

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WA.No. 2036 of 2015 () IN WP(C).14223/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 14223/2015 of HIGH COURT OF KERALA
DATED 29-07-2015

APPELLANT(S)/2ND RESPONDENT IN WPC:

THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR K.S.R.T.C FORT
THIRUVANANTHAPURAM - 695 023.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

RESPONDENT(S)/PETITIONERS IN WPC:

1. C.K.SUBRAMANIAN
DRIVER, KSRTC, PERUMBAVOOR DEPOT
ERNAKULAM - 683 542.

2. G.KRISHNAN NAIR
DRIVER, KSRTC, PERUMBAVOOR DEPOT
PERUMBAVOOR, ERNAKULAM - 683542.

3. V.MOHANDAS
DRIVER, KSRTC, PERUMBAVOOR DEPOT
PERUMBAVOOR, ERNAKULAM - 683 542.

4. P.C.JOSEPH
DRIVER, KSRTC, NORTH PARVOOR DEPOT
NORTH PARVOOR, ERNAKULAM - 683 513.

5. A.ANZARI
DISTRICT TRANSPORT OFFICER, KSRTC
KARUNAGAPPALLY DEPOT, KARUNAGAPPALLY
KOLLAM - 690 518.

6. R.VIMALAKSHAN
INSPECTOR, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM - 690 518.

7. K.PRASAD
DRIVER, KSRTC, KOLLAM DEPOT
KOLLAM 690 518.

8. A.NAZEEMA
PERSONAL OFFICER, KSRTC, KOLLAM DEPOT
KOLLAM - 690 518.
9. A.SRAJUDEEN
CONDUCTOR, KSRTC, KOLLAM DEPOT
KOLLAM - 690518.
10. K.SAINUDEEN
ASSISTANT TRNASPORT OFFICER, ARYANAD DEPOT, ARYANAD
THIRUVANANTHAPURAM - 695 542.
11. A.BASHEER
DISTRICT TRANSPORT OFFICER, KSRTC
CHADAYAMANGALAM DEPOT, CHADAYAMANGALAM
KOLLAM - 691 534.
12. S.VENU
ASSISTANT TRANSPORT OFFICER, KSRTC, PUNALLOOR DEPOT
KOLLAM - 691 305.
13. S.SURESHKUMAR
INSPECTR, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM - 690 518.
14. K.R.SASIKUMAR
ASSISTNAT TRANSPORT OFFICER, KSRTC, THIRUVALLA DEPOT
TIRUVALLA, PATHANAMTHITTA - 689 101.
15. GLADSON FERNANDEZ
ASSISTNAT TRNASPORT OFFICER, KSRTC, KANIYAPURAM DEPOT
KANIYAPURAM, THIRUVANANTHAPURAM - 695 301.
16. PONNACHAN MATHEW
ASSISTANT TRANSPORT OFFICER, KSRTC
CHANGANASSERY DEPOT, CHANGANASSERY
KOTTAYAM - 686 101.
17. K.CHANDRAPRAKASH
ASSISTANT TRANSPORT OFFICER, KSRTC, CHENGANNUR DEPOT
CHENGANNUR, ALAPPUZHA - 689 121.
18. D.RAJAN
CONDUCTOR, KSRTC, VIZHINJAM DEPOT
VIZHINJAM, THIRUVANANTHAPURAM - 695 521.
19. A.ABDUL KHARIM
CONDUCTOR, KSRTC, NEYYATINKARA DEPOT
NEYYATTINKARA, THIRUVANANTHAPURAM - 695 121.
20. M.SATHEESH KUMAR
CONDUCTOR, KSRTC, PAPPANAMCODE DEPOT
PAPPANAMCODE, THIRUVANANTHAPURAM - 695 018.

21. D.K.AJITH SANTHOSHKUMAR
INSPECTOR, KSRTC, POOVAR DEPOT
POOVAR, THIRUVANANTHAPURAM - 695 525.

22. N.SUDHAKARAN
INSPECTR, KSRTC, NEYYATTINKARA DEPOT
NEYYATTINAKRA, THIRUVANANTHAPURAM - 695 121.

23. K.YESODHARAN
DRIVER, KSRTC, VELLARADA DEPOT
VELLARADA, THIRUVANANTHAPURAM - 695 505.

24. A.YESUDASAN
CONDUCTOR, KSRTC, KOTTARAKARA DEPOT
KOTTARAKKARA, KOLLAM - 691 533.

25. K.BABU
INSPECTOR KSRTC, PEROORKADA DEPOT, PEROORKADA
THIRUVANANTHAPURAM - 695 005.

26. CHANDRA BABU C
CONDUCTOR, KSRTC, PEROORKADA DEPOT
PEROORKADA, THIRUVANANTHAPURAM - 695 005.

27. S.THAJUNIZAR
DRIVER, KSRTC, VENJARAMOODU DEPOT
VENJARAMOODU, THIRUVANANTHAPURAM - 695 607.

28. M.GOPINATHAN NAIR
DRIVER, KSRTC, VENJARAMOODU DEPOT
VENJARAMAODU, THIRUVANANTHAPURAM - 695 607.

29. M.B.SREEKUMAR
STORES OFFICER, STATIONARY STORES CHIEF OFFICE
THIRUVANANTHAPURAM - 695 023.

30. G.JUSTINE
VEHICLE SUPERVISOR, KSRTC, KATTAAKADA DEPOT
KATTAKADA, THIRUVANANTHAPURAM - 695 072.

31. S.ABDUL SALAM
ASSISTANT TRANSPORT OFFICER, KSRTC, VENJARAMOODU DEPOT
VENJARAMOODU, THIRUVANANTHAPURAM - 695 607.

32. V.S.AMBILI
INSPECTOR, KSRTC, VENJARAMOODU DEPORT
VENJARAMOODU, THIRUVANANTHAPURAM - 695 607.

33. S.RAJENDRANNAIR
DRIVER, KSRTC, VENJARAMOODU DEPOT
VENJARAMOODU, THIRUVANANTHAPURAM - 695 607.

34. M.SALIM
CONDUCTOR (SPECIAL GRADE), KSRTC, KATTAKADA DEPOT
THIRUVANANTHAPURAM - 695 072.

35. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TRANSPORT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1-R34 BY ADV. SRI.K.P.RAJEEVAN
R35 BY GOVERNMENT PLEADER SRI.VIJU THOMAS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-11-2015,
ALONG WITH WA. 2065/2015, WA. 2125/2015, WA. 2264/2015, WA. 2302/2015,
WA. 2303/2015, WA. 2380/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

**W.A.Nos.2036, 2065, 2125, 2264
2302, 2303 & 2380 of 2015**

Dated this the 23rd November, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

These writ appeals by the Kerala State Road Transport Corporation (KSRTC) are against the common judgment dated 29.7.2015 in W.P(C).No.14843 of 2015 and connected cases.

2. Heard learned counsel for the KSRTC and the learned counsel appearing for the respondents.

3. The Board of Directors of KSRTC resolved to refix the age of retirement of its employees and officers at 58 years. That decision taken in the meeting of the Board of Directors held on 23.2.2015 was forwarded to the Government. The law laid by the Honourable Supreme Court of India through a five judge Bench in ***Mysore State Transport Corporation v. Gopinath Gundachar Char*** (AIR 1968 SC 464) is that

the conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) of the Road Transport Corporations Act, 1950 is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under Section 45(2)(c).

4. Going by the materials perused by the learned single Judge as part of the files of the Government, it was noticed that the decision of the KSRTC to enhance the retirement age of its officers and staff; which indisputably involves financial obligations; did not go up to the Finance Department in the Government; but it was concluded at the hands of the Secretary to Government in the Ministry of Transport recording in the files that as per the pension conditions including retirement age governed by the Kerala Service Rules, as agreed to by the management and the unions, the proposal of KSRTC to enhance the age of superannuation of its employees need not be considered. That was communicated to KSRTC on behalf of the Secretary to

Government in the Transport Department by the Deputy Secretary. The fact of the matter remains that the opinion of the Finance Department was not obtained and the decision making process which could have concluded under the provisions of Section 34 of the Road Transport Corporations Act, 1950 never went up for consideration in the hierarchy of the Government and it did not reach the Cabinet and there was no Government decision expressed as required in terms of Section 34 of the Road Transport Corporations Act. Obviously therefore, the learned single Judge was justified in holding that the matter requires to be reconsidered by the Government following the applicable Rules of business of the Government.

5. Be that as it may, the heartburns of the KSRTC through these appeals appear to be that the observations and references made to certain facts in paragraphs 7 and 8 of the impugned judgment tend to indicate that this Court had issued certain guidelines, in relation to factual issues, to

guide the Government to reach at a decision. We may at once note the strong opposition taken by the learned counsel for the respondents to these appeals by the KSRTC. He says that the KSRTC decided that the age of superannuation of its employees and officers should be enhanced and it has now virtually turned round to challenge the decision of the learned single Judge.

6. On a deeper consideration of the aforesaid issue, we are of the view that what the KSRTC now projects is essentially the need to have a *de novo* consideration by the Government without any guiding drills being suggested through the judicial order. We say so, because, as rightly pointed out by the learned counsel for the KSRTC, there appears to be a suggestion, atleast in a remote sense, in paragraph 8 of the impugned judgment that the question of retro activities of any revision of superannuation of age would be worthwhile considering in the backdrop of the facts situation relating to different States as reflected in paragraph 7 of the impugned judgment. The views expressed through

judicial orders, atleast quite often, are taken as good advices by the Executive; not necessarily always.

Having regard to the peculiar facts and circumstances of the cases in hand, we are of the view that the learned single Judge having rightly concluded that the matter requires consideration afresh by the Government, the expressions in paragraphs 7 and 8 of the impugned judgment have to be considered as indicative of certain facts situations, without amounting to any specific recommendation through the judicial order. We clarify the impugned judgment to that effect.

The writ appeals are ordered as above.

THOTTATHIL B.RADHAKRISHNAN
JUDGE

ANU SIVARAMAN
JUDGE