IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WA.No. 981 of 2013 () IN WP(C).24312/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 24312/2011 of HIGH COURT OF KERALA DATED 27-03-2013

APPELLANT(S)/PETITIONERS:
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1. M.K.KRISHNAN
DIVISIONAL MANAGER, (RETD.)
KERALA FOREST DEVELOPMENT CORPORATION LTD.
KANIMANGALAM, THRISSUR, RESIDING AT
MANAKKATTUKUNNUMMEL, PAROPPADY,
KOZHIKODE DISTRICT.

2. K. VASUDEVAN
SENIOR SUPERINTENDENT HIGHER GRADE (RETIRED)
KERALA FOREST DEVELOPMENT CORPORATION LTD.,
KOTTAYAM, RESIDING AT VAISAKH
FOREST COMPLEX ROAD, S.H. MOUNT P.O,
KOTTAYAM -6.

BY ADV. SRI.DEEPU THANKAN

RESPONDENT(S):/RESPONDENTS
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1. KERALA FOREST DEVELOPMENT CORPORATION LTD.,
AARANIAKOM, KARAPUZHA, KOTTAYAM - 686 003,
REPRESENTED BY ITS MANAGING DIRETOR.

2. THE MANAGING DIRECTOR,
KERALA FOREST DEVELOPMENT CORPORATION LTD.,
AARANGAKONAM, KARAPUZHA, KOTTAYAM - 686 003.

3. P.M. MUHAMMED BASHEER
DIVISIONAL MANAGER (RETD)
KERALA FOREST DEVELOPMENT CORPORATION LTD.
KARAPUZHA, KOTTAYAM,
RESIDING AT SHIRINE COTTAGE, MATHUMOOLA,
VAZHAPPALLY WEST.P.O, CHANGANASSERY-686 103.

R1& R2 BY ADV. SRI.V.G.ARUN
R1 & R2 BY ADV. SRI.T.R.HARIKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02-11-2015, ALONG WITH WA. 1139/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jg-9/11

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

....

W.A.Nos.981 and 1139 of 2013

....

Dated this the 2nd day of November, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. These writ appeals arise from the judgment dated 27.03.2013 in WP(C) No.24312 of 2011. The matter relates to the service in a Government Company by name Kerala Forest Development Corporation Ltd., hereinafter referred to as 'the Company' for short. The said Company has instituted WA No.1139 of 2013. The writ petitioners, whom we hereinafter refer to as the 'petitioners', have instituted WA No.981 of 2013.

2. Heard the learned counsel for the petitioners and the learned counsel for the Company.

3. WP(C) No.28219 of 2005 was filed by the Kerala Forest Development Corporation Managers' Forum and two others. The

issue agitated through WP(C) No.28219 of 2005 and connections was as to whether the employees of the Company were eligible to have their retirement age enlarged to be at 58 years, rather than 55 years. The learned single Judge deciding that writ petition and connections held that the issue raised was covered in favour of the employees by the ratio of precedent in Kavirajan v. K.C.B.C. Ltd. [2007(2) KLT 917], which related to yet another Government Company. It was also noticed that the decision in Manoharan C v. Kerala State Warehousing Corporation [ILR 2007(3) Kerala 43] would apply. But, the fact of the matter remains that the decision in Manoharan (supra) was reversed partly by the Division Bench through the judgment reported as State of Kerala v. Mohanabalan [2010(4) KLT 95] holding that the question of revision of the upper age limit for service in Warehousing Corporation was with the Government. Here and now, we may notice the distinction that the Kerala State Warehousing Corporation is governed by the provisions of the statute under which it is constituted, whereas the Company before us and also the KCBC Ltd., which was involved in Kavirajan (supra), were Government Companies. Through the judgment dated 18.07.2007, the learned single Judge decided WP(C) No.28219 of 2005 and connections directing as follows:

> " xxx xxx xxx xxx
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> In the result, the writ petition is allowed. Exts.P4 and P6 are quashed. Following the decision of the Division Bench cited above, it is declared that the employees of the 1st respondent Corporation are entitled to continue in service till the last date of the month in which they attain the age of 58 years. The petitioners continuing on the strength of interim orders will be allowed to continue till they reach the age of 58 years. Any of the petitioners who retired after the filing of the writ petition, either for want of interim order or vacation of interim order, shall be re-inducted and allowed to continue till they attain the age of 58 years. It is also clarified that the benefit of this declaration will apply to all employees who are in service as on this date. But, the limited retrospectivity given to the declaration will apply only

> to the writ petitioners in this and the connected writ petitions, who have approached this Court while they were in service. In the case of persons who may be reinstated pursuant to this judgment, they are not entitled to get salary for the period they were out of service and have not actually worked. The persons who are working on the strength of interim orders, but without salary, shall be paid salary for the said period also."

4. Writ appeals were carried by the Company as well as the State to the Division Bench against the aforesaid judgment in WP(C) No.28219 of 2005. Those writ appeals were initially dismissed, but were again re-opened on applications for review. We may here note that during the pendency of those writ appeals, there was an interlocutory order by the Division Bench to the effect that any employee, who has not been re-inducted, need not be inducted in terms of the judgment impugned in those writ appeals. Pending those writ appeals, the Government issued a Government Order dated 01.03.2011 as per which it decided to enhance the retirement age of the employees of the Corporation

(Company) from 55 years to 58 years. Thereafter, when the writ appeals came up for consideration, the Bench noted the said Government Order and issued an order to the following effect:

> " xxx xxx xxx xxx
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> 2. Today, during the course of hearing, it is brought to the notice of this Court, that the Government has considered the matter and an order has been passed vide G.O.(MS) No.15/2011/Forest dated 01.03.2011; whereby the representation submitted before the Government by the Management Forum and Staff Union of the Kerala Forest Development Corporation has been considered and a decision has been taken; whereby the retirement age of the employees concerned has been enhanced from 55 to 58 years. A copy of the said order has been placed for consideration of this Court.
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> In the said circumstances, nothing survives for consideration in these appeals. The position as above is recorded and the writ appeals are dismissed accordingly."

5. In this round, that is to say, in the writ petition from which these writ appeals arise, the petitioners contended that the effect of the judgment of the Division Bench in W.A.No.2454 of 2007 and connections is, essentially, one affirming the decisions and the directions contained in the judgment in WP(C) No.28219 of 2005 and connections and, therefore, even if the petitioners were not re-inducted to duty, they were entitled to the benefit of the differential component of eligible pay and other payables for the period from the respective retirement dates of each of them till the dates on which each of them would have retired had they been permitted to continue in service till 58 years of age. It was argued that the interlocutory orders which precluded their re-admission to duty were not there, when they had actually offered to work for the Company, and that the doctrine of merger applies and the directions issued by the learned single Judge had merged with the dismissal of the writ appeals, and therefore, they are entitled to such monetary benefit. The learned single Judge held that the situation in hand is not one that could be attributed

entirely to any particular deprivation of legitimate payments by the Company or any direct act of the stand taken by the Company in relation to the petitioners as such. It is held that the effect of the interlocutory order and the ultimate manner of disposal of the writ appeals tend to indicate that there is no such deprivation which could be visited by an order to pay the petitioners the entire emoluments which they would have drawn had they continued till 58 years of age. The learned single Judge took into consideration the principles settled in relation to 'no work no pay' and came to the conclusion that the result ought to be that 25% of such wages or payments could be directed to be given.

6. Impeaching the findings of the learned single Judge, the learned counsel for the petitioners argued that the principle 'no work no pay' has absolutely no application in a case where the employees have been kept out on the basis of interlocutory orders which, ultimately, stood vacated, as a consequence of the dismissal of the writ appeals, thereby leading to the merger of the directions

contained in the judgment of the learned single Judge in the earlier round in the writ appeal judgment. He also argued that the writ appeals in the earlier round, namely, W.A.No.2454 of 2007 and connections, were actually referred to the Full Bench and thereafter sent down to the Division Bench, and it was in the meanwhile that the Government Order dated 01.03.2011 had come into force and no responsibility can be fastened on the petitioners leading to deprivation of their legitimate rights in terms of the judgment in WP(C) No.28219 of 2005 and connections. He also points out that a contempt of court case was filed on the strength of the judgment in WP(C) No.28219 of 2005 and connections and that the learned single Judge had referred that matter to the Division Bench holding that there is a prima facie case made out. The Division Bench had, however, closed that matter in view of the pendency of the question before the Full Bench at that point of time. On the whole, it is pointed out that the learned single Judge was not justified in confining the amounts to be paid to the petitioners to be at 25% of the emoluments which they would have drawn had they continued till 58 years of age in the service of the Company.

7. Per contra, the learned counsel for the Company argued that there is no factual foundation whatsoever to apply any proportionate restitutionary yardstick to confer on the petitioners' eligibility to any amount at all. It is argued that the writ appeals were dismissed noticing that no question of continuity would survive for consideration, in view of the Government Order dated 01.03.2011 and that it was not a case where the Company or the State had “not pressed” those appeals or had withdrawn those appeals. He further pointed out that there is nothing on record to show that the learned single Judge had before him any legally admissible material to hold that there was any loss occasioned to the petitioners by reason of their non-employment; particularly, in view of the interlocutory orders which were issued and are continued to be live in W.A.No.2454 of 2007 and connections until those appeals were, ultimately, dismissed.

8. The fact of the matter remains that the Government Order was issued on 01.03.2011 to the effect that the employees of the Company could have their retirement age enhanced to 58 years. Unlike a statutory corporation, the institution before us is a Company. It is a Government Company, where the Government has more than 51% of shares or more. Therefore, the decision making process in relation to the Company in question has necessarily to be guided by governmental policies in that regard. Under such circumstances, we are also inclined to think that the decisions in Kavirajan (supra) and Manoharan (supra) do not by themselves have any impact on all the issues arising for decision, particularly even when W.A.No.2454 of 2007 and connections were taken up by the Division Bench on 15.03.2011. The parties stood essentially going by the Government Order dated 01.03.2011. Therefore, for all intents and purposes, what the Division Bench appears to have done through the judgment in W.A.No.2454 of 2007 and connections is as to consider the effect

of the said Government Order, and noticed that the representations submitted before the Government by the Managers' Forum and the Staff Union of the Company were considered, and a decision was taken by the Government whereby the retirement age of the employees concerned was enhanced from 55 years to 58 years. After having perused a copy of that Government Order, the Division Bench held that in those circumstances, nothing survives for consideration in those appeals. The position as such was recorded and the writ appeals were dismissed, accordingly. Therefore, we are of the considered view that it was not a case where the Government and the Company had filed appeals and obtained interlocutory orders and had, ultimately, either not pressed or withdrew the appeals. It was a fait accompli at the hands of the judicial process and the Government Order dated 01.03.2011 was effectuated. That Government Order does not state that it operates prospectively. Therefore, the benefit of that Government Order would come to apply only to those employees of the Company who were in service as on 01.03.2011. The undisputed fact is that the petitioners would have retired long ago, even if they had continued in service up to 58 years of age. Therefore, the Company cannot be faulted with for continued non-employment of the petitioners.

9. In the aforesaid factual matrix, what appeals to us as applicable to the case in hand is the settled principle of law that the doctrine of 'no work no pay' has its own facets and requires to be considered and applied on the basis of the totality of the facts and circumstances of every case. Profitably, we refer to the decision in <u>Commissioner, Karnataka Housing Board</u> v. <u>C.Muddaiah</u> [(2007) 7 SCC 689], wherein Their Lordships state as follows:

> “ xxx xxx xxx xxx
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> 34. We are conscious and mindful that even in absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, however, a court

of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected."

10.Looking at the totality of the facts and circumstances of the case in hand and the views and findings expressed by the learned single Judge, we think that a pragmatic approach has been adopted through the impugned judgment. We say so because the learned single Judge had fundamentally found that the petitioners cannot stand to criticize the Company of having deprived them of the real benefits that would have followed as a result of them being kept out of service. We scanned the pleadings in the writ petition. We do not see any pleading by the petitioners that during the period after each of them attained the age of 55 years, they were not gainfully employed. That may be a relevant consideration for passing any restitutionary order pegging at any particular amount to be granted in such jurisdiction. The learned single Judge has yet thought it fit that 25% of whole of the amount that the petitioners would have got had they continued till 58 years of age, would be just and reasonable. We immediately caution ourselves that the said decision has been rendered by the learned single Judge in exercise of discretionary jurisdiction under Article 226 of the Constitution of India and has, therefore, to be taken as one rendered balancing the necessary and relevant legal and equitable considerations; unless of course, we are to find that it is not founded on legally justifiable premise. The learned Judge has spelled out different yardsticks during the course of the judgment to reach at the conclusion that has been rendered through the impugned judgment. It is not illegal, irregular, irrational or arbitrary.

11.For the aforesaid reasons, we do not find any ground to interfere with the impugned judgment through these appeals. These appeals, therefore, fail.

In the result, these writ appeals are dismissed. No costs.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

jg-3/11