

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WA.No. 60 of 2013 () IN WP(C).25094/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 25094/2007 of HIGH COURT OF KERALA
DATED 04-06-2012

APPELLANT(S)/APPELLANTS/RESPONDENTS:

1. COFFEE BOARD
NO.1, DR.AMBEDKAR ROAD, BANGALORE-1
REPRESENTED BY SECRETARY.
2. THE DEPUTY DIRECTOR (RESEARCH),
THE REGIONAL COFFEE RESEARCH STTION, CHUNDALE
WAYANAD.
3. THE FARM MANAGER,
THE REGIONAL COFFEE RESEARCH STATION, CHUNDALE
WAYANAD.

BY ADV. SRI.GOPIKRISHNAN NAMBIAR

RESPONDENT(S)/RESPONDENTS/LEGAL HEAIRS OF DECEASED M.D.ELIYAMMA
(PETITIONER IN THE WRIT PETITION):

1. STM.ROSILY M.T.
KAPPUMKUNNU, KANIYAMBETTA P.O.
KALPETTA D/O LATE M.D.ELIYAMMA, RETIRED MAZDOOR
REGIONAL COFFEE RESEARCH STATION, CHUNDALE, WAYANAD.
2. SRI. SUNNY M.T.
MAVELI HOUSE, PERUMTHATTA NO.2, CHUNDALE
S/O LATE M.D.ELIYAMMA, RETIRED MAZDOOR
REGIONAL COFFEE RESEARCH STATION, CHUNDALE, WAYANAD.
3. SRI. DAVIS M.T.,
MAVELI HOUSE, KOTAVAYAL, PUTHOORVAYAL P.O.
S/O LAE M.D. ELIYAMMA, RETIRED MAZDOOR
REGIONAL COFFEE RESEARCH STATION, CHUNDALE, WAYANAD.

R1 TO 3 BY ADV. SRI.P.RAMAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.**

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W.A. No. 60 of 2013

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Dated, this the 1st day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Correctness and sustainability of the verdict passed by the learned single Judge, whereby the writ petition filed by the petitioner seeking for a declaration to have had permitted her to continue till attaining the age of 60 years was allowed, is under challenge in this appeal.

2. The writ petitioner was working as a Farm Mazdoor in the Research Station/Farm House of the respondent Coffee Board. According to the writ petitioner, the retirement age in the Coffee Board was 60 years and the said fact is sought to be established with reference to Ext. P1 communication. Despite the factual position as above, the writ petitioner was intimated as per communication produced as Ext. P2 dated 20.03.2007 that she would have to retire on 31.05.2007, on attaining the age of 58 years. On receipt of the said communication, the writ petitioner preferred Ext. P3

representation on 22.03.2007 stating that she was being discriminated, as another employee of similar nature was permitted to continue till the age of 60 years. It is also contended that no intimation was ever given to the writ petitioner to the effect that the retirement age was reduced from 60 years to 58 years and still, she was made to retire on 31.05.2007 as originally intimated.

3. It is stated that the writ petitioner filed some proceedings under the Right to Information Act for procuring materials with regard to the retirement age and as to the situation prevailing in other States, particularly in Tamil Nadu and Karnataka. The proceedings pursued by way of appeal under Section 19 (1) of the said Act ended up in Ext. P5 dated 13.07.2007. Being aggrieved of the course and proceedings, the writ petitioner approached this Court by filing writ petition, seeking to set aside the impugned proceedings and to declare that she was entitled to continue till 60 years and to obtain all consequential benefits, including full back wages. A detailed counter affidavit was filed from the part of the respondent Management, disputing the claim and pointing out that the retirement age in all the Farms of the Board in Kerala, in respect of Mazdoor, was 58 years and not 60 years. The relevant legal provisions were also referred to, particularly The Plantation

Labour Act and also The Kerala Industrial Employment (Standing Orders) Rules. As per the said provisions, the retirement age of 'Mazdoor' was to be 58 years, in the absence of any agreement or settlement as the case may be. It was also pointed out that no agreement or settlement was executed and as such, the writ petitioner could not aspire to have continued till 60 years of age under any circumstance. Particular circumstances and remedial measures taken in respect of the mistake occurred were explained in the counter affidavit. With reference to Ext. P1, it is asserted in paragraph 6 of the counter affidavit that the Deputy Director has no authority to issue such instruction, and the same is vested with the Chairman of the Coffee Board. It is contended that, but for the solitary instance of Smt. Ratnamma, who was a permanent worker and allowed to continue till 60 years, no one else was permitted to continue till date. The said instance was only because of the lapse on the part of one Sri. Narayanan and Sri. T. Babu, who were in charge of the section and they omitted to submit the relevant file before the controlling officer. Since Smt. Ratnamma was allowed to continue and work was extracted from her, payment was effected, which however came to be the subject matter of audit objection; a copy of which has been produced as Ext. R1 (a). It is

also stated that separate action was being taken against those who were responsible for the lapse/mistake.

4. Heard Sri. E. K. Nandakumar the learned senior counsel appearing for the appellant and Smt. Preethi Ramakrishnan, the learned counsel representing the respondents. In the course proceedings, the writ petitioner was expired; pursuant to which, her legal heirs came to be impleaded in the party array, who are the respondents 2 and 3.

5. The learned senior counsel appearing for the appellants submits that no worker, who is appointed as Mazdoor, is permitted to continue in the service of the Board in Kerala, beyond 58 years and that the instance stated with reference to Smt. Ratnamma is only an exception, which was resulted by virtue of a mistake on the part of the officers/staff of the management. It is also pointed that, as many as 11 persons came to be retired from service on attaining the age of 58 years during this period. Ext. P1 by itself is not an order, nor could it be treated as 'law' governing the age of retirement. It was issued in the year 1996 i.e. 11 years before the retirement of the writ petitioner. No practice was prevailing as well, with regard to the retirement age of Mazdoor from 1996 and no agreement/settlement was executed in this regard. No

other document than mentioning the case of Ratnamma is produced from the part of the worker in this regard. It is also pointed out that in view of the factual controversy, if at all there was any dispute, it was always open for the worker to have raised a dispute in terms of law, where specific pleadings and evidence had to be let in.

6. The learned counsel for the respondents, who are legal representatives of original writ petitioner, concedes that the only document sought to be relied on is Ext. P1. With reference to the benefits given to Smt. Ratnamma, this Court asked the learned counsel as to whether any agreement/settlement was executed between the Management and the Union of the workers, stipulating the retirement age as 60 years, which is answered in the negative. No other instance than that of Smt.Ratnamma has been brought to the notice of this Court. The point to be considered is whether a solitary instance of wrongfully extending benefit to someone, that too, because of lapse on the part of the officials concerned, will constitute a precedent; or settlement whether it has got colour and characteristics of an agreement/settlement; which cannot but be answered in the negative.

7. There is a case for the writ petitioner that the impugned orders were issued in contravention of Section 11 of the Industrial Disputes Act, but the course stipulated under the Statute has not been pursued and admittedly she did not raise any dispute. On the other hand, she simply moved this Court, after retirement, seeking for a declaration based on Ext. P1. Authenticity of Ext. P1 has been vehemently disputed from the part of management. The factual position narrated in the counter affidavit has not been rebutted by the writ petitioner by filing any reply affidavit. In the said circumstances, the writ petitioner has not discharged the burden in proving that the retirement age prevailing in the establishment was 60 years and not 58 years. It is also an admitted fact that no work was extracted from the writ petitioner after attaining 58 years and she approached this Court only after cessation of employment on retirement. As such, it is a case of 'no work no pay', which is the law. Even otherwise, a wrong benefit given to Smt. Ratnamma cannot be a ground for the writ petitioner to have similar treatment. Merely for the reason that some benefit has been given wrongly to someone, it cannot be pointed as an instance of discrimination, so as to issue a positive direction. Unless the right to obtain such relief is established to

the satisfaction of the Court, the petitioner cannot claim the benefit to have continued in service till the age of 60 years. Mistake is always mistake, which is liable to be rectified at the earliest opportunity; more so in view of the law declared by the Apex Court in **Chandigarh Administration and Another Vs. Jagjit Singh and another [AIR 1995 SC 705]** holding that a writ of mandamus could not be issued to perpetuate the mistake.

In the above circumstances, this Court finds that the declaration made vide judgment dated 04.06.2012 in W.P.(C) No. 25094 of 2007 is not correct or sustainable and as such same stands set aside.

The writ appeal is allowed and the writ petition will stand dismissed. No cost.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd