

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C). No. 5811 of 2012 (B)

PETITIONER(S):

- 1. B. JAYARAJ, AGED 57 YEARS,
HEAD CLERK, KERALA COIR WORKER'S WELFARE FUND BOARD,
HEAD OFFICE, ALAPPUZHA.**
- 2. SHAJI K.S., AUDITOR,
KERALA COIR WORKER'S WELFARE FUND BOARD, HEAD OFFICE,
ALAPPUZHA.**
- 3. SATHIAMMA N., UPPER DIVISION CLERK,
KERALA COIR WORKER'S WELFARE FUND BOARD, HEAD OFFICE,
ALAPPUZHA.**

**BY ADVS.SRI.S.M.PRASANTH
SMT.SMITHA GEORGE**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
INDUSTRIES (E) DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695001.**
- 2. THE KERALA COIR WORKERS WELFARE FUND BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE,
OFFICE OF THE KERALA COIR WORKERS WELFARE FUND BOARD,
ALAPPUZHA-688001.**

**R2 BY ADVS. SRI.ELVIN PETER P.J,SC,COIR WORKERS WFB
SMT.RASHMI. K.V., SC,
BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

P1:- COPY OF THE JUDGMENT DATED 15.3.2007 IN W.P(C) NO.36894 OF 2003.

P2:- COPY OF THE G.O(MS) NO.56/10/ID. DATED 15.3.2010 ISSUED BY THE GOVERNMENT OF KERALA.

P3:- COPY OF THE G.O(MS) NO.84/2010/TSM DATED 16.3.2010 ISSUED BY R1.

P4:- COPY OF G.O(MS) NO.33/2011/LD DATED 22.2.2011 ISSUED BY THE GOVERNMENT OF KERALA.

P5:- COPY OF THE G.O(MS) NO.01/2011/CSIN DATED 26.2.2011 ISSUED BY THE GOVERNMENT OF KERALA.

P6:- COPY OF THE G.O(MS) NO.65/11/AD DATED 26.2.2011 ISSUED BY THE GOVERNMENT OF KERALA.

P7:- COPY OF G.O(MS) NO.297/2011/H. DEPARTMENT ISSUED BY THE GOVERNMENT OF KERALA.

P8:- COPY OF REPRESENTATION DATED NIL SUBMITTED BY THE PETITIONERS.

P9:- COPY OF LETTER NO.CWB/EL/211/2011 DATED 2.2012 SENT BY R2 TO R1.

P10:- COPY OF THE RESOLUTION DATED 1.10.2012 PASSED BY THE KERALA COIR WORKERS WELFARE FUND BOARD.

RESPONDENTS' EXHIBITS :- NIL

KRJ

/True Copy/

P.Ato Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.5811 of 2012

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Dated this the 23rd day of March, 2015

JUDGMENT

This writ petition is filed praying for a direction to the respondents to extend the retirement age of the petitioners from 55 to 58 years.

2. The petitioners are working as employees of the Kerala Coir Workers' Welfare Fund Board, which is a statutory authority functioning under the Government of Kerala. According to the present rule, the employees reach the date of superannuation on attaining the age of 55 years. According to the petitioners, they have to retire on 31.3.2012.

3. However, in respect of the employees of various statutory corporations, the Government have passed orders relating to the employees falling under the Employees' Provident Scheme that the age shall be raised from 55 to 58. This was done pursuant to Ext.P1

judgment of this Court and the fact that the benefit of EPF and the scheme framed thereunder put the employees similar to the employees of the unorganized sector and, therefore, they are entitled to continue in service till the age of 58 instead of 55.

4. The petitioner alleges that the aforesaid orders squarely apply to the case of the employees of the Kerala Coir Workers' Welfare fund Board also. It is alleged that the petitioners are entitled to continue in service whether or not Government passes orders in that regard till they attain the age of 58. The petitioners are not liable to be compelled to superannuate on 31.3.2012 when they reach only the age of 55. Though they filed representation, the Government have not passed any orders till now.

5. The petitioners allege that on the basis of the respondent, the second respondent board has forwarded the same to the Government and the Government have opened a file. The grievance of the petitioners is that though the Government have extended the benefits

to some other employees like the petitioners, they alone are discriminated. It is with this background, the petitioners have come up before this Court.

6. When the matter came up for hearing, the learned counsel for the petitioners invited my attention to judgment dated 29.05.2013 in W.P(C) No.13056 of 2013 wherein this Court had inclined to accept the submission of the learned Government Pleader that primarily, it is a matter of policy decision of the Government as to what should be the retirement age of its employees or, the employees of the public sector undertaking under it. The Government must be given the liberty to decide on that question at the first instance. May be the Court has the power of judicial review over the decision that may be taken by the Government. Therefore, the issue has to be left open to the decision of the Government at the first instance.

7. So far as the petitioners' case is concerned, if the retirement age is 56 years as it now is, they had to retire on 31.3.2013. As

aforesaid, by Ext.P10, the second respondent has taken a decision on its 138th Board Meeting dated 1.10.2012 to recommend the Government to increase the retirement age of the employees under the board to 58 years from 31.5.2012 with retrospective effect. The petitioners state that in view of Ext.P10, they are entitled get the relief sought for in the writ petition.

8. In **Kavirajan v. K.S.B.C Ltd.**, [2007 (2) KLT 917] this Court had issued interim orders allowing the employees concerned in that case to continue upto the aged of 58 years. The Division Bench disposed of the matter holding that the employees of the Kerala State Beverages Corporation are entitled to continue in the service till the age of 58 years as decided by the Director Board of that Corporation and that rejection of the request to that effect by the Government is in violation of Article 14 of the Constitution of India. The same principle was adopted in **Chandran T. V. and Ors. v. State of Kerala and Anr.** [2010 (3) KHC 377] concerning the employees of

the Kerala Artisans Development Corporation Limited.

9. Therefore, it is nly just and proper to permit the petitioners to continue as staff of the second respondent until they completes the age of 58 or, the Government takes any decision on Ext.P8 representation (if it is adverse to them) whichever is earlier. During the time, the petitioners continue in the service as per the order of this Court, they shall not be eligible, subject to the decision of the Government to draw any remuneration.

In the result, the writ petition is disposed of as under:-

- (a)The first respondent is directed to take appropriate decision on Ext.P8 representation as regards enhancement of retirement age of the staff of the second respondent from 56 to 58 years, as early as possible.
- (b)The petitioners are permitted to continue in the service of the second respondent until they complete the age of 58 years or, till the first respondent takes a decision (if it is adverse to them), whichever is earlier with a rider that during

the said period and subject to the decision of the Government in that regard, they shall not be entitled to receive any remuneration, for such continuance in service.

(c) It is made clear that it is open to the petitioners to challenge the decision of the first respondent in case it does against them.

(d) Petitioners shall produce a copy of the writ petition and this judgment before the first respondent as early as possible.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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