IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 17683 of 2014 (I)

PETITIONERS :
----

1. T.S. AKBAR KHAN
   S/O.LATE T.M.SAHIB, NOW RESIDING AT T.C.3/1118(4)
   'SAIBA', HOUSE NO.54, VYASA NAGAR
   PATTOM, THIRUVANANTHAPURAM.

2. E.M.RAJENDRAN NAIR
   S/O.LATE P.K.MADHAVAN PILLA, CHAITHRAM, PALACE ROAD
   PALIAKKARA, THIRUVALLA.

BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.N.K.KARNIS

RESPONDENTS :
----

1. TRAVANCORE SUGARS AND CHEMICALS LTD
   VALANJAVATTOM, THIRUVALLA
   REPRESENTED BY ITS MANAGING DIRECTOR, PIN-689104.

2. MANAGING DIRECTOR
   TRAVANCORE SUGARS AND CHEMICALS LTD., VALANJAVATTOM
   THIRUVALLA, PIN-689104.

R BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 17683 of 2014 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE GOVERNMENT OF KERALA BY GOVERNMENT ORDER DATED 12.12.2005.

P2- TRUE COPY OF THE ORDER STAYING EXT.P1 ISSUED BY THE GOVERNMENT AS PER G.O. DATED 15.12.2005.

P3- TRUE COPY OF THE GOVERNMENT ORDER BEARING NO.G.O.(RT)NO.650/2006/ID DATED 24.6.2006.

P4- TRUE COPY OF THE MINUTES INCLUDING RESOLUTION NO.6202 DATED 30.6.2006 ARRIVED AT THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT.

P5- TRUE COPY OF THE GOVERNMENT BY G.O.(RT)NO.1027/07/ID DATED 3.8.2007.

P6- TRUE COPY OF THE INTERIM ORDER DATED 24.8.2007 IN W.P[C]NO.25956/2007 OF THE HONOURABLE HIGH COURT OF KERALA.

P7- TRUE COPY OF THE MINUTES.

P7(A)- TRUE COPY OF THE COMMUNICATION ISSUED BY GOVERNMENT TO THE 2ND RESPONDENT AND OTHER DATED 5.4.2013.

P8- TRUE COPY OF THE ORDER ISSUED BY THE GOVERNMENT OF KERALA DATED 28.6.2013.

P9- TRUE COPY OF THE NOTICE DATED 19.6.2014 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER

P10- TRUE COPY OF THE NOTICE DATED 19.6.2014 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.

P11 : COPY OF THE MEMORANDUM OF WP(C)NO.32856 OF 2006 WITHOUT EXHIBITS

P12 : COPY OF THE G.O.DATED 28.2.2014 ISSUED BY THE GOVERNMENT

P13 : COPY OF EXT.P3 PRODUCED BY THE PETITIONRS IN EXT.R1(b)

P14 : COPY OF I.A.NO.7938 OF 2014 FILED IN EXT.R1(b) CASE

RESPONDENT(S)' EXHIBITS

EXT.R1(a) : COPY OF G.O.NO.3453/F3/06/ID DATED 25.08.2006 ISSUED BY THE GOVERNMENT OF KERALA

EXT.R1(b) : COPY OF THE JUDGMENT DATED 18.6.2014 AND I.A.NO.7938 OF 2014 IN WP(C) NO.32856 OF 2006 PASSED BY THIS HON'BLE COURT

EXT.R1(c): COPY OF APPLICATION DATED 8.12.2014 SUBMITTED BY THE 1ST PETITIONER FOR SETTLEMENT OF THEIR PROVIDENT FUND

EXT.R1(d) : COPY OF APPLICATION DATED 24.12.2014 SUBMITTED BY THE 2ND PETITIONER FOR SETTLEMENT OF THEIR PROVIDENT FUND

WP(C).No. 17683 of 2014 (I)

EXT.R1(e) : COPY OF LIST OF OFFICERS RETIRED AFTER THE YEAR 1981.

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.17683 of 2014

Dated this the 5th day of February, 2015

<u>J U D G M E N T</u>

The petitioners who were Officers of the 1st respondent Company have filed this writ petition challenging Exts.P9 and P10 proceedings of the 2nd respondent, by which they have been terminated from service. According to the petitioners, all employees of the 1st respondent including the petitioners have a right to continue in service till they complete the age of 60 years. However, they have been terminated before they attained the age of 60 years by Exts.P9 and P10.

2. According to the petitioners, the age of retirement of the employees of Sugar Factories including that of the 1st respondent all over India was enhanced to 60 years in the year 1970 as per the recommendations of the Sugar Wage Board. On 12.12.2005, the retirement age of employees was sought to be reduced to 58 years with effect from 18.10.2003. In the case of employees opting for voluntary retirement from service, the compensation payable was to be worked out treating the retirement age as 60. However, by Ext.P2 dated 15.12.2005, the Government stayed Ext.P1. Thereafter, Ext.P3 order was issued by the Government directing the retirement age of all existing employees of the 1st respondent to be maintained at 60 years. Pursuant to Ext.P3, by Ext.P4 minutes of the Board of Directors dated 30.06.2006, the retirement age of all employees was fixed at 60. The

names of the petitioners are mentioned as Serial Nos.117 and 118 in the list of employees appended to and forming part of Ext.P4.

3. While so, on 03.08.2007 as per Ext.P5 Government Order, the retirement age of all employees of the 1st respondent, including Officers was fixed as 58 years. Ext.P5 was challenged by the Officers Association before this Court in W.P.(C).No.32856/2006. The said writ petition was admitted and an interim order of stay of Ext.P5 was granted. Ext.P5 was also challenged by three workers' unions of the 1st respondent in W.P.(C).No.25956/07, which is still pending. The said writ petition was also admitted and an interim order of stay of Ext.P5 was granted on 24.08.2007, which is still in force.

4. In the above circumstances, a meeting was convened by the Minister for Fisheries and Excise on 26.03.2013 of the representatives of the employees as well as the 2nd respondent and other concerned persons. The minutes of the meeting is Ext.P7. At the meeting, it was decided to refer the question of retirement age of employees of the 1st respondent to a One Man Commission and to maintain the status quo. Accordingly, as per Ext.P8 order, a One Man Commission has been appointed to submit a report to the Government with respect to the terms of reference contained therein. The One Man Commission has not submitted its report so far.

5. While so, it appears that the writ petition W.P(C).

No.32856/2006 was withdrawn as per Ext.R1(b) judgment. Thereupon, by Ext.P9 and P10, the petitioners were terminated from service on the ground that, they had crossed the superannuation age of 58 years and that, the writ petition filed on their behalf had been dismissed as withdrawn. It is alleged by the petitioners that, the person who had got the writ petition withdrawn had no authority to do so and therefore, they have preferred a review petition, R.P.No.228/2014 seeking review of Ext.R1(b) judgment, which is still pending. It is contended that, the termination of the petitioners as per Exts.P9 and P10 is unsustainable and liable to the set aside.

6. According to the learned Senior Counsel Sri.N.Sukumaran who appears for the petitioners, the retirement age of employees of the 1st respondent was originally 60. However, the same was sought to be reduced to 58 by Ext.P5 Government Order. The said order had been stayed by this Court in two writ petitions, W.P.(C).No.32856/06 as well as W.P.(C).No.25956/07. Interim orders of stay had been granted in both the writ petitions. Though W.P.(C).No.32856/06 had been withdrawn, the interim order of stay in W.P.(C).No.25956/07 continues to be in force, to this date. It is also pointed out by the learned Senior Counsel that, the question of fixing the retirement age of employees of the 1st respondent was engaging the attention of the One Man Commission appointed as per Ext.P8 order. The decision to appoint

the One Man Commission was taken at a meeting chaired by none other than the Minister for Excise. In the minutes of the said meeting, Ext.P7, a further decision to maintain the status quo until the One Man Commission submits its report, was also taken. The 2nd respondent was aware of the said decision also. In spite of the above, Exts.P9 and P10 orders have been issued. The said orders are unsustainable in view of the fact that, they have been issued in violation of the interim order of this Court Ext.P6 as well as the decision contained in Ext.P7 directing that the status quo be maintained. It is therefore, contended that, the withdrawal of W.P.(C).No.32856/06 does not in any manner affect the continuance of the petitioners up to the age of 60. For the above reasons, it is contended that Exts.P9 and P10 are liable to be set aside and they are permitted to continue in service till they complete the age of 60 years.

7. The contentions of the petitioners are opposed by the respondents. A counter affidavit as well as an additional counter affidavit have been filed producing Exts.R1(a) to R1(e) documents. According to the learned counsel Sri.P. Benny Thomas who appears for the respondents, the 1st respondent Company was originally a private sector undertaking producing sugar. At that time, the Sugar Wage Board had in 1970 fixed the age of retirement of all employees in sugar factories all over India at 60. The 1st respondent Company does

not produce any sugar now and is only producing Indian Made Foreign Liquor. Therefore, the retirement age as stipulated by the Sugar Wage Board is no longer applicable. It was for the said reason that, by Ext.P1 Government Order the retirement age was reduced to 58 years. However, the said decision was stayed by Ext.P2. Later on, by Ext.P3 the retirement age was directed to be fixed at 60. However, according to the learned counsel, the Officers of the 1st respondent Company were all along retiring at the age of 58 years. It was only the workers who were permitted to continue up to the age of 60. Reliance is placed on Ext.R1(e) tabular statement to contend that no Officer of the Company had worked beyond the age of 58 years since 1981. The petitioners cannot therefore claim to continue in service up to the age of 60.

8. As per Ext.P5, the Government had decided that the retirement age of all employees shall be 58 years. The Association of the Officers challenged the same before this Court in W.P.(C). No.32856/06. They had also obtained an interim order of stay of Ext.P5. However, the said writ petition was subsequently dismissed as withdrawn. Since the order of stay granted by this Court was no longer in force, it was impermissible for the petitioners to be continued in service. It was for the said reason that, they were terminated by Exts.P9 and P10. Though they had challenged their termination orders

in this writ petition, after the filing of the writ petition, they had applied for the disbursement of their Provident Fund amount as per Exts.R1(c) and R1(d) applications. They have also obtained payment of the Provident Fund amount standing to their credit. Therefore, it is contended that, they had accepted the termination, disentitling them from questioning the same. They have by their conduct agreed to their termination from service. It is the further contention of the counsel for the respondents that, what is contained in Ext.P7 minutes is only a request to the 2nd respondent to maintain the status quo. No decision has been taken at the said meeting to maintain the status quo. What has been recorded therein is only that, there was a demand for maintaining the status quo. In the absence of anything to show that the said demand was acceded to, it is contended that there was no impediment in issuing Exts.P9 and P10. Ext.P8 Government Order by which a One Man Commission has been appointed also does not stipulate that the status quo should be maintained until the Commission submits its report.

9. Heard. The petitioners were admittedly working as Officers of the 1st respondent Company. A perusal of Exts.P1 to P3 shows that, the decision to roll back the retirement age of the employees to 58 was taken by the Board of Directors initially, taking into account the bad financial condition of the Company. The decision of the Board of

Directors was accepted by the Government as evident from Ext.P1. However, Ext.P1 is seen to have been stayed after a few days by Ext.P2. The situation continued until the issue of Ext.P3. As per Ext.P3 order dated 24.6.2006, "the retirement age of all the existing employees of TSCL can be maintained as 60." Ext.P3 has therefore fixed the retirement age of all employees of the 1st respondent Company at 60 years. The said order was followed up with Ext.P4 decision of the Board of Directors at its meeting held on 30.06.2006. Ext.P4 minutes has appended to it a list of employees of the 1st respondent wherein the names of the petitioners are mentioned as Serial Nos.117 and 118 respectively. It is clear from the above that, whatever may have been the retirement age of employees prior to the issue of Ext.P3, the retirement age has been directed to be maintained at 60, as per Ext.P3. The use of the expression "all the employees of TSCL" indicates in unmistakable terms that no differentiation between workers and officers was directed to be maintained. Nor does any such distinction appear to have been in the contemplation of the Government while issuing Ext.P3. In Ext.P5, by which the retirement age has been reduced to 58, it has been specifically mentioned that "the retirement age of all employees of Travancore Sugars and Chemicals Ltd. including Officers of Travancore Sugars and Chemicals Ltd. is fixed as 58 years". The wording of Ext.P5 also does not give room for any doubt regarding the fact that, both officers and workers were included in the roll-back of the retirement age. It was Ext.P5 that was challenged before this Court in the writ petitions referred to above. W.P.(C).No.25956/07 is still pending and the interim order of stay of Ext.P5 granted by this Court is still in force.

10. It is in the above background that, the Minister for Excise had convened the meeting of the representatives of both the workers and officers the Company on 26.03.2013. As per Ext.P7 minutes, it has been decided that the dispute regarding the age of retirement will referred to a One Man Commission and to maintain the status quo. It is true that the decision has been recorded as a request made to the 2nd respondent to maintain the status quo. However, the same has been recorded as the decision of meeting. It is also worth noticing that the Government has acted on the basis of the said minutes and has issued a Government Order Ext.P8 appointing a One Man Commission to submit a report on the terms of reference contained therein. The conduct of the Government clearly indicates that, a final decision regarding the retirement age of the employees would be taken only on the basis of the report of the One Man Commission that is yet to be submitted. It is for the said reason that, the status quo was requested to be maintained. Since a final decision on the question of retirement age of employees has not yet been taken, it was only in the fitness of

things that the status quo is maintained until such a decision is taken. Therefore, issue of Exts.P9 and P10 in a situation where admittedly the One Man Commission has not yet submitted its report, cannot be justified. There is controversy regarding the manner in which the writ petition W.P.(C).No.32856/06 was actually withdrawn. However, I do not want to say anything on the said aspect, since a review petition is pending. However, the writ petition is seen to have been got withdrawn on 18.06.2014. Exts.P9 and P10 have been issued on 19.06.2014, on the very next day. The respondents have omitted to take note of the fact that, Ext.P6 order of interim stay granted by this Court was still in force. The respondents have also failed to note that, the Government itself had decided to re-examine the entire question and to take a final decision only on the basis of the report of the One Man Commission that has been appointed to report regarding the question, as per Ext.P8 Government Order. For the above reasons, Exts.P9 and P10 are unsustainable.

11. The contention of the counsel for the respondents that the petitioners had accepted their retirement as per Exts.P9 and P10 by their conduct in applying for and receiving the Provident Fund amount that stood to their credit cannot be accepted for the reason that, the petitioners had no choice. They were already terminated from service by the respondents and therefore, they had no option but to accept the

same. However, they had filed this writ petition before they had submitted the applications. This writ petition has been pending all along.

In view of the above, this writ petition is allowed. Exts.P9 and P10 are set aside. The petitioners shall be entitled to continue in service, until they attain 60 years of age or until recommendations of the One Man Commission are accepted by the Government, whichever is earlier, with all consequential benefits.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV