

Kerala High Court

C. Sankaranarayanan And Ors. vs The State Of Kerala on 11 June, 1969

Author: R Nayar

Bench: P R Nayar, P G Nair

JUDGMENT Raman Nayar, J.

1. The petitioners in these cases are school teachers, some of them employed in Government Schools, the rest in private aided schools. Their complaint is that their age of retirement on superannuation has been reduced from 58 to 55.

2. So far as conditions of service are concerned, the teachers in the Government schools are governed by the Kerala Service Rules, rules made under the proviso to Article 309 of the Constitution, while those employed in private schools are governed by the Kerala Education Rules, rules made under Section 36 read with Section 12 of the Kerala Education Act. The reduction of age, the petitioners complain of, was made with effect from 4-5-1967, in the first instance by an executive order, but, later, by amendments to the respective rules. We might, at the very outset, observe that the power exercised in making these rules is a legislative power so that there can hardly be any question of a violation of the principles of natural justice in the sense that the petitioners were not heard before the rules were made. Nor does it matter in the least that the age was earlier raised from 55 to 58 by an amendment of the rules, as a result, it is claimed on behalf of the private school teachers, of an understanding reached between them and the Government. The raising of the age thus effected might have been a consequence of the understanding; but it was effected not by the understanding but by statutory rule. If by such a rule, validly made, the age is lowered, it seems to us that no argument can rest on the ground that this was against the understanding that had earlier been reached.

3. The rules make it quite clear that the reduction in age applies to persons already in service when the rules effecting the reduction in age were made. For, they make provision regarding the retirement of persons in service who had already reached the age of 55 on 4-5-1967 and for those who were to reach that age within three months thereafter. Therefore, there can be no doubt regarding the intendment of the rules. It is that the lower age should apply to persons already in service when the change was made, and not merely to persons entering service thereafter. If that involves any element of retrospectivity, the power exercised being a legislative power and the legislative intent being manifest there is little point in the contention that a vested right is being taken away, if indeed the right to remain in service up to a particular age can be called a vested right. Nor do we think that a right to future employment under the Government or a private employer whether stemming from contract or from statute, is property, although no doubt, emoluments actually accrued are property. Therefore, we see little substance in the contention that the lowering of the age amounts to deprivation of property in violation of Articles 19 (1) (f) and 31 of the Constitution.

4. For the rest, the contentions raised, namely, of discrimination and of equitable estoppel, are, we think, clearly answered by the decisions in *Bishun Narain v. State of U. P.*, AIR 1965 SC 1567 and *Srinivasan v. State of Kerala*, AIR 1968 Ker 158 (FB).

5. So far as the teachers of private schools are concerned, there is one other contention advanced. This is based on the note to Rule 8 of Chapter XXVII A of the Kerala Education Rules. The rule says that the age of retirement on superannuation shall be 55 years. It carries a note, which is really a proviso, and this note says:

"In the case of those who were in the service of any aided school prior to 4-9-1957 the age of retirement on superannuation shall be 60 years subject to the condition that the service beyond 55 years shall not qualify for pension and gratuity under these rules." (This note we might point out has suffered many changes, but, in the view we are taking, it is not necessary to consider their effect). The contention advanced on behalf of the petitioners who are teachers of private schools is that they were all in service prior to 4-9-1957 and that therefore the note; entitles them to continue in service till the age of 60.

6. The learned single Judge who heard the petitions from which Writ Appeal Nos. 126 and 136 of 1968 have been brought repelled this contention. We think he was right. For, in our view, the petitioners whom we are now considering are governed by Chapter XXVII B and not by Chapter XXVII A of the Rules. They cannot therefore claim the benefit of the note to Rule 8 of Chapter XXVII A. Although there are no express words to that effect, reading the provisions of Chapters XXVII A and XXVII B together, there can be no doubt that the provisions of Chaps. XXVII A cannot apply to those to whom the provisions of Chapter XXVII B apply. For, regarding the same matters, Chap. XXVII B makes independent and separate provision entirely inconsistent with that in Chapter XXVII A. Therefore there can be no question of Chapter XXVII A applying to all teachers and Chapter XXVII B only making additional provision for those to whom that chapter applies. The two chapters are mutually exclusive.

7. Rule 2 of Chapter XXVII B says that, the rules in that chapter apply to teachers in aided schools to whom the rules in Chapter XIV (C) of the Kerala Education Rules apply. (We might remark that this itself, in the absence of any indication that the rules in Chapter XXVII A also apply, would imply that those rules do not apply.) It is not disputed that the rules in Chapter XIV (C) apply to the petitioners in these cases, and it follows from what we have said that the rules in Chapter XXVII A cannot apply to them. Rule 4 of Chapter XXVII B says that the date of compulsory retirement on superannuation applicable to teachers of Government schools shall apply to teachers of aided schools, which means to teachers of aided schools governed by that Chapter. (This again, by itself, would exclude the application of Rule 8 of Chapter XXVII A to them). The age of compulsory retirement on superannuation for teachers of Government Schools is 55, and it follows that that is the age of superannuation for the petitioners.

8. There is one other provision in the rules that is relevant for it puts the matter beyond shadow of doubt. That is Rule 2 (A) of Chapter XIV (C). This rule expressly states that teachers who come under the provisions of Chapter XIV (C) shall retire at the age of 55.

9. We dismiss the appeals and the petitions but make no order as to costs.