

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 11372 of 2014 (V)

PETITIONER(S):

1. AIDED HIGHER SECONDARY TEACHERS ASSOCIATION (AHSTA)
(APPROVED BY GOVERNMENT OF KERALA)
REPRESENTED BY PRESIDENT T. PRASANNAKUMAR, AGED 52
S/O. S.THANKAPPAN
NOW WORKING AS HIGHER SECONDARY SCHOOL TEACHER
AEPM HSS, IRUMBANANGADU P.O., EZHUKONE
RESIDING AT AKHILAM, EZHUKONE P.O., KOLLAM-691505
KERALA.
2. KERALA GAZETTED OFFICERS UNION (KGOU)
(APPROVED BY GOVERNMENT OF KERALA)
REPRESENTED BY VICE PRESIDENT,
SRI. K.ASOKAN, AGED 56, S/O. P.KUMARAN
NOW WORKING AS HEAD OF SECTION IN TEXTILE TECHNOLOGY
CENTRAL POLYTECHNIC COLLEGE
THIRUVANANTHAPURAM - NOW RESIDING AT ASOK MANDIRAM
KURAKKADA P.O., THIRUVANANTHAPURAM, KERALA.
3. KERALA NON-GAZETTED OFFICERS ASSOCIATION
(APPROVED BY GOVT. OF KERALA) CIVIL STATION BRANCH,
KAKKANAD, ERNAKULAM, REPRESENTED BY PRESIDENT
CIVIL STATION BRANCH AND STATE COUNCIL MEMBER
BABU K.M., AGED 48, S/O. LATE K.T.MATHEW
KOMOROTH HOUSE, VYTILA P.O.
682019-NOW WORKING AS U.D.TYPIST
REGIONAL CHEMICAL EXAMINER'S LABORATORY, KAKKANAD
ERNAKULAM, KOCHI-682030, KERALA.
4. THOMAS MATHEW, AGED 48 YEARS
S/O. T.J.MATHEW, THUPPALANJAIYIL, CHENGALAM (E) P.O., 686585
KERALA, NOW WORKING AS PHYSICAL EDUCATION TEACHER
AMAYANNOOR AIDED HIGH SCHOOL, AMAYANNOOR P.O., 686019
KOTTAYAM, KERALA.
5. JOSE SEBASTIAN, AGED 52 YEARS
N.J.DEVASYA, KUMPLANKAL HOUSE, PRAVITHANAM P.O.
PIN-686651, KOTTAYAM DISTRICT, KERALA
NOW WORKING AS PHYSICAL EDUCATION TEACHER
ST. MICHAEL AIDED HIGH SCHOOL, PRAVITHANAM P.O.
PIN-686651, PALAI, KOTTAYAM DISTRICT
KERALA.

6. JOSEPH MATHEW
(AGED 56 AS ON 27-11-2013)
NOW WORKING AS ASST. PROFESSOR IN PHYSICAL EDUCATION
GOVERNMENT MEDICAL COLLEGE, KOTTAYAM, KERALA
NOW RESIDING AT VAZHAMPLACKAL HOUSE
NARIANGANAM P.O., PIN-686579, PALA
KOTTAYAM, KERALA.
7. N.ASOKAN, (AGED 56 YEARS AS ON 25-11-2013), S/O. P.KUMARAN
NOW WORKING AS HEAD OF SECTION IN TEXTILE TECHNOLOGY
CENTRAL POLYTECHNIC COLLEGE, THIRUVANANTHAPURAM
NOW RESIDING AT ASOKA MANDIRAM, KURAKKADA P.O.
THIRUVANANTHAPURAM, KERALA.
8. DR. P.K.JACOB, AGED 56 YEARS
(SUPERANNUATED AT THE AGE OF 56 ON 30-11-2013 WHILE
WORKING AS ASSISTANT PROJECT OFFICER, REGIONAL A.I.CENTRE
KOTTARAKKARA), NOW RESIDING AT PUTHENVEETIL DAYA,
M 33, THEVALLI NAGAR, KOLLAM-9, KERALA.
9. BALAKRISHNAN AGED 56 YEARS
(SUPERANNUATED AT THE AGE OF 56 ON 30-11-2013 WHILE WORKING
AS SR. ADMINISTRATIVE ASSISTANT, DISTRICT POLICE OFFICE,
ALAPPUZHA), NOW RESIDING AT MANITHARA HOUSE
AVANOOR P.O., THRISSUR DISTRICT-680541, KERALA.
10. RAJEEVAN T.P., AGED 56 YEARS
S/O. KINHIKRISHNAN T.P., RESIDING AT 'ARAMAM'
EDACHERY P.O., KOTTALI, KANNUR DISTRICT
KEALA STATE, NOW WORKING AS SUPERINTENDENT
GOVERNMENT TECHNICAL HIGH SCHOOL, KANNUR
KERALA STATE.
11. DINESH V., AGED 56 YEARS
S/O. DAMODARAN V., RESIDING AT SHANKER NIVAS
NEAR KURUVA ROAD, THAYYIL P.O., KANNUR
KEALA STATE, PIN-670003, NOW WORKING AS DRAFTS MAN
GRADE-II, GOVT. TECHNICAL HIGH SCHOOL, MAGRAL PUTHUR
BEDRADKA P.O., KASARAGOD, PIN-671124
KERALA STATE.
12. RAJAN K.V., AGED 56 YEARS
S/O. KANNAN, RESIDING AT KALATHERA HOUSE
PAPPINISSERI WEST P.O., KANNUR, KERALA STATE,
PIN-670561, NOW WORKING AS WORKSHOP SUPERINTENDENT
GOVT. POLYTECHNIC COLLEGE, KANNUR, KERALA STATE
PIN-670007.
13. P.K.SAHANASHEELAN, AGED 56 YEARS
S/O. KUNHI RAMAN P., RESIDING AT 'DIVYATEJ'
THOTTADA P.O., KANNUR DISTRICT, KERALA STATE
PIN-670007, NOW WORKING AS LECTURER IN ELECTRICAL
GOVT. POLYTECHNIC COLLEGE, KANNUR, THOTTADA P.O.
KANNUR DISTRICT, KERALA STATE, PIN-670007.

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14. SURENDRAN V.V., AGED 56 YEARS
S/O. KUNHAMBU, VALIYA VALAPPIL HOUSE, P.O. PALLIKUNNU
RAMATHERU, KANNUR DISTRICT, KERALA STATE
PIN-670004, NOW WORKING AS TRADE INSTRUCTOR, GRADE-II
MECHANICAL GOVT. POLYTECHNIC COLLEGE, KANNUR, P.O.
THOTTADA, KANNUR DISTRICT, KERALA STATE
PIN-670007.
 15. KUNHIRAMAN PUDUVAKKAL, AGED 56 YEARS
S/O. ALAYIL AMBU, RESIDING AT PUDUVAKKAL HOUSE, KANNOM
EZHOME P.O., KANNUR DISTRICT, KERALA STATE
PIN-670334, NOW WORKING AS INSTRUCTOR GRADE II (HG)
EEE DEPARTMENT, GOVERNMENT COLLEGE OF ENGINEERING
PARASSINIKADAVU P.O., KANNUR DISTRICT, KERALA STATE
PIN-670563.
 16. GELTRUDE K.V.
W/O. JOSEPH, THADATHIL HOUSE
1D SKYLINE ORCHID APARTMENTS-II, MUTTAMBALAM P.O.
KOTTAYAM, NOW WORKING AS JUNIOR EMPLOYMENT OFFICER
TOWN EMPLOYMENT EXCHANGE, PALA P.O., PALA.
 17. P.RADHAKRISHAN
S/O. T.G.MENON, THAYYAPARAMBIL HOUSE, KODUNGALLOOR
THRISSUR, PIN-680664, NOW WORKING AS SUPDT. OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL
ERNAKULAM.
 18. K.MADHUSUDANAN
S/O. THUPRAN, MIDHUNAM HOUSE, MUNDUPARAMBA P.O.
MALAPPURAM, NOW WORKING AS SUPDT. OF POLICE
SPECIAL BRANCH, CID, KOZHIKODE RANGE.
 19. C.K.SANKARANARAYANAN
S/O. (LATE) C.S.KUNJU, CHEMMANATTU VALAPPIL HOUSE
PERAMANGALAM P.O., THRISSUR
NOW WORKING AS SUPDT. OF POLICE AND ASSISTANT DIRECTOR (PS)
KERALA POLICE ACADEMY, THRISSUR.
 20. JOSE V.KOSHY,
VAZHAVILA PUTHENVEEDU, VADAKKADATHUCAVU P.O., ADOOR
PATHANAMTHITTA DISTRICT, ASSOCIATE PROFESSOR
SUPERANNUATED ON 31-03-2014, WHILE WORKING AS HOD
HISTORY, ST. CYRIL'S COLLEGE, ADOOR
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.BENOY THOMAS
SRI.PAULSON THOMAS

RESPONDENT(S) :

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1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695001, KERALA.

2. PRINCIPAL SECRETARY (FINANCE)
DEPARTMENT OF FINANCE, GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM-695001, KERALA.
 3. SECRETARY, DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695001, KERALA.
 4. PRINCIPAL SECRETARY
DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM-695001, KERALA.
 5. LUCY THOMAS, AGED 56 YEARS
PHYSICAL EDUCATION TEACHER RETIRED ON 31-03-2014
FROM ST. JOSEPH'S G.H.S.
MUTHOLY, NOW RESIDING AT PARANKULANGARA
AMPARANIRAPPEL P.O., BHARANANGANAM-682503
 6. VALSAMMA THOMAS, AGED 56 YEARS
PHYSICAL EDUCATION TEACHER
RETIRED ON 31-03-2014 FROM ST. JOSEPH'S H.S.
VILAKKUMADOM, POOVARANY P.O., KOTTAYAM DISTRICT
NOW RESIDING AT PULICKAL HOUSE, ELAMGULAM
KOORALY P.O., KOTTAYAM, PIN 686522.
 7. M.R.VENUGOPLAN
LIBRARIAN (RETIRED ON 30-11-2013)
GOVT. MEDICAL COLLEGE, THRISSUR
NOW RESIDING AT MUTTATHIL KAROTTU HOUSE
KANJIRAMATTAM, ERNAKULAM-682315.
 8. JOSE SEBASTIAN
NOW WORKING AS PHYSICAL EDUCATION TEACHER
ST. MICHAELS HIGHER SECONDARY SCHOOL, PRAVITHANAM
PALAI-686707.
 9. DR. AUGUSTINE GEORGE
NOW WORKING AS ASSISTANT PROFESSOR IN PHYSICAL EDUCATION
MEDICAL COLLEGE, KOTTAYAM-686001.
- Addl.10. A.M.ABDULKAREEM SAHIB
RESIDING AT AMALIPPURATH HOUSE, MYLOOR
PALLARIMANGALAM.P.O.
ERNAKULAM DISTRICT, WORKING AS JOINT
BLOCK DEVELOPMENT OFFICER
BLOCK DEVELOPMENT OFFICE, KOTHAMANGALAM.
- Addl.11. M.K.KUNJUMOITHEEN
RESIDING AT MUTHUVASSERY HOUSE, PANICHAYAM
NEDUNGAPRA.P.O., PERUMBAVOOR
ERNAKULAM DISTRICT WORKING AS JOINT
BLOCK DEVELOPMENT OFFICER
BLOCK DEVELOPMENT OFFICE, MUVATTUPUZHA, MUDAVOOR.P.O.
- Addl.12. K.K.SHAJI
RESIDING AT 'DEVIKA', SIVASAKTHI LANE, PERVARAM
N.PARAVUR, ERNAKULAM DISTRICT
WORKING AS JOINT BLOCK DEVELOPMENT OFFICER
BLOCK DEVELOPMENT OFFICE, ALANGAD, KOTTAPURAM.P.O.

ADDL. R10 TO R12 ARE IMPEADED AS PER ORDER DATED 29/05/2014
IN IA 6692/2014.

Addl.13. SAFIULLA SYED, AGED 55 YEARS, S/O.P.S.ANWAR, VADAKAYIL HOUSE
P.O.VALAPAD - 680 567, THRISSUR DISTRICT
NOW WORKING AS SUPDT. OF POLICE
SPECIAL BRANCH - CID, THRISSUR RANGE, THRISSUR.

Addl.14. K.A.ABDUL HAMEED, S/O.LATE MOHAMMED, KUNJU KANDAN,
AGED 55 YEARS, VILLA NO.5, CHELAVOOR, KOZHIKODE DISTRICT
NOW WORKING AS SUPDT. OF POLICE VIGILANCE AND ANTI
CORRUPTION BUREAU, SPECIAL CELL, KOZHIKODE.

ADDL. R13 & R14 ARE IMPEADED AS PER ORDER DATED 23/09/2014
IN IA 12726/2014.

Addl.15.VALSALAMONY K.G., ASSISTANT COMMISSIONER, COMMERCIAL
TAXES DEPARTMENT, SPECIAL CIRCLE OFFICE, COMMERCIAL TAX
COMPLEX, KOTTAYAM, PIN - 686001, W/O V.S.SATHEESH KUMAR,
POURNAMI, COLLECTORATE P.O., KOTTAYAM - 686002.

Addl.16.T.P.ABDUL HAMEED, ASSISTANT COMMISSIONER, COMMERCIAL TAXES
DEPARTMENT, SPECIAL CIRCLE OFFICE, COMMERCIAL TAX COMPLEX,
KOTTAYAM, PIN - 686001, S/O M.H.PITCHAKANNU RAWATHER,
THAIKOOTATHIL HOUSE, HIDAYATH JUNCTION, CHANGANACHERRY,
PIN - 686101.

ADDL.R15 & R16 ARE IMPEADED AS PER ORDER IN IA NO.6873/2014
DATED 30.10.2014.

R1-R4 BY GOVERNMENT PLEADER SRI.P.V.LONACHAN
R5, R6 & ADDL.R13-R16 BY ADV. SRI.N.N.ELAYATH
ADDL.R10-R12 BY ADV. SRI.N.NAGARESH
ADDL.R10-R12 BY ADV. SRI.SHAJI THOMAS
ADDL.R10-R12 BY ADV. SRI.BINU PAUL
ADDL.R10-R12 BY ADV. SRI.T.V.VINU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23.09.2015, THE COURT ON 13.10.2015 DELIVERED THE FOLLOWING:

bka/-

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT P1 ORDER IN WPC NOS.243/2014 AND 276/2014 DATED 31-03-2014.
EXT P1(A) NOTIFICATION DATED 22-12-2013 ISSUED BY GOVT. OF INDIA.
EXT P2 DETAILS OF THE NATIONAL PENSION SYSTEM GIVEN IN THE
WEBSITE OF GOVT. OF INDIA.
EXT P3 G.O.(P) NO. 170/2012/FIN. DATED 22-03-2012.
EXT P4 G.O.(P)NO. 183/12/FIN. DATED 26-03-2012.
EXT P5 G.O.(P)NO. 20/2013/FIN. DATED 07-01-2013.
EXT P6 G.O.(P)NO. 136/2013/FIN. DATED 16-03-2013.
EXT P7 G.O.(P)NO. 208/2013/FIN DATED 07-05-2013.
EXT P8 PROCEEDINGS OF THE STATE CABINET DATED 30-04-2013 (ITEM
NO. 3453) WITH NOTE.
EXT P8(A) ENGLISH TRANSLATION OF EXT. P8 PROCEEDINGS OF THE
CABINET MEETING DATED 30-4-2013.
EXT P9 RELEVANT PORTION OF THE REPORT OF KERALA PUBLIC
EXPENDITURE REVIEW COMMITTEE DATED DECEMBER, 2013.
EXT P10 G.O.(MS)NO. 8/2014/H&FWD DATED 04-01-2014.
EXT P11 COPY OF THE PROCEEDINGS NO.G3/7293/14/KEPA DATED
09.06.2014 ISSUED BY THE OFFICE OF THE IG OF POLICE
(TRAINING) UNDER THE RIGHT TO INFORMATION ACT.
EXT P11(a) ENGLISH TRANSLATION OF EXT.P11

RESPONDENT(S) ' EXHIBITS

EXT.R10 COPY OF THE PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL
TAXES DATED 21.05.2014.
EXT.R12 COPY OF THE LIST OF GAZETTE OFFICERS WHO ARE DUE TO
RETIRE DURING 2014 PREPARED BY the STATE POLICE CHIEF.
EXT.R12(a) COPY OF THE POSTING ORDERS OF THE PETITIONERS 1 & 2 IN
THEIR RESPECTIVE PRESENT POSTS ISSUED BY THE ADDITIONAL
SECRETARY TO GOVERNMENT OF KERALA, DEPARTMENT OF HOME
DATED 31.12.2012.

//TRUE COPY//

PA TO JUDGE

bka/-

'CR'

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 11372 of 2014

Dated this the 13th day of October, 2015

J U D G M E N T

The petitioners herein are recognized associations of aided higher secondary school teachers, government employees with gazetted rank, government non gazetted officers and teachers of aided educational institutions, who are working as well as superannuated at the age of 56 years on different dates.

2. They are aggrieved by Ext.P8 decision of the State Government dated 30.04.2013 excluding those appointed before 01.04.2013 in service from the purview of enhancement of age of superannuation to 60 years though the State Government, by Ext.P10 decision dated 04.01.2014, have decided to enhance the age of retirement to 60 years in respect of the members of the certain services. According to the petitioners, the denial of the aforesaid benefit to the petitioners in other services

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appointed before 01.04.2013 is discriminatory, unreasonable and arbitrary; and therefore, violative of Article 14 of the Constitution of India. According to them, the fixation of retirement age as 56 for those, who appointed before 01.04.2013 is too low, which warrants a direction from this Court to fix the retirement age in accordance with Ext.P9 report of the Kerala State Expenditure Review Committee for the year, 2011-12, which is a statutory committee appointed by the State Government under Section 6 of the Kerala Fiscal Responsibility Act, 2003. The petitioners point out that the present age of superannuation of the employees and teachers of aided school/educational institutions appointed before 01.04.2013 is 56 as per Rule 60(a) of Chapter VIII of Part 1 of KSR as mandated by Ext.P4 GO (P) No.183/2012/Fin. dated 26.03.2012. By Ext.P8 decision, dated 30.04.2013, the State Government employees and teachers of aided educational institutions appointed before 01.04.2013 are excluded from the

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enhancement of age of superannuation of Government employees to 60 years. According to the petitioners, Rule 60(a) of Chapter VIII Part 1 of the Kerala Service Rules, which fixes the present age of retirement as 56, as well as the impugned decision, excluding those appointed before 01.04.2013 from the purview of enhancement of retirement age from 56 to 60 years, are applicable to both government employees including teachers of educational institutions owned by the State Government and of aided educational institutions. Therefore, according to the petitioners, both employees of aided educational institutions in the State and State Government employees are directly affected by the decision, if any, to be rendered in this writ petition. In the writ petition, there is a prayer for reinstatement of those, who were appointed before 01.04.2013 and superannuated subsequent to 01.04.2013, since petitioners 6 to 15 are government employees superannuated after 01.04.2013. Petitioner No.20 was an employee of an aided college

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superannuated on 31.03.2014. Petitioners 4 & 5 are working teachers appointed before 01.04.2013 in aided education institutions. Petitioners 16 to 19 are working government employees appointed before 01.04.2013.

3. Respondents 5 & 6 are impleaded representing those employees of aided educational institutions appointed before 01.04.2013 and retired subsequent to that at the age of 56. The 7th respondent is impleaded representing government employees appointed before 01.04.2013 and retired at the age of 56 after 01.04.2013. The 8th respondent is impleaded representing working employees of aided educational institutions appointed before 01.04.2013, whose retirement age is 56. The 9th respondent is impleaded representing the working state government employees appointed before 01.04.2013, whose retirement age is 56. Respondents 5 to 9 are, thus, impleaded as persons directly affected by the decision, if any, to be rendered in this case.

4. The petitioners point out that till 01.04.2013, all

the State Government employees and teachers of aided educational institutions covered by Rule 60(a) of Part 1 of KSR were treated on an equal footing for the purpose of age of superannuation. The petitioners allege that no intervening circumstance having an intelligible differentia, which has nexus with the object sought to be achieved by the enhancement to 60 warranting classification of employees on the basis of their date of appointment and exclusion of those appointed before 01.04.2013 from the enhancement, emerged between 26.03.2012 and 01.04.2013. It is alleged that though the impugned classification was made when the State Government introduced the contributory National Pension Scheme made applicable to the new entrants in State Service etc. appointed after 01.04.2013, the fixation of retirement age has no casual connection with the nature of pension scheme; and therefore, the classification on the basis of the nature of pension scheme has no intelligible differentia having nexus with

the objects sought to be achieved by the enhancement. Therefore, according to the petitioners, the exclusion of those employees appointed before 01.04.2013 from the purview of enhancement is discriminatory and violative of Article 14. The petitioners have approached the apex court under Article 32 of the Constitution of India challenging Ext.P8 decision with two different writ petitions as WP(C) Nos.243/2014 & 276/2014, which were disposed of by the apex court on 31.03.2014. The apex court, after a preliminary hearing, relegated the petitioners to this Court under Article 226 and, accordingly, by Ext.P1 order, permitted the petitioners to withdraw the writ petitions filed before the apex court with liberty to approach this Court. It is with this background, the petitioners have come up before this Court.

5. A detailed counter affidavit has been filed by the 2nd respondent, wherein it is contended as follows;

The employees, who were appointed before

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01.04.2013, come under the statutory pension as Part 3 Kerala Service Rules. On the other hand, the employees, who were appointed on or after 01.04.2013, do not come under the statutory pension. However, they come under the National Pension System. According to the guidelines of the National Pension Scheme and as per notification F.No.5/7/2003-ECB&PR dated 22.12.2003, the normal exit period prescribed is the age of 60, wherein the employees and the Government have made equal contribution (10% of pay and DA) to the employees' NPS account, which would be later used to purchase the annuity to provide pension to the employee. In order to satisfy these requirements, it is required to enhance the retirement age of employees appointed on or after 01.04.2013 to 60 years, which is permissible as per the Constitution of India, which empowers the State Governments to frame separate service rules to govern the conditions of service of person employed by them taking into account the socio economic factors of each State. The characteristics of service regulations make the employees separate classes. The distinctive nature of pre and post 01.04.2013 appointees would not amount to discrimination because

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the questions of priority sustains only with the classes and not bad in law or discriminatory as alleged in the writ petition. The Kerala Public Service Act, 1968, empowers the State of Government to make rules keeping in mind the administrative exigency of the State. It was in exercise of the powers conferred under the said Act, the Government decided to enhance the retirement age of those appointed on or after 01.04.2013 to 60 years and were included in NPS benefit system. On the other hand, the employees, who are appointed before 01.04.2013, are benefited by the Statutory Pension under Part 3 Kerala Service Rules. Hence, there is no discrimination between the employee appointed before 01.04.2013 and on or after 01.04.2013. The contrary contention in the writ petition is without any merit. The Government employees of the State as well as teachers of aided institution are governed by the same Kerala Service Rules; and therefore, any amendment made to the said rules would also affect them equally.

6. Arguments have been heard.

7. By the operation of Ext.P8 proceedings dated 30.04.2013, the benefit of enhancement of retirement age

of 60 years is confined to those appointments from 01.04.2013. It was argued by Mr.Binoy Thomas, the learned counsel for the petitioners, that the policy that the non-inclusion of State Government employees, who were appointed before 01.04.2013, within scope of enhancement of age of superannuation is discriminatory, irrational and violative of Article 14 of the Constitution of India.

8. The learned senior Government Pleader made a frontal attack against the writ petition on the ground that as it is a policy matter of the Government, the same cannot be subjected to a challenge in a writ petition like this. In answer to the said submission, the learned counsel for the petitioners relied on a decision of the apex court in **State of Uttar Pradesh v. Dayanand Chakrawarty & Others** [(2013) 7 SCC 595], wherein it was held that discriminatory and differential treatment is impermissible in the matter of service including the age of superannuation in the absence of intelligible differentia

distinguishing from each other. The learned counsel for the petitioners also relied on the decisions of the apex court in **Kailash Chand Sharma v. State of Rajasthan & Others** [(2002) 6 SCC 562] and **Centre for PIL & Another v. Union of India & Another** [AIR 2011 SC 1267], wherein the apex court held that the court can interfere with the legality and constitutionality of the policy decisions. Therefore, in the light of the above, I am called upon to assure the question as to whether there is intelligible differentia between the persons, who are appointed before and after 01.04.2013; and whether there is a proper nexus between the classification and purpose sought to be achieved by the classification.

9. The impugned classification as evident from Ext.P8 decision of the State Government was made when the State Government introduced the contributory national pension scheme and made applicable to the new entrants in the State Service etc. appointed after 01.04.2013 by Ext.P5 read with Exts.P6 & P7 GO. The

existing employees governed by non-contributory pension scheme were excluded from the provisions of NPS. The argument advanced by the learned counsel for the petitioner is that there is no casual connection between the classification and the nature of pension scheme; and therefore, the classification on the basis of the nature of pension scheme has no intelligible differentia having nexus with the objects sought to be achieved.

10. The national pension scheme was firstly introduced in the country by the Central Government in respect of Central Government employees by the executive order/notification with effect from 01.01.2004. When Ext.P1 was introduced, the age of superannuation of Central Government employees was 60. It was in the year 1998, pursuant to the recommendation of the 5th recommendation report, the same was enhanced from 58 to 60. According to the learned counsel for the petitioners, the Central Government, in all fairness, exempted the existing employees, to whom the benefit of

non-contributory pension scheme was applicable, from National Pension Scheme and made it applicable to the new recruits as no pension scheme could be introduced in variation with the one in existence, which is prejudicial to the existing employees. It was also pointed out that the Central Government, in Ext.P1, accepted the then age of retirement of the recipients of the non-contributory pension scheme, i.e., 60 as age of superannuation of the recipients of defined contributory pension scheme, i.e., new recruits appointed after 01.01.2004 and prescribed the normal age of exit from NPS as 60. This, according to the learned counsel for the petitioners, is a clear indication that there is no intelligible differentia between the employees of the same service having different pensionary benefits vis-a-vis determination of age of superannuation. It is true that the same age of retirement is retained to all employees in Ext.P1 irrespective of the difference in pensionary benefits.

11. However, as rightly contended by the State

Government the employees of the State Government and Central Government could not be treated alike since every State Government will have to take into account its peculiar circumstances so as to formulate its policy; and consequently, the argument that the State Government should follow the same pattern that is followed by the Central Government is meaningless. It may be noticed that both these two sets of employees are not similarly placed in view of the different service conditions. The allegation of discrimination deserves consideration only when it is practised among equals. The contention of the petitioners is to effect that the retirement age of the Central Government employees did not become a hurdle on the Central Government while implementing NPS in view of the fact that retirement age of Central Government employees was 60 years even at the time of introduction of National Pension Scheme. As per the Constitution, which provides a federal structure, every State Government has freedom to formulate its own rules

and procedures and service conditions, which are applicable to their employees. Therefore, it cannot be said that the State Government should follow what the Central Government has done in the matter of retirement age. The State Government has its own separate entity and is free to have its own service conditions as mandated under the Kerala Public Service Act, 1968.

12. In support of his argument that there cannot be any distinction between pensionable and non-pensionable service in fixing the age of retirement, the learned counsel for the petitioners relied on the decision of the apex court in **Moti Ram Deka v. General Manager, North East Frontier Railway** & conn. cases [AIR 1964 SC 600]. However, the said decision has no application to the present case.

13. The definite stand taken by the State in the counter affidavit is that pursuant to the introduction of a defined contributory pension system or National Pension System for the new entrants to the Central Government

service with effect from 01.01.2004 vide Government of India notification dated 22.02.2013, almost all State Governments adopted the new pension system in their States with effect from various dates. The Government of Kerala also decided to introduce the National Pension System with effect from 01.04.2013 consequent upon the introduction of Fiscal Management Measures to control expenditure to achieve Fiscal Consolidation and, later, introduced National Pension System in the State, making it mandatory for all appointments made on or after 01.04.2013. In continuation, statutory amendments were made in the relevant rules in Part 3 of the Kerala Service Rules vide SRO No.181/2013 notified by GO(P) No.136/2013/Fin. dated 16.03.2013 to the effect that the Rules in Part 3 should not be applicable to the employees appointed on or after 01.04.2013. Clarification and orders in view of the amendment were also issued vide GO(P) No.208/2013/Fin. dated 07.05.2013 to the effect that the scheme would be applied to all employees

appointed on or after 01.04.2013 for whom Part 3 of Kerala Service Rules would have been applicable otherwise. Therefore, admittedly, there are two different pension systems in the State, i.e., Statutory Pension Scheme with retirement age of 56 years for the employees appointed before 01.04.2013 and National Pension System with retirement age at 60 years for the employees appointed on or after 01.04.2013. As rightly pointed out by the State in their counter affidavit, the characteristics of service regulations make the employee separate classes and the distinctive nature of employees appointed prior to 01.04.2013 and after 01.04.2013 would not amount to discrimination because the question of priority sustains only within the classes and not among the classes of employees under the State Government. The employees appointed before 01.04.2013 are benefited with the statutory pension under KSR.

14. As could be seen from Rule 60(a) of Chapter VIII Part 1 of the Kerala Service Rules, an officer has to

retire at 56 years of age only when the Government has not prescribed a different date for him. The said power is fully in accordance with Article 39 of the Constitution of India. The Kerala Service Rules are issued under the Kerala Public Service Act, 1968, which, in turn, are issued under Article 309 of the Constitution of India. Therefore, the State Government has statutory power to prescribe different dates for retirement of its employees.

15. It is was pointed out by the learned Government Pleader that the Kerala State figures among the top States facing acute unemployment problem and if the retirement age of the employees appointed prior to 01.04.2013 is also enhanced further, there would be a recruitment holiday for some years. According to the learned Government Pleader, no policy decision could be taken without appreciating the socio economic background prevailing in the State. Therefore, the decision of the Government to keep 56 years as the age of retirement for those appointed prior to 01.04.2013 cannot

be branded as discriminatory or violative of Article 14 of the Constitution of India.

16. However, taking into account Ext.P9 report of the Kerala Public Expenditure Review Committee, I am of the definite view that the retirement age as 56 for those, who are appointed before 01.04.2013, is too low. I say this because, having regard to the life expectancy in Kerala and as far as Ext.P9 statutory commission report is concerned, need of raising the age of superannuation for the employees of the State, who were appointed prior to 01.04.2013, appears to be reasonable. As rightly pointed out by the learned counsel for the petitioners, the mental capacity of the civil servants, having regard to the climatic conditions under which they work, are uniform in the State of Kerala. Moreover, as far as the nature or work is concerned, it is same for all employees, to whom Rule 60(a) of Chapter 1 KSR otherwise apply irrespective of their dates of appointment and the nature of their pensionary scheme. In Ext.P9 report, it is stated that the

present retirement age fixed as 56 years is lower by any standard. However, as this Court cannot compel the Government to enhance the age of retirement from 56 to a particular age, I leave this question to be decided by the Government in the light of the recommendations in Ext.P9 report on a proper representation filed by the petitioners herein.

With the aforesaid observation, reserving the right of the petitioners as above, this writ petition is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-