

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

RP.No. 1014 of 2014 (J) IN WP(C).32856/2006

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AGAINST THE ORDER/JUDGMENT IN WP(C) 32856/2006 of HIGH COURT OF KERALA
DATED 18-06-2014**

**REVIEW PETITIONERS (NOT PARTIES TO THE WRIT PETITION.
THEY ARE MEMBERS OF THE 2ND PETITIONER IN THE WRIT PETITION):**

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- 1. T.S.AKBAR KHAN,
S/O.LATE T.M.SAHIB, NOW RESIDING AT T.C.3/1118(4),
"SAIBA", HOUSE NO. 54, VYASA NAGAR,
PATTOM, THIRUVANANTHAPURAM.**
 - 2. E.M.RAJENDRAN NAIR,
S/O.LATE P.K.MADHAVAN PILLA, CHAITHRAM, PALACE ROAD,
PALIAKKARA, THIRUVALLA.**
 - 3. GEORGE PHILIP, AGED 59 YEARS,
S/O.C.C.GEORGE, CHACKALAYIL, ANGADICAL,
CHENGANNUR - 689 122.**

**BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.N.K.KARNIS**

RESPONDENTS/PETITIONERS AND RESPONDENTS IN WP(C):

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- 1. TRAVANCORE SUGARS AND CHEMICALS LTD.
EMPLOYEES UNION, PRF QUARTERS, EQ NO.1
TRAVANCORE SUGARS & CHEMICALS LTD., VALANJAVATTOM
THIRUVALLA, REP. BY ITS VICE PRESIDENT
S.SASIDHARAN NAIR (REMOVED FROM PARTY ARRAY AS PER ORDER
DATED 12.12.2008 IN IA NO.15952 OF 2008)**
 - 2. TRAVANCORE SUGARS AND CHEMICALS LTD.
OFFICER'S ASSOCIATION, STB, B.QUARTERS
VALANJAVATTOM, THIRUVALLA, REP. BY ITS
GENERAL SECRETARY, ALEX PABRAHAM.**
 - 3. THE PRINCIPAL SECRETARY TO GOVT.,
INDUSTRIES DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.**

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- 4. TRAVANCORE SUGARS & CHEMICALS LTD.,
VALANJAVATTOM, THIRUVALLA, REP. BY ITS
MANAGING DIRECTOR, PIN - 689 104.**
- 5. STATE OF KERALA, REP. BY ITS
SECRETARY TO GOVT., INDUSTRIES DEPARTMENT
GOVT. SECRETARIAT, TRIVANDRUM.**

**R2 BY ADVS. SMT. V.P.SEEMANTHINI (SR).
SRI.M.R.ANISON**

**SMT.V.BHARGAVI (PANANGAD)
R4 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS**

R3 & R5 BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 15-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

P.N.RAVINDRAN, J.
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R.P.No.1014 of 2014
in
W.P.(C)No.32856 of 2006
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Dated this the 15th day of October, 2015

ORDER

The petitioners herein, three in number, are members of the Travancore Sugars and Chemicals Ltd. Officers' Association, the second respondent in the instant review petition. The first respondent in the review petition is the Travancore Sugars and Chemicals Ltd. Employees' Union. While the Employees' Union represents the workers, the Officers' Association represents the officers of the Travancore Sugars and Chemicals Ltd. They jointly filed W.P.(C)No.32856 of 2006 in this court challenging Ext.P7 Government order dated 3.8.2007 whereby the Government fixed the age of retirement of all employees of the Travancore Sugars and Chemicals Ltd. including officers as 58 years and directed that all those who have crossed the age of 58 years will be permitted to retire after giving due notice.

2. The age of retirement of all employees of Travancore Sugars and Chemicals Ltd. was initially 60 years. By order dated 12.12.2003, the Government approved the decision of the Board of Directors to reduce the age of retirement to 58 years. By order dated 15.12.2003,

the Government directed the earlier Government order to be kept in abeyance. The Government thereafter considered the objections received from the employees at the high level meeting held on 13.2.2006. At that meeting, a decision was taken to the effect that the retirement age of all the existing employees of the Travancore Sugars and Chemicals Ltd. be maintained as 60. The Government thereafter issued Ext.P4 order dated 21.6.2006 to that effect. Later, the Government sent Ext.P5 letter dated 25.08.2006 to the effect that the intention of the Government, when it issued Ext.P4 order, was to restore the retirement age to 60 only in respect of those employees whose age of retirement was cut short from 60 to 58. It was at that point of time that the instant writ petition was filed and while the writ petition was pending, the Government issued Ext.P7 order dated 3.8.2007 fixing the age of retirement of all employees as 58.

3. While the writ petition was pending, the writ petitioners filed I.A.No.15952 of 2008 praying that the name of the first petitioner union may be deleted from the party array. That application was heard and allowed by me by order passed on 12.12.2008. It appears that the first petitioner union had even earlier filed W.P.(C)No.25956 of 2007 along with two other unions seeking the very same reliefs and that was the reason why it did not want to continue as the first petitioner in W.P.(C)No.32856 of 2006.

4. While matters stood thus, the Travancore Sugars and Chemicals Ltd. Officers' Association represented by its General Secretary filed I.A.No.7938 of 2014 praying that it may be permitted to withdraw the writ petition. In paragraph 3 of the affidavit filed in support of the said application its General Secretary had averred that the second petitioner has at its meeting held on 12.6.2014 taken a decision not to pursue the writ petition due to subsequent developments. Along with that affidavit, a copy of the letter sent by the second petitioner to its counsel instructing the counsel to withdraw the writ petition was produced and marked as Ext.P12. The said application namely I.A.No.7938 of 2014 came up before me on 18.6.2014. By order passed on that day, I allowed the said application and consequently, by a separate order passed on the same day I dismissed the writ petition as withdrawn. It is the said order that is sought to be reviewed by the instant review petition.

5. The review petitioners have averred that Sri.Alex P. Abraham who represented the Officers' Association in the writ petition is an officer junior to them and that with sinister intention and without any necessity and occasion, he instructed the counsel to withdraw the writ petition. The review petitioners have also averred that no such decision was taken on 12.6.2014 as stated in Ext.P12 letter, that no notice calling for a meeting on 12.6.2014 was served on them and no

meeting was held on that day. It is contended that it was without considering these aspects that this court allowed I.A.No.7938 of 2014 and dismissed the writ petition as withdrawn.

6. The Officers' Association which was the second petitioner in the writ petition and is the second respondent in this review petition has sworn to a counter affidavit dated 23.1.2015 though its General Secretary denying and disputing the averments in the review petition and produced along with it as Annexure-R2(a), a copy of the minutes of the meeting of the Officers' Association held on 12.6.2014. Relying on the said document, it is contended that the allegations in the review petition are baseless and incorrect. It is stated that the third petitioner in the instant review petition had also attended the meeting. The fourth respondent in the review petition namely the Travancore Sugars and Chemicals Ltd. has sworn to a counter affidavit dated 20.1.2015. It is stated that the petitioners in the review petition have after the instant writ petition was dismissed as withdrawn, filed W.P.(C)No. 17683 of 2014 challenging the termination of their services and that the said writ petition is pending before this court.

7. I heard Sri.N.Sukumaran, learned Senior Advocate appearing for the petitioners, Smt.V.P.Seemanthini, learned Senior Advocate appearing for the second respondent, Sri.E.M.Abdul Khadir, learned Senior Government Pleader appearing for respondents 3 and 5 and

Sri.Benny P. Thomas, learned counsel appearing for the fourth respondent. Smt.V.P.Seemanthini, learned Senior Advocate and Sri.Benny P. Thomas, learned counsel appearing for the fourth respondent submitted that a learned single Judge of this court has by judgment delivered on 5.02.2015 allowed W.P.(C)No.17683 of 2014, quashed Ext.P7 Government order and held that the petitioners herein are entitled to continue in service up to the age of 60 years and directed their reinstatement in service and therefore, the petitioners herein will in no way be affected if the impugned judgment is allowed to stand. The learned counsel for the fourth respondent however fairly submitted that the fourth respondent has filed W.A.No.1690 of 2015 canvassing the correctness of the judgment of the learned single Judge in W.P.(C)No.17683 of 2014 and that the said appeal is even today pending, but no interim order has been passed therein. Learned counsel submitted that in such circumstances, as the petitioners have now crossed the age of superannuation they will in no way be affected if the impugned judgment is allowed to stand.

8. Learned Senior Counsel appearing for the petitioners however submitted that the judgment in W.P.(C)No.17683 of 2014 has not attained finality, that it has been subjected to challenge and therefore, unless the impugned judgment is reviewed and set aside, it is likely to be held out against the petitioners herein in the writ appeal filed from

the judgment in W.P.(C)No.17683 of 2014. The learned Senior Advocate appearing for the review petitioners also submitted that even assuming that the fourth signatory to Annexure-R2(a) minutes is a member of the Association, as three of the members of the Association are before this court seeking a review, there is no reason why the review petition should not be allowed and the petitioners afforded an opportunity to get themselves impleaded in the writ petition as petitioners and to prosecute it. The learned Senior Counsel also submitted that there is no reason why the Officers' Association which had canvassed the correctness of Ext.P7 order and is now entitled to the benefits flowing from the judgment in W.P.(C)No.17683 of 2014 should fight shy of the writ petition being decided on the merits. The learned Senior Counsel submitted that Sri.P.M.John, who is one among the signatories to Annexure-R2(a) minutes, was an office bearer of the Employees' Association, that he had not been formally enrolled as a member of the Officers' Association and therefore, nothing turns on the fact that he is also a signatory to Annexure-R2(a) minutes. The learned Senior Counsel lastly submitted that though a copy of the minutes of the meeting stated to have been held on 12.6.2014 is produced, there is no averment as regards the manner in which the meeting was convened and the manner in which notice was given to the members of the Officers' Association.

9. I have considered the submissions made at the Bar by learned counsel appearing on either side. I have also gone through the pleadings and the materials on record. It is evident from the chronology of events set out in the writ petition that the Government which had initially agreed that the age of retirement of all the employees of the Travancore Sugars and Chemicals Ltd. shall be 60 years later directed that, that decision will apply only to those employees whose retirement age was 60 years but was cut short to 58 years. The Government thereafter directed by Ext.P7 order that the retirement age of all employees be fixed as 58 years. The Officers' Association and the Employees' Union had come to this court contending that the age of retirement of all employees including officers should be 60. It was that dispute which was projected before this court. The petitioners herein, who are members of the Officers' Association had therefore a stake in the matter. The Officers' Association, for reasons best known to it, decided to withdraw the writ petition. Even earlier, the Employees' Union, the first respondent herein, filed a separate writ petition during the pendency of the instant writ petition along with two other unions and later moved this court to have its name struck off from the party array. That shows that the Employees' Union was also agitating the issue. In such circumstances, as the petitioners have a vital interest in the subject matter of the writ

petition and no prejudice whatsoever will be caused to the Officers' Association or its members, I am of the opinion that in the interests of justice, the judgment dismissing the writ petition as withdrawn should be reviewed and recalled so as to facilitate the petitioners an opportunity to get themselves impleaded as supplemental petitioners or initially as respondents in the writ petition and to get themselves transposed as petitioners in the event of the second petitioner in the writ petition namely the Officers' Association withdrawing from the writ petition or filing an application to the effect that its name may be struck off from the party array. Notwithstanding the submissions made by learned counsel appearing for the respondents that W.P.(C) No.17683 of 2014 filed by the review petitioners has been allowed, the fact remains that the judgment therein has not attained finality. It is res sub judice for the reason that W.A.No.1690 of 2015 filed by the employer is pending in this court. Unless the impugned judgment is reviewed and recalled it is likely that the dismissal of the earlier writ petition filed by the Officers' Association of which the petitioners are members, as withdrawn, is likely to be held out against them in that appeal. I am therefore of the considered opinion that in the interests of justice this review petition should be allowed. After all, what the petitioners seek is only an adjudication of the writ petition on the merits and there is no reason why this court should adopt a hyper-

technical view and deny them that opportunity. This institution, which has been established to redress the grievances of citizens should not in my opinion deny the citizen the opportunity to have a lis decided on the merits on a technical ground and that too when no real prejudice will be caused to the persons/organizations opposing the prayer for review.

For the reasons stated above, I allow the review petition. Consequently, the judgment delivered by me on 18.6.2014 dismissing W.P.(C)No.32856 of 2006 as withdrawn, shall stand recalled.

Registry is directed to post the writ petition for hearing as per roster, after two weeks.

Sd/-

**P.N.RAVINDRAN
JUDGE**

/TRUE COPY/

P.A. TO JUDGE

vpv