

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

RP.No. 183 of 2015

AGAINST THE OJUDGMENT IN W.P.(C).NO.17578/2004, DATED 07-01-2015

REVIEW PETITIONER(S)/PETITIONER :

**THE ADMINISTRATIVE OFFICER,
AMMACHIVEEDU MOORTHY TEMPLE TRUST HOSPITAL,
CATCHERY WARD, KOLLAM.**

**BY ADVS.SRI.S.P.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND**

RESPONDENT(S)/RESPONDENTS :

**1. THE LABOUR COURT,
KOLLAM.**

**2. SECRETARY,
KERALA PRIVATE HOSPITAL EMPLOYEES UNION, INTUC,
JETTY ROAD, KOLLAM.**

**R1 BY SR.GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R2 BY ADV. SRI.B.ASHOK SHENOY**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

K. VINOD CHANDRAN, J

R.P No.183 of 2015

in

W.P(C) No.17578 of 2004

Dated this the 25th day of February, 2015

O R D E R

The labour Court award granting reinstatement with 30% backwages, has been affirmed in the above writ petition. The review is insofar as, the petitioner having reached the age of 58 years as on 2006; that being a reasonable retirement age, there could be no reinstatement as of now.

2. The learned counsel for the review petitioner would contend that the Labour Court award was passed on 27.12.2003 and the worker had been paid 17B wages also from September, 2004. The learned counsel would specifically refer to the age declared by the worker herself in I.A No.11841/2004; wherein it is indicated as 56 years as on 07.09.2004. Hence, in 2006 the petitioner ought to retire, having attained 58 years of age, is the

contention.

3.The learned counsel for the worker would take me to Section 2 (oo); the definition of “retrenchment”, which by clause (b) specifically speaks of retirement as per the contract of employment. The worker would contend that since no contract of employment is produced by the management, definitely, it cannot raise a contention as to superannuation and if at all the management does not wish to continue the workman in the employment, then, retrenchment compensation ought to be granted under Section 25F of the Industrial Disputes Act, 1947.

4. It is to be noticed that the Model Standing Orders; under the Industrial Employment Standing Orders Act, 1948, specifies 58 years as the age of superannuation. True, the Model Standing Orders would not be applicable to the management herein, since, it does not employ the required number of employees as per the statute. However, the age, so notified is an indication

of what the State Government thought fit to prescribe, as an age of superannuation.

5. Even if, that would not be applicable to the management establishment herein, this Court would definitely, take the prescription in the model standing orders as a guideline to decide on the age of superannuation. Further it is to be noticed that herein, the worker would not be entitled to any Provident Fund on retirement. The eligibility of the worker on retirement would be to gratuity under the Payment of Gratuity Act, 1972. The gratuity payable and the compensation payable under Section 25F being $\frac{1}{2}$ months pay for every completed year of service, the petitioner can be severed from employment on payment of such compensation as on 07.09.2006.

6. In such circumstance, the petitioner would be entitled to 30% backwages till the date of award and after that the backwages till 07.09.2006 and $\frac{1}{2}$ months pay for every completed year of service, subject to the

limitation as provided under the Payment of Gratuity Act. The judgment in the writ petition would be reviewed to the above extent.

7. If the amounts are not computed and paid within three months from today, the petitioner shall be entitled to interest for the backwages due from the date of the award and for the wages and gratuity payable from the date on which it is payable at the rate of 10% per annum. If the amounts are paid within three months there shall be no interest liability on the management. It is also made clear that whatever amounts are paid under Section 17B, shall be deducted from the amounts so computed.

Review petition allowed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge