

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 14843 of 2015 (E)

PETITIONERS:

- 1. V.JAYENDRAKUMARAN NAIR
CONDUCTOR, KSRTC, VENJARAMOODU DEPOT
VENJARAMOODU, THIRUVANANTHAPURAM.**
- 2. K.P.VENUGOPALAN NAIR
ASSISTANT SERGEANT, KSRTC, NEDUMANGAD DEPOT
NEDUMANGAD, THIRUVANANTHAPURAM.**
- 3. A.SUDARSANAN
GUARD GR-I, KSRTC, CENTRAL WORKS
PAPPANAMCODE, THIRUVANANTHAPURAM.**
- 4. K.P.SAGAR
CONDUCTOR, KSRTC, PARASALA DEPOT
PARASALA, THIRUVANANTHAPURAM.**
- 5. B.G.JAYARAJ
INSPECTOR, KSRTC, VIZHINJAM DEPOT
VIZHINJAM, THIRUVANANTHAPURAM.**
- 6. VINCENT GEORGE
ASSISTANT DEPOT ENGINEER, KSRTC, CENTRAL WORKS
PAPPANAMCODE, THIRUVANANTHAPURAM.**
- 7. J.ROBINSON
DRIVER, KSRTC, KATTAKADA DEPOT
KATTAKADA, THIRUVANANTHAPURAM.**
- 8. V.N.PARAMESWARAN
CONDUCTOR, KSRTC, THIRUVANANTHAPURAM CENTRAL DEPOT
THIRUVANANTHAPURAM.**
- 9. S.CHANDRAN
INSPECTOR, KSRTC, NEDUMANGAD DEPOT
NEDUMANGAD, THIRUVANANTHAPURAM.**
- 10. Y.VIJAYARAJAN
CHARGEMAN, KSRTC, CENTRAL WORKS
PAPPANAMCODE, THIRUVANANTHAPURAM.**

- 11. A.JOHNSON
INSPECTOR, KSRTC, KOLLAM DEPOT
KOLLAM.**
- 12. N.VIDYADHARAN
DRIVER, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM.**
- 13. K.PAVITHRAN
DRIVER, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM.**
- 14. G.CHANDRASEKHARAN
DRIVER, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM.**
- 15. N.THYAGARAJAN
DRIVER, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM.**
- 16. K.RADHAKRISHNAN NAIR
DRIVER, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM.**
- 17. N.ASOKA KUMAR
DRIVER, KSRTC, KARUNAGAPPALLY DEPOT
KARUNAGAPPALLY, KOLLAM.**
- 18. K.VISWAMBARAN
DRIVER, KSRTC, HARIPPAD DEPOT
HARIPPAD, ALAPPUZHA.**
- 19. N.PUSHPANGATHAN
INSPECTOR, KSRTC, PATHANAMHITTA DEPOT
PATHANAMTHITTA.**
- 20. C.TENNISON
VEHICLE SUPERVISOR, KSRTC, PANTHALAM DEPOT
PANTHALAM, PATHANAMTHITTA.**
- 21. KRISHNAN NAIR.K
GUARD, KSRTC, REGIONAL WORKSHOP
MAVELIKKARA, ALAPPUZHA.**
- 22. P.SAMSON
DRIVER, KSRTC, ADOOR DEPOT
ADOOR, PATHANAMTHITTA.**
- 23. B.VIJAYA PANICKER
INSPECTOR, KSRTC, PATHANAPURAM DEPOT
PATHANAPURAM, KOLLAM.**

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- 24. K.R.MURALEEDHARA KURUP
DRIVER, KSRTC ADOOR DEPOT, ADOOR
PATHANAMTHITTA.**
- 25. S.BASHEER
INSPECTOR KSRTC, ADOOR DEPOT, ADOOR
PATHANAMTHITTA.**
- 26. PRABHAKARAN NAIR E.S.
DRIVER, KSRTC, ERATTUPETTA DEPOT
ERATTUPETTA, KOTTAYAM.**
- 27. P.A.RAJAN
CONDUCTOR, KSRTC, MALA (KODUNGALLOOR) DEPOT
MALA, THRISSUR.**
- 28. K.V.RAMDADASAN
DRIVER, KSRTC, ERNAKULAM DEPOT
ERNAKULAM.**
- 29. M.S.RAVEENDRAN
DEPOT ENGINEER, KSRTC, CHALAKKUDY DEPOT
CHALAKKUDY, THRISSUR.**
- 30. P.M.VARGHESE
CONDUCTOR, KSRTC, GURUVAYOOR DEPOT
GURUVAYOOR, THRISSUR.**
- 31. K.O.JOB
CHARGEMAN, KSRTC, REGIONAL WORKSHOP
EDAPPAL.**

BY ADV. SRI.K.P.RAJEEVAN

RESPONDENTS:

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- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TRANSPORT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
 - 2. THE KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM
PIN 695023.**

**R1 BY SR. GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN
R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC
ADV. DR. THUSHARA JAMES, SC, KSRTC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015 ALONG WITH W.P.(C). NO. 10057/2015 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: A TRUE COPY OF DUTY PASS ISSUED TO THE 1ST PETITIONER, DATED NIL.**
- EXHIBIT-P2: A TRUE COPY OF LIST OF INDIAN STATES BY LIFE EXPECTANCY AT BIRTH TAKEN FROM WIKIPEDIA, THE FREE ENCYCLOPEDIA.**
- EXHIBIT-P3: A TRUE COPY OF DETAILS OF CENTRAL AND STATE GOVERNMENT EMPLOYEES RETIREMENT AGE IN INDIA TAKEN FROM THE WIKIPEDIA.**
- EXHIBIT-P4: A TRUE COPY OF THE NOTE OF THE PROCEEDINGS OF THE DISCUSSIONS OF THE CHIEF MINISTER WITH THE TRADE UNIONS OF KSRTC CONDUCTED ON 22.12.2014.**
- EXHIBIT-P5: A TRUE COPY OF 1ST AND 19TH PAGES OF MINUTES OF THE BOARD DECISION AGENDA ITEM NUMBER 34/2015 DATED 23.2.2015 OF THE BOARD OF DIRECTORS OF KSRTC.**
- EXHIBIT-P6: TRUE COPY OF LETTER DATED 8.4.2015 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**
- EXHIBIT-P7: A TRUE COPY OF JUDGMENT DATED 1.7.2013 IN WP(C) NO.3663 OF 2013.**
- EXHIBIT-P8: A TRUE COPY OF JUDGMENT DATED 21.2.2014 IN WANO.165 OF 2014.**
- EXHIBIT-P9: A TRUE COPY OF ORDER DATED 8.8.2014 IN SLP NOS.20032-20035 OF 2014 OF THE HON'BLE SUPREME COURT OF INDIA.**
- EXHIBIT-P10: A TRUE COPY OF INFORMATION DATED 17.8.2013 OF THE PUBLIC INFORMATION OFFICER OF KERALA STATE BEVERAGES CORPORATION.**
- EXHIBIT-P11: A TRUE COPY OF JUDGMENT DATED 11.2.2015 IN WPC NO.16562 OF 2014.**
- EXHIBIT-P12: A TRUE COPY OF ORDER DATED 12.5.2015 OF THIS HON'BLE COURT IN WP(C) NO.14223 OF 2015.**

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**EXHIBIT-P13: A TRUE COPY OF THE RELEVANT PORTION OF PAGE 13 OF
MATHRUBHUMI DAILY DATED 30.06.2015**

EXHIBIT P14:- A TRUE COPY OF GOVT. NOTIFICATION DATED 04.4.2013

**EXHIBIT P15:- A TRUE COPY OF ORDER DATED 27.1.2007 ISSUED BY THE
KSRTC**

RESPONDENT(S)' EXHIBITS:-NIL

/TRUE COPY/

P.A. TO JUDGE

DCS

“C.R.”

V.CHITAMBARESH, J.

W.P.(C) Nos.14843, 10057, 12512,
13146, 13803, 14223, 14643, 14768,
15005, 15575, 15738 & 21166 of 2015

Dated this the 29th day of July, 2015

J U D G M E N T

The issue pertains to the age of retirement of the employees of the Kerala State Road Transport Corporation Limited ['the KSRTC' for short]. The employees seek to enhance their age of retirement from service from the existing 56 years to 58 years.

2. The Board of Directors of the KSRTC in its meeting held on 23.2.2015 resolved to re-fix the age of retirement of its employees and officers at 58 years. Such decision was taken after a long deliberation taking note of the financial position and future commitments of the KSRTC. The decision was forwarded to the Government for its consideration as per the Road Transport Corporation Act, 1950 ['the Act' for short]. The petitioners knew from the print and electronic media that the Government has turned down the request of the KSRTC in that regard. Reply was elicited under the Right to Information Act, 2005 which confirmed the rejection by the Government. The reply dated 8.4.2015 revealed that the retirement age cannot be enhanced

since the Kerala Service Rules is applicable. The retirement age is 56 years as per Rule 60(a) of Part I of the Kerala Service Rules adopted. It is questioning the decision of the Government has this bunch of writ petitions been filed by the employees.

3. The KSRTC has the power to make its own Regulations ofcourse with the previous sanction of the Government under Section 45 of the Act. Such Regulations may provide for the conditions of appointment and service of its employees. Section 45 of the Act is as under:-

“45. Power to make regulations:- A Corporation may, with the previous sanction of the State Government and by notification in the Official Gazette, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the manner in which, and the purposes for which, persons may be associated with the Board under

- section 10;
- (b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;
- (c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser;
- (d) the issue of passes to the employees of the Corporation and other persons under Section 19;
- (e) the grant of refund in respect of unused tickets and concessional passes under section 19.” (emphasis supplied)

The Regulations can be inconsistent with the provisions of the Kerala Service Rules though not inconsistent with the Act and the Rules framed thereunder. The power aforesaid under Section 45 is quite distinct from the power of the Government under Section 34 of the Act.

4. Instances are numerous where the KSRTC has adopted conditions of service contrary to the

provisions of the Kerala Service Rules. The provisions of the Kerala Service Rules do not govern the payment of subsistence allowance to the employees of the KSRTC. Instead the provisions of the Payment of Subsistence Allowance Act, 1972 (Kerala) have been made applicable to the employees. The payment of Family Pension and Military Pension to the employees is not governed by the Kerala Service Rules. The disbursement of Dearness Allowance to the employees is also not governed by the Kerala Service Rules. Similarly the provisional service of the employees is reckoned as qualifying service for pension as per a bilateral agreement. This is in direct conflict with the provisions of the Kerala Service Rules as modified on 15.12.1998. Suffice it to say that the Kerala Service Rules is not the final word as regards the service conditions of employees. The KSRTC is empowered to make Regulations inconsistent with the same for the administration of its affairs.

5. No order of the Government duly authenticated in the manner envisaged under Article 166 (2) of the Constitution of India was exhibited. I therefore directed the files to be produced in the

light of Sudheer v. State of Kerala [2010 (1) KLT 25]. The files produced by the Government Pleader did contain the request dated 20.3.2015 put in by the KSRTC to the Government. The relevant part of the same is extracted herein below:-

“Government of Kerala owned Companies do not have uniformity in age of superannuation. In many companies the age of superannuation is 58 or 60 and not 56, but without any pension benefits as in KSRTC. In Government of India and Government of India owned Companies, the age of superannuation is 60.

If the age of superannuation is increased from the current 56 years to 58 years, the Corporation can save atleast ₹.400 crore includes deferring of deposit the daily collection to the 10% TSB account, because of non-payment of retiral benefits to the employees for two years continuously. This money can be utilised for the revival initiatives such as creation of gratuity fund or pension fund. Moreover the Corporation is on the threshold of a major revival initiative and the services of experienced and trained personnel are essential for the

success of these efforts.

In the circumstances explained above, a viable remedial measure is to declare a retirement holiday of two years in KSRTC by raising the retirement age from 56 years to 58 years.”

Thus cogent reasons had been stated by the KSRTC in support of its plea for re-fixation of the retirement age of its employees at 58 years.

6. The file contains a note that it shall be forwarded to the Finance Department for their considered opinion on the proposal of the KSRTC. But there is no indication anywhere in the files that it was forwarded to the Finance Department. It was desirable to obtain the considered opinion since the proposal involved financial obligations. The operative part of the decision of the Ministry for Transport dated nil is as under:-

“As the pension conditions including retirement age is governed by the KSR as agreed to by the Management and the Unions, the proposal of MD to enhance the age of superannuation of the employees of KSRTC need not be considered.”

Thus the only reason stated is the applicability of the Kerala Service Rules and none of the reasons stated in the request of the KSRTC are adverted to. The decision cannot also be termed as a general instruction of the Government in the context of Section 34 of the Act.

7. I should note that the life expectancy at birth in the State of Kerala is highest when compared to the other States in India. The life expectancy in the State of Kerala is fixed as 74 when the average throughout India can be pegged at 63.5. The retirement age of Government employees is 56 years only in the State of Kerala and Jharkand. The retirement age is 58 years in the neighbouring Tamil Nadu and 60 years in Karnataka and Andhra Pradesh. It is time for the Government to open its eyes especially in the wake of the request put in by the KSRTC. That money can be saved by declaring a retirement holiday of two years in the KSRTC is a vital point. The money so saved could be profitably utilised for the revival of the KSRTC is a valid reason mooted. But the Government has turned a blind eye to the points canvassed by the KSRTC in turning down its request. There is a total non

application of mind on the part of the Government in turning down the plea of the KSRTC.

8. I quash the decision of the Government on the basis of which the letter dated 8.4.2015 was addressed to the KSRTC. A decision shall be taken anew after adverting to the salient points urged by the KSRTC and noticing the attendant circumstances. It is open to the Government to confer the benefit of enhancement of the retirement age retrospectively. This is because the petitioners have retired subject to the result of the writ petitions and many other employees would be similarly situate. Such decision shall be taken within a period of one month from the date of receipt of a copy of this judgment.

The writ Petitions are allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj.