

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 13748 of 2014 (P)

PETITIONER(S):

1. SURESH BABU T.,
CHIEF MANAGER,
KERALA STATE FINANCIAL ENTERPRISES (K.S.F.E),
MANNANCHERRY PO, ALAPPUZHA DISTRICT.
2. VIJAYAPPAN.P.K,
SENIOR MANAGER,
KERALA STATE FINANCIAL ENTERPRISES (K.S.F.E),
KURUPPANTHARA, KOTTAYAM DISTRICT.
3. SANALKUMAR.M.S,
SPECIAL GRADE ASSISTANT,
KERALA STATE FINANCIAL ENTERPRISES (K.S.F.E),
THEKKEKKARA BRANCH, MANCOMPU P.O, ALAPPUZHA DISTRICT.
4. REJI.K.M,
CHIEF MANAGER,
KERALA STATE FINANCIAL ENTERPRISES (K.S.F.E),
REGIONAL OFFICE, KOTTAYAM, KOTTAYAM DISTRICT.
5. N.SHYLAJABAI,
DEPUTY MANAGER,
KERALA STATE FINANCIAL ENTERPRISES (K.S.F.E),
ALAPPUZHA-11, ALAPPUZHA DISTRICT.

BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.
2. THE KERALA STATE FINANCIAL ENTERPRISES LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, HEAD OFFICE,
BHADRATHA , MUSEUM ROAD, THRISSUR- 680 020.
3. THE MANAGING DIRECTOR,
THE KERALA STATE FINANCIAL ENTERPRISES LTD.,
HEAD OFFICE, BHADRATHA, MUSEUM ROAD, THRISSUR- 680 020.

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*** ADDITIONAL R4 IMPEADED**

4. THE PRINCIPAL SECRETARY TO GOVERNMENT,
TAXES (H) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.

*** ADDITIONSL R4 IS IMPEADED AS PER ORDER DATED 02/09/2014 IN
I.A.NO. 12068/2014.**

ADDITIONAL R5 TO R7 IMPEADED

5. VALENTINE K.GILBERT,
KUTTIKATU HOUSE, MARUVAKKAD, CHELLANAM,
KOCHI.

6. ARUN VIMESH C.V,
CHAMBAKAL HOUSE, NORTH CHENNANAM P.O, KOCHI.

7. MAHESH C.M,
CHAKKUMKAL PARAMPU, NORTH CHELLANAM P.O, KOCHI.\

**# ADDITIONAL R5 TO R7ARE IMPEADED AS PER ORDER DATED 12.11.2014 IN
I.A.NO.12236/2014.**

R1 & R4 BY SPL.GOVERNMENT PLEADER SRI.LONACHAN (FINANCE)

R2 & R3 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURRYAN THOMAS

ADDL.R5 TO R7 BY ADV. SRI.S.MANU

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2015,
ALONG WITH W.P.(C).NO.16562 OF 2014 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE PHOTOCOPY OF THE ORDER G.O.(P) NO.20/23013/FIN DATED 07/01/2013.
- EXHIBIT P2: TRUE PHOTOCOPY OF THE REPRESENTATION DATED 01/08/2013 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE MINISTER FOR FINANCE.
- EXHIBIT P3: TRUE PHOTOCOPY OF THE REPLY DATED 02/05/2013.
- EXHIBIT P4: TRUE PHOTOCOPY OF COMMUNICATION BEARING NO. 20858/H2/2013/TAXES DEPT. DATED 25/10/2013.
- EXHIBIT P5: TRUE PHOTOCOPY OF THE JUDGMENT DATED 20/02/2014 IN W.P.(C).NO.27353/2013 (T).
- EXHIBIT P6: A TRUE PHOTO COPY OF THE MINUTES OF THE 460TH MEETING OF THE BOARD OF DIRECTORS OF THE 2ND RESPONDENT HELD ON 25.06.2014.
- EXHIBIT P7: A TRUE PHOTO COPY OF THE COMMUNICATION BEARING NO.32318/PUC2/14/FIN. DATED 22.07.2014.
- EXHIBIT P8: A TRUE PHOTO COPY OF THE COMMUNICATION BEARING NO.20688/H2/2014/TD DATED 25.07.2014.
- EXHIBIT P9: A TRUE PHOTO COPY OF THE ANNEXURE-IX REVIEW OF PUBLIC ENTERPRISES IN KERALA FOR 2012-2013 PUBLISHED BY BY THE 1ST RESPONDENT.
- EXHIBIT P10: A TRUE PHOTO COPY OF THE ANNEXURE-XIV REVIEW OF PUBLIC ENTERPRISES IN KERALA.
- EXHIBIT P11: A TRUE PHOTO COPY OF THE ANNEXURE-XIII OF THE REVIEW OF PUBLIC ENTERPRISES IN KERALA.
- EXHIBIT P12: A TRUE PHOTO COPY OF THE ORDER BEARING GO(MS) NO.108/2014/ID DATED 31.07.2014.

REPLY AFFIDAVIT FILED BY THE PETITIONERS TO THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN THE ABOVE WRIT PETITIONER EXHIBITS P13 & P14

- EXHIBIT P13: TRUE COPY OF THE G.O.(MS)NO.745/2014/H.EDN.DATED 29.08.2014.
- EXHIBIT P14: TRUE PHOTOCOPY OF THE ORDER BEARING G.O.(MS)NO.43/2014/P & ARD DATED 27.12.2014.
- EXHIBIT P13: TRUE COPY OF THE GO(MS)NO.03/2012/S & T DATED 16.04.2012.
- EXHIBIT P14: TRUE COPY OF THE GO(MS)NO.65/11/AD DATED 26.02.2011.

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EXHIBIT P15: TRUE COPY OF THE GO(RT.)NO.1483/2010/ID DATED 18.10.2010.

RESPONDENT(S)' EXHIBITS & ANNEXURES

EXHIBIT R2(A): TRUE COPY OF THE LETTER DATED 22.07.2014 ISSUED BY
THE DEPUTY SECRETARY, FINANCE.

EXHIBIT R2(B): TRUE COPY OF THE LETTER DATED 25.07.2014 ISSUED BY
THE GOVERNMENT OF KERALA, SECRETARY TO
GOVERNMENT.

EXHIBIT R2(C): TRUE COPY OF THE COMMUNICATION DATED 19.09.2014
ISSUED BY THE GOVERNMENT OF KERALA.

ANNEXURE I TO III : TRUE COPY OF THE MEMOS ISSUED TO THE PETITIONERS
FOR VERIFICATION OF DOCUMENTS.

ANNEXURE IV: TRUE COPY OF THE LETTER DATED 22.07.2014 FROM
THE ADDITIONAL CHIEF SECRETARY (FINANCE) TO
THE MANAGING DIRECTOR KSFE.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.13748, 16562, 22778, 23826,  
24381, 24937, 27114, 27696, 27935,  
29880, 30301 & 30969 of 2014  
&  
791 of 2015**  
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Dated this the 11th day of February, 2015

J U D G M E N T

These writ petitions are filed by employees working under the Kerala State Financial Enterprises Ltd (for short, "KSFE"). The issue in these writ petitions pertain to enhancement of retirement age of the employees of KSFE from 58 years to 60 years. They also challenge the decisions of the Government dated 22/07/2014 and 25/07/2014 (Exts.P7 and P8 produced in W.P.(C).No.13748/2014) declining the above request. The above decision was rendered pursuant to the direction of this Court in W.P.(C).No.20079/2013 and

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connected cases. It is stated in the impugned orders as follows:

(in Ext.P7 produced in W.P.(C).No.13748/2014)

“2. The enhancement of retirement age of the employees of Public Sector Undertaking's is to be decided by the Government as a matter of policy. Finance Department has taken a stand not to enhance the retirement age of employees of Public Sector Undertaking's at this point of time and the position has been intimated to the Secretary Taxes Department through a D0 letter.”

(in Ext.P8 produced in W.P.(C).No.13748/2014)

“Government have examined the matter in detail in the light of the judgment mentioned above. Enhancement of the retirement age of employees of Public Sector Undertaking is to be decided by the Government as a matter of policy. Finance Department in Government has already taken a stand not to enhance the retirement age of employees of Public Sector Undertakings at this point of time and communicated the matter to you.”

2. It is submitted that KSFE is a company incorporated under the Companies Act. It is a Private

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Limited Company promoted and controlled by the State. The bye-laws of the company are framed by the Board of Directors of the company with the prior approval of the Governor.

3. The employees of KSFE made a representation before the Board to enhance the retirement age from 58 years to 60 years. In the memorandum of the writ petition it is pointed out that many State Level Public Enterprises has enhanced the retirement age to 60 years. The Board in its 460th meeting held on 25/06/2014 considered the request of the employees and as per Ext.P6 resolution No.6590 (produced in W.P.(C).No.13748/2014), resolved to recommend to the Government of Kerala the enhancement of retirement age of the KSFE employees from 58 years to 60 years. Since some of the employees are due to retire pending consideration of the decision of the Government, approached this Court in W.P.(C).No.20079/2013 and connected matters. Therein this Court directed the Government to take a

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final decision in the matter and accordingly, the impugned decision was taken by the Government.

4. In the impugned decision the only reason stated for rejecting the claim for enhancement of retirement age is that the issue relating to the enhancement of retirement age is a policy decision to be taken by the Government and the Government had not taken a decision to enhance the retirement age of the Public Sector Undertakings at that point of time and therefore, the request of the petitioners cannot be considered.

5. The learned counsel for the petitioners challenged this decision of the Government on various grounds. Petitioners point out various instances wherein the Government allowed enhancement of age of retirement in various Corporations such as Kerala Artisans Development Corporation Limited, Kerala State Warehousing Corporation, Kerala State Information Technology Infrastructure Limited.

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6. The Board of Directors of KSFE have decided to enhance the retirement age of KSFE employees from 58 years to 60 years. Accordingly, a resolution was submitted before the Government. The Board is required to have prior approval of the Government to amend the bye-laws for enhancing the retirement age of the employees. The reference in the Articles of Association of KSFE is to have the prior approval of the Governor. Under Article 166 of the Constitution of India, all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. The question is whether there is any need to have a pre-existing policy of the Government to enhance retirement age.

7. The function of the Governor, in terms of the Articles of Association, is in relation to the company. This function is not an executive function as contemplated under the Constitution or under any Legislation. The "Governor" in this context is to be understood as an incorporation by reference to the

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executive function being exercised by the Government in the name of the Governor. The reference in the bye-law "to have a prior approval of the Governor", therefore, must be understood in regard to satisfaction by the Government on the viability of the company having enhanced age of retirement from 58 years to 60 years. This do not depend upon any policy of the Government. The policy of the Government being discharged through an executive function has nothing to do with the duty being discharged in terms of the Articles of Association of the Company. It is obvious that the matter of enhancement of age of retirement of the employees of KSFE is not placed before the Council of Ministers for their advice and views. The decision has to be taken by the Government with a specific reference to the Company in terms of the Memorandum of Association and Articles of Association of the Company.

8. As afore-noted, the decision of the Government for enhancement of the age of the employees of KSFE is not depend upon any policy of the Government. This

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decision has to be taken independent, based on the resolution passed by the Board of Directors of the Company. Accordingly, the impugned orders (Exts.P7 and P8 produced in W.P.(C).No.13748/2014) are set aside. The writ petitions are disposed of with the following directions:

i. The Government shall take appropriate decision based on Ext.P6 resolution (produced in W.P.(C).No.13748/2014), dated 25/06/2014, of the Board of Directors of the Company in its 460th meeting, within two months from the date of receipt of a copy of this judgment.

ii. The petitioners shall be permitted to continue till a decision is taken by the Government in this matter.

iii. If an adverse decision is taken not to enhance the age of retirement, the petitioners shall be permitted to continue for a further period of two weeks from the date of decision of

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the Government to enable them to work out alternative remedy.

iv. The payment of salary to the employees who are continuing based on the interim order would depend upon the outcome of the decision of the Government. All other issues in the writ petitions are left open. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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