IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 10173 of 2013 (V)
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PETITIONERS :
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1. P.KUNHIRAMAN, PALARINJAL,
   P.O KEEZHPALI, KANNUR DISTRICT

2. E.G.SUKUMARAN,ELIPPALLI HOUSE,
   CHEDIKULAM, VEEPADI P.O., KANNUR DISTRICT

3. N.SASI, PANTHAPLAKKAL HOUSE,
   EDAKKUZHA, P.O., KEEZHPALI, KANNUR DISTRICT

4. V.SANTHA, VELEYERI HOUSE,
   P.O. KLEEZHPALI, KANNUR DISTRICT

5. P.VASANTHA, VANIDAN HOUSE,
   P.O. KEEZHPALI, KANNUR DISTRICT

BY ADVS.SRI.K.BALACHANDRAN (MANGALATH)
SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENTS :
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1. STATE OF KERALA
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   SCHEDULED CASTES/SCHEDULED TRIBES(D) DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM

2. ARALAM FARMING CORPORATION(KERALA) LIMITED
   REPRESENTED BY ITS MANAGING DIRECTOR, P.O. ARALAM FARM,
   VIA PERAVOOR, KANNUR 670 673

3. THE MANAGING DIRECTOR,
   ARALAM FARMING CORPORATION (KERALA) LIMITED)
   P.O., ARALAM FARM
   VIA PERAVOOR, KANNUR 670 673

R1 BY ADV. GOVERNMENT PLEADER
R2 & R3 BY ADVS. SRI.V.KRISHNA MENON
SMT.P.VIJAYAMMA
SMT.UMA GOPINATH
SMT.J.SURYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

**WP(C).No. 10173 of 2013 (V)**

## APPENDIX

**PETITIONER'S EXHIBITS :**

**P1: COPY OF THE GOVERNMENT ORDER DT 10/01/2011.**

**P2: COPY OF THE GOVERNMENT ORDER DT 24/07/2012.**

**P3: COPY OF THE OFFICE ORDER DT 30/3/2011 ISSUED BY THE MANAGING DIRECTOR**

**RESPONDENT'S EXHIBITS : NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**bp**

**K. VINOD CHANDRAN, J.**

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**W.P.(C) No.10173 of 2013 - V**

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**Dated this the 6th day of January, 2015**

**J U D G M E N T**

The petitioners are employees, who retired from the 2nd respondent Corporation under a Voluntary Retirement Scheme (VRS). The petitioners claim for enhanced benefits under the VRS, as also gratuity, in accordance with the pay revision order brought in, subsequently to the retirement of the petitioners. The pay revision having been made retrospective from 01.01.2010; the petitioners claim revision of the VRS benefits.

2. The pay revision orders are produced at Exts.P1 to P3 and admittedly, such revision made to the pay of the employees of the Corporation, was w.e.f 01.01.2010. The pay revision order Ext.P1 was dated 10.01.2011, by which time, the petitioners had retired from the service of the company. The petitioners claim that by Ext.P4, the Managing Director of the respondent Corporation had

entered into an agreement with the representative Unions granting the benefits of the pay revision to those employees, who retired from the respondent Corporation under VRS. The petitioners also contend that the respondent Corporation had sought for a clarification by Ext.P6, which has not been replied to till now.

3. The learned Counsel appearing for the respondent Corporation however would contend that, the pay revision as such is not applicable to the petitioners, since they had, with open eyes applied under a valid scheme of voluntary retirement and had retired from the Corporation, on being paid the severance benefits as indicated in the scheme and no enhancement could be made on a subsequent revision of pay. Even if the revision is retrospective, it applies only to serving employee, is the contention.

4. Ext.P5 is the scheme under which the petitioners had applied and retired. Ext.P5 indicates that the respondent Corporation was initially under the Central Government and the State Government had taken over the same, upon which the State Government had the liability to

consider the applications for voluntary retirement; as implemented in the Corporation by the Central Government. It was in consideration of implementation of the scheme, that Ext.P5 order was passed. Ext.P5 directed submission of applications for VRS/Voluntary Separation Scheme (VSS), within one month from the date of that order. All the petitioners had submitted the applications within the said period, which were considered and the petitioners were allowed to retire voluntarily respectively on 28.02.2010, 31.03.2010 and 31.07.2010. The petitioners were also paid the entire benefits as indicated in the scheme.

5. The claim now raised by the petitioners, is based on the revision of pay effected by Ext.P1, and also Ext.P4 Circular, issued by the Managing Director. Ext.P4 is in pursuance of a conciliation with the employees of the representative Unions of the Corporation. Ext.P4 was specifically with respect to the extension of the period, for applying under the VRS, which stood extended up to 31.01.2011. The said agreement between the representative Unions and the management applied only to those persons,

who applied for voluntary retirement in the extended period, and those who were in the service of the respondent Corporation when the decision was taken to further extend the VRS.

6. It is trite that, voluntary retirement is a device employed by the management when there is surplus of employees and out of financial exigency decides on voluntary severance of employment, granting certain benefits beyond that is normally due on the retirement. This benefits the Corporation insofar as absolving it from paying salary to the surplus employees. The employees who opt under the scheme also are benefited by payment of higher benefits in lump. Such schemes introduced provide for specific terms, under which voluntary retirement, would be effected and there is no compulsion as such, since only on an application voluntarily made, an employee would be retired from service. The petitioners had all applied under the scheme and had retired on various dates in the year 2010 and were paid the benefits under the VRS. The scheme as of then, did not reckon any subsequent revision

of pay nor did the terms make the persons applying under it, entitled to such revision.

7. The learned Counsel for the petitioner submits that a pay revision was in the anvil even as on the date of the their retirement. If that be so and the petitioners were interested in getting such revised emoluments, then ought not to have applied under the scheme. The petitioners having applied under the scheme cannot claim for any further revision of pay, especially since the terms under which the option was exercised did not entitle such a claim. The petitioners also cannot rely on Ext.P4 since that was a further device of extension effected to the scheme; reckoning the revision also, which the existing employees were, in any event, entitled to. When Ext.P4 decision was taken the revision already had been made effective.

8. In **HEC Voluntary Retd. Employees Welfare Society and another** v. **Heavy Engineering Corpn.Ltd. And others[(2006)3 S.C.C 708]** the Hon'ble Supreme Court held that voluntary severance of employment as per the terms of a scheme, is an agreement by which the

employee and the management contract out of the general terms and conditions of employment, by a separate contract. The terms of such severance are explicit under the scheme, which is sought to be implemented by the management. A revision of pay made subsequently to the retirement of the employees under a VRS, cannot be made applicable to the employees so retired voluntarily earlier, since they have contracted out of the general terms and conditions of employment and had entered into a separate contract under the VRS.

9. In **HEC** (supra) the pay revision brought in after the voluntary retirement of certain employees was retrospective and specifically conferred such benefit of revision on the employees who ceased to be in service on account of superannuation or death. Exclusion too was provided only as against employees severed on dismissal, discharge and specific instances of resignation. The inclusion of superannuated employees was held to be of no aid to those voluntarily retired, since the latter's retirement was not a normal incidence of superannuation. The

voluntary retirees having not been specifically excluded was also found to be of no consequence, since such persons had contracted out of the general terms of employment, by entering into a separate contract for voluntary severance of employment. A subsequent pay revision, even made retrospective from a date prior to the actual voluntary retirement, was held to be not applicable to those who voluntarily opted; unless there existed a statutory compulsion or a policy formulation by the employees, for conferment of such benefits on revision.

10. It has to be emphasised that the Hon'ble Supreme Court found so despite the Central Government having sanctioned conferment of the revisional benefit, on a clarification sought by the employer, which was a wholly owned Government Company. The financial planning which preceded the introduction of VRS definitely did not anticipate a revision of pay and nor is there any compulsion on the employees, who also opts voluntarily, based on individual financial planning for the future. Any tinkering made on the terms of the scheme, under which employment

was voluntarily severed, based on subsequent conferment of benefits on continuing employees, would go against the financial discipline sought to be brought in, by downsizing the employee strength.

11. The learned Counsel for the petitioners would rely on an unreported judgment of this Court numbered as W.P.(C) 16135 of 2005 dated 31.07.2007, to contend that atleast the gratuity may be revised in accordance with the revision of pay. A reading of the judgment would indicate that there were two voluntary retirement schemes which were the subject matter of consideration in the said case, which were respectively notified on 28.02.2003 and 29.10.2003. Certain employees were retired under the first scheme on 20.09.2003 and after the introduction of the second scheme, the wages of the employees of the Corporation were revised w.e.f 01.07.2003. Pay revision with retrospective effect was granted to the employees who voluntarily retired under both the schemes, but, however, the enhanced VRS benefits in accordance with the pay revision was granted only to those who retired under the

second scheme.

12. It was in such circumstance that this Court found that under Section 14 of the Payment of Gratuity Act, 1972, the employees who retired under the first scheme also would be entitled to the enhanced benefits. Therein, the revision was made applicable to the employees who were retired voluntarily, even prior to the order of revision being issued. That was a policy formulation, which having been made could not be applied on different standards on persons similarly placed. The facts being clearly distinguishable, the said judgment does not in any manner help the petitioners in advancing their claim in the present writ petition.

13. The claim of discrimination urged is on the strength of Ext.P4 decision wherein, certain employees were granted the benefit of pay revision. Essentially the persons, who applied under the original scheme, before the revision of pay was made effective and those entitled to apply after it came into force, cannot be placed on equal footing. The petitioners applied under a scheme, the terms

of which had been complied by the employer and the petitioners permitted to voluntarily retire from employment. The revision of pay was not implemented then nor did the specific terms of the scheme reckon any such subsequent revision. After the revision was made effective the management when taking a decision to extend the scheme, agreed to the payment of benefits under the scheme, reckoning the revision too, since none would voluntarily opt for retirement if the terms were based on the pre-revised pay. No ground of discrimination could be successfully urged or sustained.

For all the above reasons, the claim made by the petitioners is found to be unsustainable and the writ petition is dismissed.

Sd/-
**K. VINOD CHANDRAN,**
**JUDGE**

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P.A To Judge.