

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6994/2021

DR. G. SADASIVAN NAIR

...APPELLANT(S)

VERSUS

COCHIN UNIVERSITY OF SCIENCE
AND TECHNOLOGY REPRESENTED
BY ITS REGISTRAR, & ORS.

...RESPONDENT(S)

J U D G M E N T

NAGARATHNA J.

This appeal is directed against the judgment and order dated 29th August 2019, passed by the Division Bench of the High Court of Kerala at Ernakulam in Writ Appeal No. 988/2012, wherein the aforesaid writ appeal was dismissed.

2. Succinctly stated, the facts in the instant appeal are that the appellant herein was appointed as a Lecturer in the School of Legal Studies of the respondent No. 1 University, namely, Cochin

University of Science and Technology, Kochi, with effect from 7th September 1984. Prior to such appointment, the appellant was a lawyer practising in the District Court and Subordinate Courts at North Parur, Ernakulam, Kerala for the period between 11th March 1972 and 2nd February 1980. During the period between March 1980 and February 1984, the appellant was pursuing his PhD programme on availing a University Grants Commission Fellowship. The appellant resumed practice as an advocate in the Kerala High Court and Subordinate Courts after obtaining his PhD, upto the date of his appointment as a lecturer in the respondent University.

3. On 10th November 2004, the appellant made a representation before the Registrar of the respondent University, requesting to reckon his practice of eight years at the Bar for the purpose of determining his pensionary benefits payable to him on his superannuation. In making such a representation seeking consideration of his practice at the Bar, the appellant relied on Rule 25 (a), Part III, Kerala Service Rules (hereinafter referred to as "KSR" for

brevity) which provides that experience at the Bar could be reckoned as qualifying service for the purpose of determining superannuation pension, subject to a condition that only a person who was recruited into service after attaining the age of 25 years could avail such benefit. In such a situation, the Rule allows addition of as many years by which a person exceeds the age of 25 years. The benefit of additional service shall also be limited to the actual number of years of practice at the Bar, subject to a maximum of ten years.

4. The appellant received a letter on 7th January 2006, from the Registrar of the respondent University declining appellant's request to reckon his tenure of practice at the Bar for the purpose of determining appellant's superannuation pension. In rejecting the representation made by the appellant, the Registrar relied on the proviso to Rule 25 (a), Part III, KSR which provides that the benefit under Rule 25 (a) would be available only to such employees who are recruited when practising at the Bar, to those posts requiring a qualification in law and experience at

the Bar. Having regard to the aforesaid proviso, the Registrar in his letter dated 7th January 2006, stated that experience at the Bar was not essential for appointment to teaching posts at the University and therefore, the question of reckoning previous experience at the Bar would not arise in relation to the appellant.

5. The appellant preferred an appeal petition against the decision of the Registrar of the respondent University dated 7th January 2006, before respondent No. 3 herein, namely, the Chancellor of Cochin University of Science and Technology, contending that the Registrar had rejected his request for reckoning his tenure of practice at the Bar for the purpose of determining his superannuation pension, without following the relevant rules in their proper perspective. The appellant stated in his appeal petition before the Chancellor - respondent no.3 that the proviso to Rule 25 (a), Part III, KSR was inserted in said Rule with effect from 12th February 1985. The appellant contended that the proviso could not be made applicable to him as the

same was not in force as on the date on which he joined service at the respondent University, i.e., 7th September 1984. The appellant also stated in his representation that one Dr. Leela Krishnan, who was similarly situated as the appellant, was granted the benefits prescribed under Rule 25 (a), Part III, KSR.

6. As there was no response to his representation, the appellant on the same grounds as those urged in the appeal petition preferred before respondent No. 3, also preferred a writ petition before the High Court of Kerala at Ernakulam being W.P. (C) No. 10057/2006. The High Court in its judgment dated 3rd April 2006 directed respondent No. 3 to decide, within a period of four months from the date of receipt of the judgment of the High Court, the question, as to, whether the the appellant was entitled to get the benefit under Rule 25(a), Part III, KSR.

7. In accordance with the High Court's judgment dated 3rd April 2006, respondent No. 3 afforded an opportunity of hearing to the appellant on 12th July

2006 and subsequently dismissed the appeal petition preferred by the appellant on 7th October, 2006 by holding that the Government or any other statutory body has the right to modify the service conditions, even retrospectively. Respondent No. 3 further held that since the proviso was introduced in Rule 25 (a) while the appellant herein was still in service of the respondent University, the proviso would apply to him, thereby limiting the benefit of Rule 25 (a), Part III, KSR.

8. Aggrieved by the dismissal of the appeal petition by respondent No. 3, the appellant preferred a writ petition before the High Court of Kerala at Ernakulam, being W.P. (C) No. 28410/2006. The Single Judge of the High Court by judgment dated 25th January 2012 dismissed the writ petition preferred on the ground that it was open to the Government to unilaterally alter the service conditions of employees during their service and therefore, what was applicable was the rule prevailing as on the date of retirement and not that which existed as on the date of entering service.

9. During the pendency of the writ petition, the appellant was to superannuate from service of the respondent University on 19th October 2006. But by virtue of Rule 60 (C), Part I, KSR, the appellant was entitled to continue in service till the last day of the month in which the academic year ends i.e. until 30th April 2007. The appellant retired on 30th April 2007 from the post of Professor and Director, School of Legal Studies, Cochin University of Science and Technology.

10. Aggrieved by the judgment of the Single Judge of the High Court of Kerala, dated 25th January 2012 in W.P. (C) No. 28410/2006, the appellant herein preferred an intra-court writ appeal being W.A. No. 988/2012. The Division Bench of the High Court, in its judgment dated 29th August 2019, confirmed the findings of the Single Judge and dismissed the writ appeal preferred by the appellant. Being aggrieved, a special leave petition was filed by the appellant before this Court in which leave was granted on 22nd November 2021.

11. Before proceeding further, it would be useful to encapsulate the reasoning of the High Court of Kerala in dismissing the writ appeal filed by the appellant herein, as under:

(a) The High Court relied on the decision of this Court in *Deoki Nandan Prasad v. State of Bihar* - AIR 1971 SC 1409, wherein it was held that the rule applicable in matters of determination of pension is that which is existing at the time of retirement. Similarly, in *Government of Andhra Pradesh & Ors. v. Syed Yousuddin Ahmed* - 1997 (7) SCC 241, it was held that the emoluments forming a part of the pension payable to an employee shall be determined on the basis of the rule existing as on the date of retirement.

In light of the above citations of this Court, the High Court stated that the right to receive pension arises and crystallises into a vested right only on the date of superannuation. The High Court held that the appellant was entitled to obtain pension in

accordance with the rules existing as on the date of superannuation.

(b) The High Court found that the argument advanced on behalf of the appellant herein, that other Universities require candidates to possess Bar experience for appointment as teaching faculty, was irrelevant and inconsequential.

(c) The High Court held that the Government was authorised under Article 309 of the Constitution of India, to make laws determining service conditions of Government employees and to amend such laws, even retrospectively.

12. The writ appeal preferred by the appellant herein was dismissed by the High Court on making the aforestated observations.

13. We have heard Dr. K.P. Kylasanatha Pillay, learned Senior Counsel along with Mr. Sajith P. Warriar, learned counsel for the appellant, Ms. Malini Poduval, learned counsel for respondent nos.1

and 2, and Mr. G. Prakash, learned counsel for respondent-State and perused the material on record.

14. Dr. Pillay, learned Senior Counsel for the appellant, submitted that the Rule 25 (a), Part III, KSR as it stood at the time of appointment of the appellant to the post of lecturer in the School of Legal Studies of the respondent University, allowed experience at the Bar to be reckoned as qualifying service for the purpose of determining superannuation pension. The said Rule prescribed a condition that only a person who was recruited into service after attaining the age of 25 years could claim such benefit of additional service. The Rule allowed for addition of as many years by which a person exceeds the age of 25 years. The benefit of additional service was limited to the actual number of years of practice at the Bar, subject to a maximum of ten years.

15. Learned Senior Counsel for the appellant contended that the proviso to Rule 25 (a), Part III, KSR, which limited the scope of the benefit conferred

under Rule 25(a) by stating that such benefit would only be available to such employees as are recruited to those posts requiring a qualification in law and experience at the Bar, was introduced with effect from 12th February 1985. That the said proviso could not have been made applicable to the appellant as it was not in force at the time of his appointment, i.e., on 7th September 1984. That the benefit of the Rule could not be denied by applying the proviso retrospectively, in the absence of express direction to that effect in the Amendment to the Rule by which the proviso was inserted in Rule 25(a). It was submitted that the intention of inserting the proviso in Rule 25 (a) was not to exclude previously appointed law teachers from the purview of the said Rule, but to streamline the condition regarding pension for future appointees. It was stated that the appellant had acquired a vested right to his pension when he joined service which could not have been taken away at the time of his retirement.

16. Learned Senior Counsel for the appellant highlighted that Dr. P. Leela Krishnan, former Head of the Department of Law and Dean, Faculty of Law, Cochin University of Science and Technology who superannuated from service of the respondent University with effect from 30th April 1996, was granted the benefit of additional service as provided for under Rule 25 (a), Part III, KSR; that Dr. P. Leela Krishnan had practiced as an advocate at the Kerala Bar during the period between 29th March 1962 and 24th June 1969, i.e. for a period of 7 years, 2 months and 26 days. Dr. P. Leela Krishnan served in the Law Faculty of the respondent University from 24th June 1969 to 30th April 1996. His retirement benefits were granted, having regard to the period of service rendered at the University as well as the period of practice at the Bar. The respondent University found his length of qualifying service for the purpose of grant of pension to be 33 years, 7 months and 4 days, which included 26 years, 9 months and 2 days of service at the respondent University and 7 years, 2 months and 26 days of practice at the Bar.

17. In that context, learned counsel for the appellant contended that the appellant is similarly situated as Dr. P. Leela Krishnan as they both were appointed from the Bar before the proviso to Rule 25 (a) came into effect, i.e. before 12th February 1985; and that they both superannuated after the proviso was brought into force. However, while the proviso to Rule 25(a) was applied in relation to the appellant, thereby denying him the benefit of Rule 25(a), but the said proviso was not applied in the case of Dr. P. Leela Krishnan. That the respondent University has singled out the appellant without any legal basis and has arbitrarily denied to him the benefit of Rule 25(a), Part III, KSR, which is discriminatory and in violation of Article 14 of the Constitution of India.

18. As opposed to the aforesaid arguments, Ms. Poduval, learned counsel for respondent no.1 and 2, relied on the proviso to Rule 25(a), Part III, KSR and contended that the benefit under the said Rule was rightly withheld by the respondent University in light of the proviso. That the proviso would be

applicable in relation to the appellant as it is trite law that the rule applicable in the matter of determination of pension is that which exists at the time of retirement. In the case of the appellant, the date of superannuation was 30th April 2007, on which date the proviso to Rule 25(a) was in force and therefore it would apply, limiting the benefit of the Rule.

19. In relation to the appellant's contention that other employees of the respondent University who were similarly situated as the appellant, had been granted the benefit under Rule 25(a), it was submitted that the appellant cannot claim such relief relying on an earlier illegal order. That such a claim based on negative equality in favour of the appellant was untenable.

20. It was further submitted on behalf of the respondents that the appellant made a representation before the Registrar of the respondent University after an inordinate delay and had not adhered to the time limit prescribed under Rule 22C, Part I, KSR,

for making such claim. Rule 22C, Part I, KSR stipulates that an officer who wishes to get his prior service counted shall apply for the same within a period of five years from the date of his entry into service. Rule 22C also provides that an order reckoning previous service shall not be issued by the Competent Authority within a period of less than five years before the date of retirement on superannuation.

21. The respondents relied on the aforestated rule and submitted that the appellant made a representation before the Registrar of the respondent University requesting him to reckon appellant's practice of eight years at the Bar, only on 10th November 2004, i.e. over 20 years after his appointment as a lecturer at the respondent University. That the claim of the appellant was rightly not entertained by the authorities of the respondent University after such an inordinate delay.

22. Learned counsel for respondents urged that the case of the appellant has been rightly appreciated in

its true perspective, having due regard to the relevant law, by the High Court in its judgment while dismissing the appeal preferred by the appellant herein, which judgment would not call for any interference in this appeal.

Points for consideration:

23. Having regard to the submissions of the learned Senior Counsel and learned counsel for the respective sides, the following points would arise for our consideration:

(i) Whether the appellant herein is entitled to the benefit of Rule 25(a), Part III, Kerala Service Rules?

(ii) Whether the High Court was justified in dismissing the appeal preferred by the appellant herein?

(iii) What Order?

24. The fact that the appellant was appointed to the post of lecturer in the School of Legal Studies of

the respondent University with effect from 7th September 1984, is not in dispute. The appellant practised as an Advocate at the District Court and Subordinate Courts at North Parur, Ernakulam, Kerala for the period between 11th March 1972 and 2nd February 1980. The appellant sought for reckoning of his experience at the Bar as qualifying service for the purpose of determination of superannuation pension, as provided under Rule 25 (a), Part III, KSR. The same was denied by the authorities of the respondent University. During the pendency of litigation in this regard before the High Court, the appellant retired from service of the respondent University on attaining the age of superannuation with effect from 30th April 2007.

25. Learned counsel for the respondents have relied upon the proviso to Rule 25 (a) of Part III, KSR in urging that the respondent University rightly denied the claim of the appellant for reckoning the period of practice at the Bar. Rule 25 (a) together with the

proviso inserted by way of an Amendment, with effect from 12th February 1985, is reproduced hereunder:

"25 (a) Persons recruited from the Bar after the age of 25 years to appointments in Government service may add to their service qualifying for superannuation pension (but not for any other kind of pension) the actual period (not exceeding ten years) by which their age at the time of recruitment exceeded 25 years provided that no employee can claim the benefit of this rule unless his actual qualifying service at the time he becomes eligible for superannuation pension is not less than eight years. This concession is also subject to the condition that the period that may be so added shall not at any time exceed the actual period of the employee's practice at the Bar. No application will be entertained for pension on the ground that the appointee did not get an opportunity for service for the qualifying period.

Provided that the benefit under this sub-rule shall be available only to employees who are recruited when practicing at the Bar to posts requiring law qualification and experience at the Bar."

26. The proviso limits the benefit of the Rule by restricting its application only to such employees as are recruited when practicing at the Bar, to those posts requiring a qualification in law and experience at the Bar. The respondent University has contended that since the post of a lecturer to which the appellant was appointed in 1984, did not require prior experience at the Bar, the proviso would be attracted thereby disentitling the appellant of the

benefit under Rule 25(a). Although the proviso was inserted by way of an amendment, with effect from 12th February 1985 and was not in force at the time of appointment of the appellant in 1984, the respondent University has contended that the rule applicable in the matter of determination of pension is that which exists at the time of retirement. That the appellant superannuated on 30th April 2007, on which date the proviso to Rule 25(a) was in force and therefore it would apply, limiting the benefit of the Rule.

27. The appellant brought to our attention that in the case of one Dr. P. Leela Krishnan, a Professor of Law who was similarly situated as the appellant herein, the respondent University duly considered the period of practice at the Bar as a part of Dr. P. Leela Krishnan's qualifying service for the purpose of determining pension payable on his superannuation.

28. Perusal of extracts from the pension book of Dr. P. Leela Krishnan, reveals that his experience of practice at the Bar, of 7 years, 2 months and 26 days was added to the period of his service at the

University, being 26 years, 9 months and 2 days. The respondent University in determining his superannuation pension, considered 33 years, 7 months and 4 days as the qualifying period of service.

29. No argument has been advanced on behalf of the respondents as to the manner in which the case of the appellant is different from that of Dr. P. Leela Krishnan and on what basis the benefit of Rule 25 (a) was granted to Dr. P. Leela Krishnan but was withheld in relation to the appellant.

30. We find that the appellant and Dr. P. Leela Krishnan were in fact similarly situated. Both these individuals were appointed as teaching faculty at the respondent University after practicing as advocates in various Courts of Kerala. They were both appointed before the proviso to Rule 25 (a) came into effect, i.e. before 12th February 1985 and retired after the said proviso came into force.

31. In the circumstances, we find no valid ground to sustain the application of the proviso in relation to the appellant, thereby denying the benefit of Rule

25(a), when the same was not applied in the case of Dr. P. Leela Krishnan, thereby allowing the benefit of Rule 25(a).

32. While we accept the settled position of law that the rule applicable in matters of determination of pension is that which exists at the time of retirement, we are unable to find any legal basis in the action of the respondent University of selectively allowing the benefit of Rule 25 (a). The law, as recognized by this Court in *Deoki Nandan Prasad* and *Syed Yousuddin Ahmed (supra)* unequivocally states that the pension payable to an employee on retirement shall be determined on the rules existing at the time of retirement. However, the law does not allow the employer to apply the rules differently in relation to persons who are similarly situated.

33. Therefore, we are of the view that if the respondent University sought to deny the benefit of Rule 25 (a), in light of the proviso which was subsequently inserted thereby limiting the benefit of the Rule, it ought to have done so uniformly. The

proviso could have been made applicable in relation to all employees who retired from service of the respondent University following the introduction of the proviso, i.e. after 12th February 1985. However, the action of the respondent University of selectively applying the proviso to Rule 25(a) in relation to the appellant, while not applying the said proviso in relation to similarly situated persons, is arbitrary and therefore illegal. Such discrimination, which is not based on any reasonable classification, is violative of all canons of equality which are enshrined in the Constitution of India.

34. Hence, in the instant case, the denial of the benefit under Rule 25 (a), KSR, to the appellant is arbitrary and not in accordance with law. Consequently, the appellant is entitled to receive pension having regard to his total qualifying service, inclusive of the period of his service at the respondent University and the period of his practice as an Advocate in various Courts of Kerala.

35. In view of the aforesaid discussion, we set aside the judgment of the Division Bench as well as that of the learned Single Judge of the High Court dated 29th August 2019 and 3rd April, 2006 respectively and allow the instant appeal.

36. The respondent University is directed to calculate the amount of pension short paid to the appellant from the date of his superannuation i.e. 30th April 2007, till date and disburse such amount together with interest at the rate 5% p.a. till date of payment in favour of the appellant within a period of two months from the date of receipt of a copy of this judgment. It is needless to observe that such calculation shall be carried out after considering the period of practice of the appellant as an advocate at the Bar and the service rendered at the respondent University.

37. Parties to bear their respective costs.

.....J.
(M.R. SHAH)

.....J.
(B.V. NAGARATHNA)

NEW DELHI;
1st December, 2021.