

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 8481 of 2011 (I)

PETITIONER(S):

1. **E.K.ABDUL AZEEZ**
(TURNER & MACHINES), EXECUTIVE ENGINEER
(MECHANICAL) DEPARTMENT, M.S.OFFICE, COCHIN PORT
TRUST, COCHIN-9, RESIDING AT ERAMANGALATH HOUSE
KUSUMAGIRI P.O., KAKKANAD, KOCHI-682030.
2. **K.K.VARGHESE, RETD. SHED FOREMAN,**
COCHIN PORT TRUST, COCHIN-9
RESIDING AT KURUPPASSERY HOUSE, PANORAMA, RESIDENCY
KUMARANASAN ROAD, ERNAKULAM.
3. **K.RAGHUNATHAN, RETD. TURNER &**
MACHINIST, HIGHLY SKILLED, E.E.MECH.
M.S.OFFICE, COCHIN PORT TRUST, COCHIN-9
RESIDING AT KANAVALIL HOUSE, SOUTH CHITTUR
KOCHI-682027.
4. **T.G.JAMES, RETD. TURNER & MACHINIST,**
HIGHLY SKILLED, E.E.MECHANICAL, M.S.OFFICE
COCHIN PORT TRUST, COCHIN-9, RESIDING AT
THAYATHUPARAMBU, NETTOOR, MARADU.
5. **K.M.GOPINATHAN, RETD. TURNER &**
MACHINIST, HIGHLY SKILLED, E.E.MECHANICAL
COCHIN PORT TRUST, COCHIN-9, RESIDING AT
26/2443, "RAJI", THEVARA
ERNAKULAM.
6. **K.K.HARIHARAKUMAR, RETD. DRIVER,**
DOCK LABOUR DIVISION, FIRE SERVICE, COCHIN PORT TRUST
COCHIN-9, RESIDING AT, KATTUMPURATH HOUSE
THEVARA COLONY, COCHIN-13.
7. **K.D.BABUJI, RETD. SENIOR ACCOUNTANT,**
OFFICE OF THE MECHANICAL SUPERINTENDENT
CHIEF MECHANICAL ENGINEER'S DEPOT, COCHIN PORT TRUST
COCHIN-9, RESIDING AT, "PRATHEEKSHA"
SANTHI NAGAR, 6-A LINE, KAKKANAD P.O.

8. V.M.DAULPHUS, RETD. ASSISTANT WHARF
SUPERINTENDENT, DEPUTY TRAFFIC MANAGER'S TRAFFIC
DEPARTMENT, COCHIN PORT TRUST, COCHIN-9
RESIDING AT, VADAKKAN HOUSE, KATTITHARA ROAD
MARADU P.O., KOCHI-682304.
9. K.V.YOHANNAN, RETD. MOULDER,
HIGHLY SKILLED FIRST GRADE
E E MECHANICAL M.S. - C.M.E.'S DEPOT
COCHIN PORT TRUST, COCHIN-9, RESIDING AT
KEECHERRY CHAMAKKAD, AIMURY KARA, PERUMBAVOOR.
10. P.M.BEERAN, RETD. FOREMAN,
FITTER SECTION, OFFICE OF THE EXECUTIVE ENGINEER
(MECHANICAL WORKSHOP), COCHIN PORT TRUST, COCHIN-9
RESIDING AT, PUZHAKKARA HOUSE, CHANGAMPUZHA NAGAR P.O.
SOUTH KALAMASSERY, ERNAKULAM DISTRICT.
11. M.G.KRISHNANKUTTY, RETD. MOULDER
WORKSHOP, HIGHLY SKILLED (MECHANICAL WORKSHOP)
COCHIN PORT TRUST, COCHIN-9, RESIDING AT
MULAYATH HOUSE, POTTA P.O., VIA. CHALAKUDY
THRISSUR DISTRICT.
12. K.V.ROBERT, RETD. CHARGEMAN,
ASSISTANT MECHANICAL SUPERINTENDENT (MARINE)
DRY DOCK, C.M.E.'S DEPOT, COCHIN PORT TRUST
COCHIN-9, RESIDING AT, KALARICKAL HOUSE
NEAR ELLICHUVADU JUNCTION, MUNDAMVELI P.O.
13. PHILIP THOMAS, RETD. JUNIOR ENGINEER
(WORKSHOP), COCHIN PORT TRUST, COCHIN-9
RESIDING AT, PLOT NO.65, 1ST FLOOR
KUMARANASAN NAGAR, KADAVANTHRA, KOCHI-20.
14. C.P.RADHAKRISHNAN, RETD. WELDER,
HIGHLY SKILLED, DRY DOCK, M.S.DIVISION
COCHIN PORT TRUST, COCHIN-9, RESIDING AT
CHERAYIL HOUSE, PANANGAD P.O., KOCHI-682506.
15. I.KUNJU MOHAMMED, RETD. CHARGEMAN,
ELECTRICAL CRANE, C.M.E'S DEPARTMENT
COCHIN PORT TRUST, COCHIN-9, RESIDING AT
KULATHERIL HOUSE, THAIKKATTUKARA P.O.
CHOORNIKKARA P.O., ALUVA.
16. K.U.YACOOB, RETD. WELDER,
(DRY DOCK), COCHIN PORT TRUST, COCHIN-9
RESIDING AT, KADAVIL OMANA BHAVANAM, POOTHRIKKA P.O.
PUTHENCURUZ, ERNAKULAM DISTRICT.
17. M.RAMACHANDRAN ACHARY,
RETD. CHARGEMAN, FITTER (DRY DOCK), COCHIN PORT TRUST
COCHIN-9, RESIDING AT, 'KEERTHY'
39/174, MONASTRY ROAD, KARAKKAMURY
COCHIN-682011.

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**18. JOSEPH FELIX P.T., RETD. FITTER
(DRY DOCK), COCHIN PORT TRUST, COCHIN-9
RESIDING AT, 'PAVANATHARA HOUSE', NORTH PIPE LINE ROAD
HMT COLONY P.O., KALAMASSERY.**

**19. JOSEPH D'SOUZA, RETD. WELDER
(DRY DOCK), COCHIN PORT TRUST, COCHIN-9
RESIDING AT, VALYAKATHU HOUSE, PONNARIMANGALAM
MULAVUKADU P.O., ERNAKULAM DISTRICT.**

**BY ADVS.SRI.T.RAMPRASAD UNNI
SMT.SMITHA GEORGE**

RESPONDENT(S):

**1. THE COCHIN PORT TRUST
COCHIN-682009, REP. BY ITS SECRETARY.**

**2. UNION OF INDIA,
REP. BY ITS SECRETARY TO MINISTRY OF
SURFACE TRANSPORT, NEW DELHI-110001.**

R2 BY SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

R1 BY ADV. SRI.K.ANAND (SR.)

R1 BY ADV. SMT.LATHA KRISHNAN

R2 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT P1: COPY OF THE ORDER DATED 14.2.2001 ISSUED BY R1.

EXHIBIT P2: COPY OF THE CIRCULAR DATED 18.8.2003 ISSUED BY R1.

EXHIBIT P3: COPY OF THE REPRESENTATION DATED 4.1.2010 SUBMITTED BY THE 1ST PETITIONER BEFORE THE CHAIRMAN, COCHIN PORT TRUST.

EXHIBIT P4: COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER BEFORE THE CHAIRMAN, COCHIN PORT TRUST.

EXHIBIT P5: COPY OF THE REPRESENTATION DATED 4.10.2010 SUBMITTED BY THE 3RD PETITIONER BEFORE THE CHAIRMAN, COCHIN PORT TRUST.

EXHIBIT P6: COPY OF THE REPRESENTATION DATED 4.10.2010 SUBMITTED BY THE 4TH PETITIONER BEFORE THE CHAIRMAN, COCHIN PORT TRUST.

EXHIBIT P7: COPY OF THE REPRESENTATION DATED 6.10.2010 SUBMITTED BY THE 3RD PETITIONER BEFORE THE CHAIRMAN, COCHIN PORT TRUST.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

C.K.ABDUL REHIM, J

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Dated this the 28th day of January, 2015

JUDGMENT

Petitioners are employees retired from service of the 1st respondent, opting under Ext.P1 Voluntary Retirement Scheme, which was continued on the basis of Ext.P2 circular. They were paid pensionary benefits calculating their actual service in the 1st respondent. Some of the petitioners submitted representations as per Exts.P3 and P4 claiming that, for the purpose of calculation of pension the period upto their original date of superannuation, with a maximum of 5 years, should be added. But the 1st respondent replied that with respect to pensioners under the 'Voluntary Retirement Scheme' such additional services cannot be reckoned. According to the petitioners the stand taken by the 1st respondent in this regard is contrary to the dictum laid by the Hon'ble Supreme Court in Bank of India v K. Mohandas and Others [(2009) 5 SCC 313]. In the case of bank employees, the Supreme Court held that those who have completed 20 years of service and opted for Voluntary

Retirement Scheme are entitled to addition of 5 years of notional service in calculating the length of service for the purpose of pension. Contention of the petitioner is that in view of the above said decision the petitioners are also entitled to get reckoned with the additional period of service for the purpose of calculation of pension.

2. Standing counsel appearing for the 1st respondent Board contended that the decision rendered by the Hon'ble Supreme Court is on different facts and that such benefits cannot be made applicable in the case of scheme formulated by the 1st respondent. It is also pointed out that the representations were submitted by the petitioners only long after their retirement.

3. This court is of the considered opinion that a decision on the claim made by this petitioners has to be taken by the 1st respondent, considering all the circumstances. It will be highly premature for this court to allow such claim even before the 1st respondent takes a decision on the subject matter. Therefore a direction to the 1st respondent to consider the claim and to take an

appropriate decision would suffice to meet the ends of justice.

4. Hence the writ petition is hereby disposed of by directing the 1st respondent to consider the claim raised by the petitioners for reckoning the additional period of service under the Voluntary Retirement Scheme, for calculating pensionary benefits. A decision in this regard shall be taken considering all the contentions raised, after affording an opportunity of personal hearing to any of the representative of the petitioners.

5. A decision in this regard shall be taken at the earliest possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

C.K.ABDUL REHIM, JUDGE.

/TRUE COPY/

P.A. TO JUDGE

SKV