

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).NO. 13824 OF 2012 (C)

PETITIONER(S):

- 1. P.V. NARAYANAN, AGED 57 YEARS,
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**
- 2. C.K. KRISHNAN
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**
- 3. M. KUNHAMBU
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**
- 4. M. KUNHIRAMAN
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**
- 5. N.V. KUNHIKRISHNAN
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**
- 6. P.P. SREEDHARAN
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**
- 7. N.V. RAJU
PERMANENT WORKER
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KERALA AGRICULTURAL UNIVERSITY, PILICODE
KASARAGOD DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL**

RESPONDENT(S):

- 1. THE KERALA AGRICULTURAL UNIVERSITY
VELLANIKKARA, THRISSUR DISTRICT - 680 609
REPRESENTED BY ITS REGISTRAR.**
 - 2. THE ASSOCIATE DIRECTOR,
REGIONAL AGRICULTURAL RESEARCH CENTRE PILICODE
KASARAGOD DISTRICT - 671 121.**
 - 3. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF AGRICULTURE, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- R3 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK
R1 & 2BY SRI.BABU JOSEPH KURUVATHAZHA,SC**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER(S) EXHIBITS

**EXHIBIT-P1-TRUE COPY OF THE G.O(MS) 40/AD.TVM DATED 19/11/1994
OF THE GOVERNMENT OF KERALA.**

**EXHIBIT-P2-TRUE COPY OF THE ORDER NO. TP (3) 27980/1994 DATED
09/01/1995 OF THE DIRECTOR OF AGRICULTURE.**

**EXHIBIT-P3-TRUE COPY OF THE NOTIFICATION DATED 08/09/2000 ISSUED BY
THE ADMINISTRATIVE OFFICER OF THE COLLEGE OF AGRICULTURE**

**EXHIBIT-P4-TRUE COPY OF THE LETTER NO. 18062/F1/1998/AGRL. DATED
21/12/2000 ISSUED BY THE GOVERNMENT.**

EXHIBIT-P5-TRUE COPY OF THE JUDGMENT DATED 01/06/2004 IN O.P 33611 OF 2000

EXHIBIT-P6-TRUE COPY OF THE JUDGMENT DATED 11/01/2007 IN W.A 1726 OF 2004

**EXHIBIT-P7-TRUE COPY OF THE ORDER NO. GA/F2/43970/94(I) DATED
17/09/2008 OF THE UNIVERSITY.**

**EXHIBIT-P8-TRUE COPY OF THE ORDER NO. B1/1707/2009 DATED
31/08/2011 OF THE 2ND RESPONDENT.**

**EXHIBIT-P9-TRUE COPY OF THE POSTING ORDER OF THE PETITIONERS
ISSUED BY THE 2ND RESPONDENT DATED 17/09/2011**

**EXHIBIT-P10-TRUE COPY OF THE COMMUNICATION NO. GA/F2/42576/2011
DATED 13/12/2011 ISSUED BY THE 1ST RESPONDENT TO THE
2ND RESPONDENT.**

**EXHIBIT-P11-TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER BEFORE THE CHIEF MINISTER**

**EXHIBIT-P12-TRUE COPY OF THE UNOFFICIAL NOTE DATED 05/06/2012
PREPARED BY THE 2ND RESPONDENT.**

**EXHIBIT-P13-TRUE COPY OF THE FORM OF CONSENT PREPARED BY THE 2ND
RESPONDENT.**

RESPONDENTS' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P(C). No.13824 of 2012

Dated this the 28th day of October, 2015.

JUDGMENT

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The petitioners are presently working as permanent workers in the Regional Research Centre of the Kerala Agricultural University at Pilicode, Kasaragod District. They were initially employed as workers, in Coconut Seed Farm, Nileschwaram, since 12.3.1975. While continuing as permanent workers there, by Ext.P1 dated 19.11.1994, the Government have taken a decision to transfer the Coconut Seed Farm to the Kerala Agricultural University, the 1st respondent herein. Regarding the labourers like the petitioners, Ext.P1 says that the labourers working in the farm also will be transferred to the Agricultural University, under whose control and supervision the Coconut Seed Farm got transferred. Further, Ext.P2 order issued by the Director, says that all the

labourers will be taken over by the Kerala Agricultural University, as per a Government Order, and further that the service of the skilled labourers (pollination) will be available to the department till the pollination work is completed.

2. Even after the pollination, the 1st respondent University was reluctant to permit the petitioners to join the service of the 1st respondent and they invited applications for making fresh appointment of labourers, by Ext.P3 and the same was challenged before this Court in O.P.Nos.33176/2000 and 33611/2000. In the mean time, the Government, by Ext.P4, directed the 1st respondent to appoint the petitioners and other similar workers under them. In view of Ext.P4, this Court passed Ext.P5 judgment holding that the 1st respondent University has to absorb the petitioners, as permanent labourers, and until then, there will not be any recruitment for casual labourers. Even though the 1st respondent University has challenged Ext.P5 before the Division Bench, the Division Bench also affirmed Ext.P5 by Ext.P6 and, at last, the 1st

respondent passed Ext.P7 order appointing the petitioners as temporary labourers and thereafter, by Ext.P8 order, appointed them on regular basis and subsequently passed Ext.P9 posting orders.

3. Since it has been made in Ext.P7 that the previous service of the petitioners, prior to the absorption of the University, will not be counted for pension, the petitioners made a representation to the 1st respondent University, praying for reckoning the entire period of their service, for pension, and the said prayer was recommended by the 2nd respondent also. To the said representation, the 1st respondent University issued Ext.Pl0 communication stating that the period of regular service in the University alone will be reckoned for pension and the service in the Coconut Seed Farm, prior to absorption, would not be counted. Aggrieved by exclusion of prior service in the matter of pension, the petitioners made Ext.Pl1 representation to the Government. While Ext.Pl1 is pending consideration, the 2nd respondent, as per the direction of the 1st respondent, issued Ext.Pl2

unofficial note wherein it is stated that the 1st respondent has adopted a decision to permit the workers of the Coconut Seed Farm to continue in service, on submission of an undertaking foregoing the pension, and the 1st respondent further directed the 2nd respondent to terminate the service of those who fail to submit such a consent letter for continuation, without right to get pension, and Ext.Pl3 form of consent prepared by the 2nd respondent was issued to all the workers for compliance. Thus, the petitioners and other similarly placed workers are constrained to give consent foregoing their valuable pension and hectic steps are being taken to procure consent letters from the petitioners undertaking not to claim pension, so as to make the proceedings before the Government infructuous. According to the petitioners, the compulsion to submit consent letters during the pendency of the proceedings is arbitrary, illegal and liable to be interfered by this Court invoking jurisdiction under Article 226 of the Constitution of India. If the petitioners are compelled to submit the

consent letters, before the Government takes a decision, that will be highly prejudicial to the petitioners and that would amount to admission agreeing to forgo pension and that would run against them in the proceedings before the Government. It is with this circumstance the petitioners filed this writ petition with the following prayers:

- i) to issue a writ of mandamus or any other writ, order or direction to the 1st respondent to grant pension to the petitioners on retirement reckoning their entire service including the service prior to the handing over of the establishment by the Government to the University.
- ii) to set aside Ext.P8 in so far as it holds that the petitioners do not have pensionable service, that is without reckoning the service prior to the handing over of the coconut farm.
- iii) to declare that the petitioners are entitled to reckon the entire service under the Government and the University, in the coconut farm now named as Regional Agricultural Research Centre under the University, for pension.
- iv) to set aside Ext.Pl0, by issuing appropriate writ or order.
- v) to set aside Ext.Pl2 compelling the

petitioners to give consent for foregoing pension, in Ext.Pl3 proforma.

vi) to command the 3rd respondent to consider and pass orders on Ext.Pl1, within one month.

vii) to issue any other writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.

4. Heard the learned counsel for the petitioners and the learned Standing Counsel appearing for the 1st respondent.

5. The learned counsel for the petitioners advanced arguments, in support of the averments in the writ petition and the reliefs sought for.

6. In view of the rival submissions made at the Bar, the question to be considered is, whether the 1st respondent University is justified in insisting the production of consent letter agreeing to forgo their prior service, for reckoning the pensionary benefits, while the matter is pending before the Government.

7. Going by Ext.Pl, it is seen that while the petitioners were continuing as permanent workers employed in Coconut Seed Farm, Nileschwaram, the

Government had taken a decision to transfer Coconut Seed Farm to the Kerala Agricultural University and it has been stated that a policy decision was taken by the Government to establish a college for agriculture in Kasaragod District under the Kerala Agricultural University and the Agricultural University has suggested that it can be set up at Neeleswaram and the Government have decided to hand over the Coconut Seed Farm to the Agricultural University.

8. Further, Ext.P2 order passed by the Director of Agriculture says that all the labourers will be taken over by the Kerala Agricultural University as per the Government order. Subsequently, by Ext.P4, the Government have again clarified the position of the petitioners and similar workers directing the 1st respondent to appoint the former workers of the Coconut Seed Farm in the University. Though the petitioners have filed O.P. Nos.33176/2000 and 33611/2000 seeking a direction to the 1st respondent to absorb them in the service of the 1st respondent University, those O.Ps were disposed of, in view of the

stand taken by the Government in favour of the petitioners as per Ext.P4 order. But, the Government specifically observed that the 1st respondent University has to absorb the petitioners, as permanent labourers and until then, there shall not be any recruitment for casual labourers.

9. Further, by Ext.P6, the Division Bench of this Court dismissed the appeal filed against Ext.P5 with an observation that “when Agricultural University enjoyed a privilege as granted in Ext.P2, they cannot contend that they will not share the burden as envisaged in it and as now ordered by the very same Government.” On a combined reading of Exts.P1 to P6 it can be held that it was obligatory on the part of the 1st respondent University to absorb the petitioners and similar workers of the Coconut Seed Farm with all their rights and liabilities to its service. It is pertinent to note that the Coconut Seed Farm was transferred to the 1st respondent University, for the benefit of the University, and it was not a transfer at the instance or for the benefit of the workers

permanently employed in the Coconut Seed Farm. Even if no additional benefit was given to them, by the said transfer, they can never be losers under a policy decision taken by the Government.

10. Indisputably, the petitioners have a long service in the Coconut Seed Farm since 1975 and they cannot be deprived of the benefit of the valuable service rendered by them, under the guise of transfer of the Coconut Seed Farm. In short, the transfer shall not make them losers. In this context, the observation made by the Division Bench of this Court in Ext.P6 judgment, “when Agricultural University has enjoyed a privilege as granted in Ext.P2, they cannot contend that they will not share the burden as envisaged in it and as now ordered by the very same Government” assumes relevance and significance in the present context also. Needless to say, the exclusion of prior service of the petitioners for reckoning pensionary benefits is arbitrary and unreasonable, and liable to be interfered by this Court under Article 226 of the Constitution of India. This view is supported by the

decision of this Court in *Muhammed Basheer v. State of Kerala* [2015 (1) ILR 10]. The relevant paragraph reads as follows:

"17. The Government issued GO (P) No. 369/87 / Fin. dated 31/03/1987, GO (P) No. 383/89 / Fin. dated 29/08/1989 and GO (P) No. 228/2001 / Fin. dated 02/02/2001 for reckoning the services rendered in Government of India Departments / Central Autonomous Bodies / State Government Departments / State Autonomous Bodies / Public Sector Undertakings etc. for pensionary benefits consequent on permanent absorption in State Government Departments / State Autonomous Bodies and vice versa. This Court on considering these orders found in the judgment in OP No. 10540 of 1998 that the employees who joined State Government Service after serving in State Autonomous Bodies / Public Sector Undertakings were entitled to count their such service along with their service under the Government as qualifying for pension. Also found that the KSRTC would come under the sweep of the expression "State Autonomous Bodies / Public Sector Undertakings". Applying the same analogy, the Khadi and Village Industries Board also would come under the sweep of the expression "State Autonomous Bodies / Public Sector Undertakings". The judgment rendered by this Court in OP No. 10540 of 1998 has become final and implemented. This Court again considered the question as to whether the past service put in by a Government employee in the KSRTC would qualify for pension in WP (C) No. 6536 of 2007. In that case also, following the judgment in OP No. 10540 of 1998, this Court found that the petitioner therein was entitled to count his past service in the KSRTC as qualifying service for the purpose of pensionary benefits. That judgment also has become final and implemented. Therefore, in the light of the said three Government Orders and the two judgments of this Court, the service put in by the petitioners in the KSRTC and in the Khadi and Village Industries Board can be reckoned as service qualifying for computing pensionary benefits."

11. In view of the proposition laid down by this Court, in the above decision, I hasten to hold that when

a State Autonomous Body or Public Sector Undertaking is transferred to or absorbed by another Autonomous Body or Public Sector Undertaking, by the policy decision of the Government, the employees, who were employed under the former employer, are entitled to get all pensionary benefits, reckoning their entire service, under both employers, as if no such transfer or absorption was made to the latter employer. Put it differently, they are entitled to get all service benefits, as if they were continuing in the service of the former employer, without any break.

12. In the above view of the matter, the exclusion of previous service rendered by them in the Coconut Seed Farm, before the transfer of the Coconut Seed Farm to the 1st respondent University, for counting their pension, is illegal and arbitrary.

13. Consequently, Ext.P8, in so far as it excludes the previous service of the petitioners for reckoning pensionary benefits, will stand set aside and it is made clear that the petitioners are entitled to get reckoned their entire service under the 1st respondent

University and the Department of Agriculture, for pensionary benefits. In the light of the above declaration, Exts.P7, P8, P10, P12 and P13 to the extent it goes against the declaration made above, will also stand quashed. The 1st respondent University is directed to grant pension to the petitioners on their retirement reckoning their entire service, as declared above.

This writ petition is disposed of accordingly.

Sd/—
K. HARILAL, JUDGE

okb.