

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WA.No. 962 of 2015 IN WP(C).10109/2015

AGAINST THE ORDER IN WP(C) 10109/2015 DATED 01/04/2015

.....

APPELLANTS/RESPONDENTS :

1. KERALA KERAKARSHAKA SAHAKARNA FEDERATION LTD
(KERAFED), REPRESENTED BY THE MANAGING DIRECTOR
KERAFED, THIRUVANANTHAPURAM-695 001
2. THE MANAGING DIRECTOR,
KERAFED, THIRUVANANTHAPURAM 695 001
3. THE ADMINISTRATIVE OFFICER,
KERAFED, THIRUVANANTHAPURAM-695 001
4. THE REGIONAL MANAGER,
KERAFED, VYTTILA, KOCHI-682 019

BY ADV. SRI.GEORGE POONTHOTTAM, SC, KERAFED

RESPONDENT/PETITIONER :

P.N.SARASAN
DRIVER HIGHER GRADE, KERAFED REGIONAL OFFICE
AISWARYA BUILDING, VYTTILA, ERNAKULAM-682 019

BY SRI.KALEESWARAM RAJ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No. 962 of 2015

Dated this the 22nd May, 2015

JUDGMENT

Ashok Bhushan, CJ.

Heard learned counsel for the appellants as well as learned counsel appearing for the respondent.

2. This Writ Appeal has been filed against the interim order dated 1.4.2015 passed in W.P(C).No.10109 of 2015 filed by the respondent. The respondent herein is hereinafter referred to as the writ petitioner. He attained the age of superannuation on 31.3.2015. The administrative committee of the appellants sent a proposal recommending enhancement of the age of superannuation. The said decision was taken on 20.3.2015. The writ petitioner filed the Writ Petition on 26.3.2015 praying the following reliefs:

- “i) To issue a writ of certiorari quashing Exhibit P4 as unjust, illegal, arbitrary and unsustainable.*
- ii) To declare that the petitioner is entitled to continue in service till he attains the age of 60 years.*
- lii) To issue a writ of mandamus directing the respondents to permit the petitioner to continue in service even after 31.3.2015, till the petitioner attains 60 years of age.*
- iv) To issue a writ of mandamus directing the respondents 1 and 2 to reconsider Exhibit P2 afresh untrammelled by the stand taken in Exhibit P4.”*

3. The learned Single Judge earlier passed an interim order dated 27.3.2015, which was modified by issuing the following directions by order dated 1.4.2015:

“i. The petitioner shall retire without prejudice to his claim for the enhanced age of retirement. If ultimately, this court finds that the petitioner is entitled to continue beyond the age of 58 years, the petitioner will be entitled for the entire monetary benefits.

ii. Till a decision is taken in this matter, substantive vacancy shall not be filled up by making a permanent appointment. It is open for the respondent to engage any temporary employees in the post of the petitioner and if the Management resorts to such course of action, necessarily, the first preference shall be given to the petitioner, as a temporary arrangement."

4. As far as the first direction is concerned, no challenge can be made to the said direction. The appellants are aggrieved by the second direction, where the appellants have been prohibited by filling up the vacancy substantively by making a permanent appointment. The appellants' case is that no such embargo can be put on the right of the employer to fill up the post. It is submitted that it is for the employer to carry on the affairs of the Federation for which it has full authority or jurisdiction and on a mere expectation of enhancement of age of superannuation, no direction could have been given.

5. Learned counsel appearing for the writ petitioner has supported the direction and submitted that this Court may not interfere with the order passed by the learned Single Judge exercising his discretion. Reliance has been placed by him on a Division Bench judgment reported in **Secretary, Home Department v. Abdu Azeez** (1995 KHC 129). Paragraph 2 of the said judgment is relevant, which reads as follows:

“2. O.P.172447 1994 was filed by the petitioner challenging the order of detention before it was executed. Along with the petition, he moved C.M.P.30454/1994 praying for stay of operation of Exhibit P6 (detention order passed under the COFEPOSA Act) and Exhibit P10 (the order passed by the Government rejecting the representation made by the wife of the petitioner to withdraw the order of detention) pending disposal of the Original Petition. On 27.1.1995, a learned Single Judge passed an order of interim stay as prayed for, for a period of one month. When the said petition came up before the learned Judge on 24.2.1995, the learned Judge extended the order of stay for a further period of three months. That order has been taken up in appeal by the State as W.A.323/1995.

When the appeal came up for admission, learned counsel representing the respondent raised a contention that appeal is not maintainable as per the decision of this Court in K.S.Das v. State of Kerala, 1992(2) KLT 358. Jagannadha Rao, C.J., speaking on behalf of the majority of Judges, formulated the conclusions in Para.46 of that judgment. It inter alia stated that an appeal would lie against an order only if substantially affects or touches upon the substantial rights or liabilities of the parties or area matters of moments and caused substantial prejudice to the parties. His Lordship went on to state that normally a discretionary order is not to be interfered with unless it was passed without jurisdiction, contrary to law or are perverse and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante or grant adequate compensation. In the instant case the order that was sought to be stayed was an order passed under the COFEPOSA Act to detain the petitioner. The execution of that order was the one sought to be stayed by the learned Single Judge. Without looking into the law on the point, it appeared that the learned single Judge stayed its operation as a matter of course. When it was found that the order happened to be passed in clear mistake of the

provisions of law, we were of the view that the appeal has certainly to be entertained. Accordingly, we admitted the appeal and stayed the operation of the order passed by the learned Single Judge in C.M.P.30454/1994. That appeal came up for final hearing on 20.3.1995. On hearing counsel appearing on either side, we felt that for a proper decision, the Original Petition has to be called to this Court to be disposed of along with the Writ appeal. Accordingly, we passed the following order:

“This is an appeal against an order passed in C.M.P.30454/94. On the facts and circumstances of this case, we feel that for a proper decision, the O.P itself has to be called to this Court. Accordingly O.P.17244/94 is called to this Court to be heard along with the W.A. Post O.P.17244/94 and this W.A on 23.3.1995.”

6. We have considered the submissions of learned counsel for the parties and perused the records.

7. From the facts it is clear that the writ petitioner has already attained the age of superannuation and has retired. In the Writ Petition there was no prayer that no permanent appointment be made on the post, which was going to be vacated by the writ petitioner. Merely because the appellant Federation has recommended for

enhancement of age of retirement, there cannot be any decision estopping the appellants from making arrangements as it likes on the post falling vacant during the period the proposal is pending consideration. There is no dispute that the matter is pending before the State Government, which shall take decision regarding the enhancement of superannuation. The second direction issued by the learned Single Judge causes serious prejudice to the appellants and this Court in appellate jurisdiction can interfere with such embargo put on the right of the employer.

We, thus, find force in the submission of learned counsel for the appellants. The Writ Appeal is partly allowed and the direction No.(ii) is set aside.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs22/5/15