

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

RP.No. 225 of 2015 () IN WP(C).32697/2005

**AGAINST THE ORDER/JUDGMENT IN WP(C) 32697/2005 of HIGH COURT OF KERALA
DATED 28-11-2014**

REVIEW PETITIONER/IST RESPONDENT IN WPC:

**THE GENERAL SECRETARY
ERNAKULAM DISTRICT ENGINEERING AND INDUSTRIALWORKERS UNION
PRAKASH BHAVAN, RAILWAY STATION ROAD, TRIPUNITHURA
REPRESENTED BY ITS GENERAL SECRETARY MR.P.RAJAPPAN PILLAI.**

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS/PETITIONERS 1 AND 2 & 2ND RESPONDENTS IN WPC:

**1. GOVERNMENT OF INDIA
REPRESENTED BY SECRETARY, MINISTRY OF LABOUR
NEW DELHI.**

**2. EXECUTIVE ENGINEER (CONSTRUCTION)
SOUTHERN RAILWAY, ERNAKULAM.**

**3. EXECUTIVE ENGINEER (CONSTRUCTION)
SOUTHERN RAILWAY, TRICHUR.**

**R2 & R3 BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS
R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 16-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES

- A1 : TRUE COPY OF THE EXTRACT OF SCHOOL ADMISSION REGISTER
ISSUED BY GOVERNMENT GIRLS HIGH SCHOOL WADAKKANCHERY
DATED 31.2.1978
- A2 : TRUE COPY OF THE CERTIFICATE SHOWING THE DATE OF BIRTH
ISSUED BY THE HEADMISTRESS G.M. LPS, KANJIRASSERY, THRISSUR
DISTRICT DATED 28.4.1995
- A3 : TRUE COPY OF THE AADHAR CARD OF SMT. VASANTHA
- A4 : TRUE COPY OF THE RATION CARD NO.1842069210 ISSUED BY THE
CITY RATIONING OFFICER
- A5 : TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF
MULLUKKARA GRAMA PANCHAYAT

RESPONDENT'S ANNEXURES

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

Review Petition No.225 of 2015
in
W.P.(C) No. 32697 of 2005 (P)

Dated this the 16th day of September, 2015

ORDER

The petitioner has filed the above Review Petition on the ground that there was an error on the face of the record, since P.K. Droukumari, K.C. Karthyayani and P.R. Vasantha were held to have attained superannuation and hence, the relief was confined to the compensation as directed therein.

2. The learned counsel rightly points out from the records that, P.K. Droukumari, K.C. Karthyayani and P.R. Vasantha have not reached the superannuation age of 60 years. In such circumstance, the contention of the petitioner is that, this Court having upheld the award of the Labour Court, the benefits due under the award has to, necessarily, be granted to the petitioners and the compensation awarded with respect to the above three

persons has also to be corrected insofar as granting them the prayer for reinstatement.

3. Admittedly, the said issue was not argued before this Court at the time of hearing since all were under the impression that the petitioners had all crossed the age of superannuation. Having pointed out the discrepancy with respect to age, the Railways has filed a counter affidavit in the Review Petition wherein under paragraph 7 it has been specified so:

“(A) The Railway Board has issued order vide RBE No.190/2001 (Letter No.E(NG)II/99/CL/19 dated 20.09.2001) in connection with the absorption in the Railways of ex-casual labors borne on Live/Supplementary Live Casual Labour Registers. In this order the Board has carefully scrutinized the issue and ordered that the upper age limit was considered as follows:-

GENERAL CATEGORY	:	40 years
O.B.C.	:	43 years
SC/ST	:	45 years

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(B) The petitioners submitted that their date of birth as follows:-

1. Smt.P.K.DROUKUMARI, 54years DOB 18.03.1961
2. Smt.K.C.KARTHIYANI, 55 years DOB 05.07.1960
3. Smt.VASANTHA, 58 years DOB 29.07.1957"

4. The learned Standing Counsel appearing for the Railways also produces a Division Bench judgment of this Court in W.P.(C) 3246/2006, which dealt with the order of the Central Administrative Tribunal, Ernakulam Bench, which is relied on by the petitioners herein. The operative portion of the judgment reads as such:

"The age limit prescribed as per Circular Nos. E(NG)II-99/CL/19 dated 28.2.2001 and E(NG)II-99/CL/19 dated 20.09.2001 will not be applicable to the casual labourers, who have completed 360 days' service. Quashing of the above said circulars is set aside. Even though the age limit is not applicable to absorption, other stipulations in the Rules like medical fitness, etc. can be insisted by the Railways."

5. Hence, the 2001 circular, referred to by the Government Order specifying age restrictions, as a corollary is applicable to persons having service below the stipulated limit of 360 days. The petitioners are all below the 360 days' limit. Hence, the age stipulation having been upheld, as on the year 2001, P.K.Droukumari and P.R. Vasantha having crossed the age stipulated, there could be no order of reinstatement in their case. However, with respect to K.C. Karthyayani, it is to be noticed that, with respect to Scheduled Castes/Scheduled Tribes the permitted age restriction as per the 2001 circular is 45 years. As on 2001 Karthyayani had not acquired the said 45 years.

6. In such circumstance, the said Karthyayani would be granted reinstatement as directed by the Labour Court. The regularisation granted to the other two, being against the circular of the Railways and against the categoric

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finding of a Division Bench of this Court, would have to concede to the said Circular and the compensation as directed earlier would be paid to them.

The Review Petition would stand partly allowed to the extent indicated above. The Labour Courts order will also stand modified as above. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE