be quoted.

Rule 62 of Chapter XIV(A) of the Kerala Education Rules:-

> ``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 the continuance under thus 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].

Rule 60(c) of Kerala Service Rules (Part I):-

60(c) The teaching staff of all educational institutions (including Principals 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, they shall be retired from service on the day of superannuation or on the date of suspension whichever is later.

If, however, the day on which the teaching staff (including Principals of Colleges) attains, 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 re-opening 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 addition 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." On a bare reading of Rule 60(c) of the Service Rules the position is clear that the ineligibility indicated relates to increment or promotion. Learned counsel for the appellant submitted that the expression ``increment" is conceptually capable of reading as ``the enhanced amount received or receivable due to pay revision". His other submission is that even though same has not been specifically stated, it can be read into the provision being a case of casus omissus.

It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr., AIR (1998) SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner, (1846) 6 Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr., JT (1998) 2 SC

253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd., (1978) 1 All ER 948 HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act or Parliament unless clear reason for it is to be found within the four corners of the Act itself. Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans, (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v.

Kodimaniandra Deviah and Ors., AIR (1962) SC 847.

The question is not what may be supposed and has been intended but what has been said, ``Statutes should be construed not as theorems of Euclid''. Judge Learned Hand said, ``but words must be construed with some imagination of the purposes which lie behind them''. (See Lenigh Valley Coal Co. v. Yensavage, 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama, AIR (1990) SC

981. In D.R. Venkatachalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc., AIR (1977) SC 842, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived 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 disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain, [2000] 5 SCC 511). The legislative casus omissus cannot be supplied by judicial interpretative process.

Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole- appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four

corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. ``An intention to produce an unreasonable result'', said Danackwerts, L.J. in Artemiou v. Procopiou, (1966) 1 QB 878, `` is not to be imputed to a statute if there is some other construction available''. Where to apply words literally would `` defeat the obvious intention of the legislature and produce a wholly unreasonable result'' we must `` do some violence to the words'' and so achieve that obvious intention and produce a rational construction. Per Lord Reid in Luke v. IRC, (1963) AC 557 where at p. 577 he also observed: ``this is not a new problem, though our standard of drafting is such that it rarely emerges''.

It is then true that, `` when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt.'' ``But,'' on the other hand, `` it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom'' (See Fenton v. Hampton, (1858) XI Moore, P.C. 347). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute-Casus omissus et oblivioni datus dispositioni communis juris relinquitur; ``a casus omissus,'' observed Buller, J. in Jones v. Smart, 1 T.R. 52, ``can in no case be supplied by a court of law, for that would be to make laws.'' The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: ``The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further'' (See Grey v. Pearson, (1857) 6 H.L. Cas. 61). The latter part of this ``golden rule'' must, however, be applied with much caution. ``if,'' remarked Jervis, C.J., ``the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning'' (See Abley v. Dale, 11, C.B. 378).

At this juncture, it would be necessary to take note of a maxim ``Ad ea quae frequentius accidunt jura adaptantur'' (The laws are adapted to those cases which more frequently occur). (See Maulavi Hussein Haji Abraham Umarji v. State of Gujarat and Anr., [2004] 6 SCC 672 and Prakash Nath Khanna and Anr. v. Commissioner of Income Tax and Anr., [2004] 9 SCC 686).

There is no dispute that the Service Rules are statutory. Chapter VIII deals with retirement from service and Rule 60 deals, with age of superannuation. Clause (c) deals with Teachers. Apart from Clause (c) of Rule 60 Clause (a) is also relevant. It reads as follows:

> ``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 every special circumstances.'' A civil servant retires under the applicable rules in the afternoon of the last day of the month in which he attains the age of 55 years. Similarly a teacher is normally to retire on completing the age of 55 years. But in the specifically prescribed cases the date of retirement is postponed ``till the last day of month in which the academic year ends'' so that the education of the students is not disturbed during the academic year. The legislature has denied the benefit of increment and promotion during the extended period. There is no scope for reading into the provision the benefits of pay revision. ``Increment'' has a definite concept in service laws. It is conceptually different from revision of pay scale. ``Increment'' is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by this Court in State Bank of India v. The Presiding Officer, Central Government Labour Court, Dhanbad and Anr., [1972] 3 SCC 595, under the Labour and Industrial Laws, an ``increment'' is in the same scale. A promotion involves going to a higher grade. The pay of an employee is generally fixed with reference to a pay scale. On the other hand, in the case of revision, the pay scale is revised which may incidentally result into increment. Rule 60(c) does not refer to pay revisions which is conceptually different from annual increments within the prescribed pay scale. Therefore, entitlement of the concerned teachers for the benefits of pay revision cannot be doubted. The view taken by the High Court does not suffer from any infirmity to warrant interference.

> The appeals are dismissed with no orders as to costs.