

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 6345 of 2005 (E)

PETITIONER(S):

- 1. RAMAKRISHNAN T.N.,
THACHAPARAMBIL HOUSE, MADAVAKKARA, P.O.CHITTYSSERY.**
- 2. K.V.JOSE,
KUNNATHUPARAMBIL HOUSE, MANNAKPETTA, P.O.VARAKARA.**

**BY ADVS.SMT.V.P.SEEMANDINI (SR.)
SMT.T.B.REMANI
SMT.VEENA.B.KUMAR
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI**

RESPONDENT(S):

- 1. THE NATIONAL TEXTILES CORPORATION LTD.,
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR
(APKK&M)LIMITED, P.B.NO.2713, NANJAPPA MANSION
29/2, K.F.ROAD, SANTHI NAGAR
BANGALORE-560 027.**
- 2. THE GENERAL MANAGER,
ALAGAPPA TEXTILES (COCHIN) MILLS, ALAGAPPANAGARA
TRICHUR DISTRICT.**

**R,R1 & 2 BY ADV. SRI.U.K.RAMAKRISHNAN (SR.)
R,R1 & 2 BY ADV. SRI.P.V.LOHITHAKSHAN
R,R2 BY ADV. SMT.P.VIJAYAMMA
R,R2 BY ADV. SRI.DEVIDAS.U.K
R,R2 BY ADV. SRI.SANDEEP.E.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER (S) EXHIBITS

- EXT. P1: TRUE COPY OF THE ESI CARD NO. 409314 ISSUED TO THE 1ST PETITIONER.
- EXT. P2: TRUE COPY OF THE ESI CARD NO. 409321 ISSUED TO THE 2ND RESPONDENT.
- EXT. P3: TRUE COPY OF THE SALARY SHEET OF THE 1ST PETITIONER SHOWING HIS PF NO. 2451.
- EXT. P4: TRUE COPY OF THE SALARY SHEET OF THE 2ND PETITIONER SHOWING HIS PF NO. 2457.
- EXT. P5: TRUE COPY OF THE ORDER DATED 20.10.91 PUBLISHED BY THE 2ND RESPONDENT.
- EXT. P6: TRUE COPY OF THE LIST DATED 01.09.96 PUBLISHED BY THE 2ND RESPONDENT.
- EXT. P7 SERIES: TRUE COPIES OF THE PAPERS GRANTING GRATUITY AND EXGRATIA BENEFITS TO THE 1ST PETITIONER.
- EXT. P8 SERIES: TRUE COPIES OF THE PAPERS GRANTING GRATUITY AND EXGRATIA BENEFITS TO THE 2ND PETITIONER.
- EXT.P9 COPY OF THE 'F' FORM SUBMITTED BY THE 1ST PETITIONER ON 26.9.86
- EXT.P10 COPY OF THE 'F' FORM SUBMITTED BY THE 2ND PETITIONER ON 3.10.06

RESPONDENT (S) EXHIBITS :

- EXT.R2(A) COPY OF THE LIST PUBLISHED BY THE 2ND RESPONDENT CONTAINING DATE OF BIRTH, DATE OF ENTRY INTO SERVICE AND DATE OF RETIREMENT PUBLISHED IN SEPTEMBER 1996.
- EXT.R2(B) COPY OF THE MODIFIED VOLUNTARY RETIREMENT SCHEME FORMULATED BY THE NATIONAL TEXTILE CORPORATION, NEW DELHI.
- EXT.R2(C) COPY OF THE NOTICE DTD. 29.9.04 PUBLISHED BY THE 2ND RESPONDENT IN CONNECTION WITH THE MVRS
- EXT.R2(D) COPY OF THE NOTICE DTD. 29.9.04 OF THE 2ND RESPONDENT.

CONTD.. 2..

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- EXT.R2(E) COPY OF THE APPLICATION DTD. 23.10.04 SUBMITTED BY THE 1ST PETITIONER.
- EXT.R2(F) COPY OF THE APPLICATION DTD. 21.10.04 SUBMITTED BY THE 2ND PETITIONER.
- EXT.R2(G) COPY OF RELIEVING ORDER NO. 3892/04 DTD. 30.10.04 OF THE 1ST PETITIONER.
- EXT.R2(H) COPY OF RELIEVING ORDER NO. 3884 OF 2004 DTD. 30.10.04 OF THE 2ND PETITIONER.
- EXT.R2(I) COPY OF WORKMEN'S RECORD CARD OF THE 1ST PETITIONER.
- EXT.R2(J) COPY OF WORKMEN'S RECORD CARD OF THE 2ND PETITIONER.

/ TRUE COPY /

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.6345 of 2005 - E

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Dated this the 19th day of October, 2015

J U D G M E N T

The petitioners are aggrieved by the fact that in retiring them under a Voluntary Retirement Scheme (V.R.S), the petitioners were granted ex-gratia benefits only reckoning their retirement age as 58, while they are entitled to be treated as workers liable to be superannuated at 60 years of age. The petitioners admittedly had applied under Ext.R2(b). The petitioners on the basis of Exts.P1 and P2 contend that they had been issued with E.S.I identification as early as on 15.01.1969 and hence they also come under the exception provided in the Industrial Employment (Standing Orders) Act, 1946 (for brevity 'Standing Orders Act') with respect to age of superannuation.

2. Admittedly the 2nd respondent was in the private

sector and in the year 1974, the 1st respondent took over the unit of the 2nd respondent. The retirement age of all employees was stipulated as 58; despite there being a clause in the existing Standing Orders with respect to the 2nd respondent Unit; that the retirement age would be 60. The 1st respondent was before the Certifying Officer under the Standing Orders Act. The retirement age was reduced to 58 for all employees.

3. However, 111 employees who were in fact employed prior to 1974 approached the Certifying Officer for an amendment so as to preserve their service conditions atleast with respect to the superannuation. An exception was made to clause 14C of the Standing Order, which provided so:-

Exception: This clause will not apply to workmen who have joined prior to 01.04.1974 and staff who have joined prior to 01.10.78. Their age of superannuation will be 60".

The petitioners claim such exception.

4. The learned Standing Counsel for the respondent would contend that neither of the petitioners were parties in

Ext.P15 and the date of entry of the petitioners were long after the Nationalisation; on 01.01.1975, as indicated at Ext.P6. The petitioners too had at the time of release under the V.R.S on 13.12.2004 accepted the entire amounts as per Exts.P7 and P8, which noticed the date of entry in service as 01.01.1975.

5. This Court is not inclined to accept the contention of the respondent that the exception applicable was only to the persons, who had approached the Regional Joint Labour Commissioner by an appeal which concluded in Ext.P5. The exception carved out, in the Standing Orders would be applicable to all workers, who joined prior to 01.04.1974. However, it is to be noticed that the petitioners themselves have produced Ext.P6 list of September 1996, in which their date of entry in service is shown as 01.01.1975.

6. The learned Counsel for the petitioners submit that Ext.P6 list was not circulated but there is no explanation offered as to how they obtained in the list of September 1996 and

produced it along with the writ petition. It is also to be noticed that Exts.P1 and P5 E.S.I cards; placed reliance upon, does not evidence their continuous service from 15.01.1969 till the Nationalisation of the 2nd respondent. It is trite that even contract engagement for a single day; would be eligible to be covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act') and the Employees' State Insurance Act, 1948 (for brevity, 'the ESI Act').

7. It is incumbent upon the petitioner to prove that they had continuous service from 15.01.1969, which alone would make them eligible for the exception carved out in the Standing Orders. The word used in the exception clause is that, it would only apply to workers, who joined prior to 01.01.1974. Any contract employment prior to that date would not entitle such petitioners to such benefits.

8. The further reliance placed on Exts.P9 and P10 alleged to be the nomination of the petitioners under the

Payment of Gratuity Act, 1972, cannot be relied upon, since there is no authenticity as to the same having been issued by the company. At the risk of repetition, it is to be observed that the petitioners essentially have to establish that they had continuous employment from a date prior to 01.04.1974, which alone would entitle the claim for superannuation at the age of 60. Despite the fact that this Court under Article 226 of the Constitution of India would be unable to examine the evidence on that count, it is to be emphasised that the above factum has not been, even prima faice substantiated by the documents available in the records of the case.

9. The petitioners also had accepted the entire V.R.S as per Exts.P7 and P8 on the basis of their appointment as on 01.01.1975. Exts.P7 and P8 series are documents signed by the petitioners, which shows their date of appointment as 01.01.1975. These documents were filed up by the petitioners themselves, while applying under the VRS scheme. Having filed

such documents admitting a date of appointment and having accepted the amounts due under the VRS, the petitioners have turned around to claim additional benefits on the ground that their age of superannuation was liable to be treated as 60 and not 58.

10. In **Himachal Pradesh Road Transport Corporation and another v. Hukam Chand [(2009) 11 SCC 222]** an employee was proceeded with for wrong declaration of date of birth and convicted. While the appeal was pending, on the application submitted by the employee, he was retired reckoning the correct date of birth. When the conviction was overturned the employee challenged the retirement as illegal termination. The Hon'ble Supreme Court found that the retirement was on the admitted date of birth of the applicant, in the application for retirement and not based on the conviction. Herein also the petitioners admitted a particular date as their date of appointment and obtained retirement voluntarily. After

such severance from service, effected under a scheme, they seek additional reliefs, contrary to their own admission, which cannot be permitted.

The writ petition is found to be devoid of merit and the same would stand dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/ 20 / 10/2015

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P.A to Judge.