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. 25634 of 2012 (D)

PETITIONER(S):
----

1. USHA KUMARI R., AGED 58 YEARS,,
   D/O.GOPINATHAN NAIR, ASSISTANT GRADE I,
   KERALA STATE BEVERAGES (M&M) CORPORATION LIMITED
   WARE HOUSE, PETTAH JUNCTION, POONITHURA.P.O
   KOCHI-682038, RESIDING USHUS, AROOKUTTY.P.O
   CHERTHALA, ALAPPUZHA.

2. E.N.R.SREEKUMAR, AGED 58 YEARS
   S/O.E.N.R.RAMACHANDRAN, ASSISTANT MANAGER
   KERALA STATE BEVERAGE(M&M) CORPORATION LTD
   WARE HOUSE, KOMMADY, ALAPPUZHA
   RESIDING AT EYYANI, NHYAKKATU HOUSE, THRISSUR.

3. MOHANAN.T.G, AGED 58 YEARS
   S/O. GOVINDAN NAIR, HELPER
   KERALA STATE BEVERAGES(M&M) CORPORATION LTD
   WARE HOUSE, PETTAH JUNCTION, POONITHURA.P.O
   KOCI-682038, RESIDING AT THODUVAYIL HOUSE
   CHETHICODE.P.O, PIN-682315, KANJIRAM.

4. C.R.SANTHAMMA, AGED 58 YEARS
   W/O.G.MOHAN, HELPER
   KERALA STATE BEVERAGES (M&M) CORPORATION LTD
   WARE HOUSE, PERINTHALMANNA
   RESIDING AT CHOORAPARA HOUSE, KUNNIPPALA.P.O
   BHOODAN COLONY, MALAPPURAM DISTRICT.

5. PADMAVATHI AMMA.N.V, AGED 58 YEARS
   W/O.MANIYAN PILLAI.K, ASSISTANT GRADE I
   KERALA STATE BEVERAGES (M&M)CORPORATION LTD, PULAMON
   KOTTARAKKARA, RESIDING AT PADMALAYAM,
   THOLICODE.P.O -691333, PUNALUR, KOLLAM DISTRICT.

6. N.REMANI, AGED 58 YEARS
   WO.P.V.PUSHKARAN, TYPIST GRADE I
   KERALA STATE BEVERAGES(M&M) CORPORATION LTD
   WARE HOUSE, PETTAH JUNCTION, POONITHURA.P.O
   KOCHI-682038, RESIDING AT PULIMOOTTIL HOUSE, VMC ROAD
   KOCHUKAVALA.

PJ

....2/-

WP(C).No. 25634 of 2012 (D)
----

7. SUDHARMA.G, AGED 58 YEARS
D/O.LATE V.BHADRAN, HELPER
KERALA STATE BEVERAGES(M&M) CORPORATION LTD
WARE HOUSE, KOLLAM, RESIDING AT MANECHERIL VEEDU
TKMC.P.O, PEROOR, KOLLAM-5.

8. NABEESA BEEVI.S, AGED 58 YEARS
W/O ABDULLA .M, HELPER
KERALA STATE BEVERAGES(M&M) CORPORATION LTD
WARE HOUSE, KOLLAM, RESIDING AT PALLIVADAKETHIL VEEDU
KERALAPURAM, VELLIMON.P.O, KOLLAM.

9. K.B.RADHAMANI AMMA, AGED 58 YEARS
W/O.K.C.GOPINATHAN NAIR, ASSISTANT GRADE I
KERALA STATE BEVERAGES (M&M) CORPORATION LTD
WARE HOUSE, THODUPUZHA
RESIDING AT KUDACKANAL HOUSE KOLANI.P.O, THODUPUZHA
IDUKKI DISTRICT.

10. A.V.MARY, AGED 58 YEARS
W/O.DR.A.M.VARKEY, MANAGER
KERALA STATE BEVERAGES(M&M) CORPORATION LTD
WARE HOUSE, ALUVA, RESIDING AT ARATTIL HOUSE
PAZHANGANADU KARA, ASANPADY, KIZHAKKAMBALAM.P.O
ERNAKULAM DISTRICT.

11. C.RADHAKRISHNAN NAIR, AGED 58 YEARS
S/O.K.CHELLAPPAN PILLAI, HELPER
KERALA STATE BEVERAGES (M&M) CORPORATION LTD
FL 1 SHOP NO.1043, NILAKKAMUKKU, KADAKKAVOOR
THIRUVANANTHAPURAM DISTRICT
RESIDING AT KONATHU VEEDU, KADAKKAVOOR.

12. S.PRASAD, AGED 58 YEARS
S/O.N.SAMBAN, ASSISTANT GRADE I
KERALA STATE BEVERAGES(M&M) CORPORATION LTD
WARE HOUSE, ATTINGAL, RESIDING AT ASARIKARHAN
MELVETTOOR(VIA), VARKALA.

BY ADV. SRI.M.RAJENDRAN NAIR

RESPONDENT(S):
----

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TAXES (G) DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

2. MANAGING DIRECTOR,
KERALA STATE BEVERAGES (M&M) CORPORATION LIMITED
SASTHAMANGALAM, THIRUVANANTHAPURAM.

PJ

WP(C).No. 25634 of 2012 (D)
----

3. THE SECRETARY,
KERALA STATE BEVERAGES (M&M)CORPORATION LIMITED
SASTHAMANGALAM, THIRUVANANTHAPURAM.

R1 BY GOVERNMENT PLEADER SMT.RAJASREE M.J.
R2 & 3 BY SRI.C.S.AJITH PRAKASH,SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2015, ALONG WITH WPC. 8538/2013 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 25634 of 2012 (D)

APPENDIX

PETITIONER(S) EXHIBITS

EXT-P1 TRUE COPY OF CHAPTER II OF THE KERALA STATE BEVERAGES (M&M)CORPORATION LTD,SERVICE RULES(RULES 10 TO 45)

EXT-P2 TRUE COPY OF THE DECISION IN KAVIRAJAN VS.K.S.B.C.LTD.2007(2) KLT.917. (JUDGMENT IN WPC.36864/03 DATED 15/3/2007 OF THIS HONOURABLE COURT)

EXT-P3 TRUE COPY OF JUDGMENT DATED 11-04-2010IN WP(C)6047 OF 2012 (E)

EXT-P4 TRUE COPY OF THE REPRESENTATION DATED 12TH SEPTEMBER 2012.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

W.P.(C).Nos.25634/2012 & 8538/2013 & 7716, 9097, 9620, 14524, 27346, 29761, 31723, 32079 and 34045 of 2014

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

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 Beverages (Manufacturing and Marketing) Corporation, (for short, the "BEVCO"). The issue in these writ petitions pertain to continuation of these employees until the age of 60 years.

2. The retirement age of the employees other than the Abkari Workers, who were absorbed in the service of BEVCO consequent upon the decision of the Government to entrust foreign liquor business to BEVCO in the State, is 58 years. The retirement age of Abkari workers who are absorbed is 60 years. This Court passed a detailed interim order on 13/06/2014 in W.P.(C).No.14524/2014

permitting the petitioner therein, who is due to retire at the age of 58 years to continue in the service beyond the age of 58. However, it was made clear that the salary and allowances payable to the employee would depend upon the outcome of the writ petition. Challenging the said order BEVCO preferred a writ appeal. In writ appeal, this Court did not interfere with the interim order. The Special Leave Petition (SLP No.29237/2014) preferred by BEVCO before the Hon'ble Supreme Court was also dismissed.

3. Heard the learned Senior Counsel Dr.K.P.Satheesan, the learned counsel Shri Babu Joseph Kuruvathazha, Shri Mohammed Salahudeen appearing for the petitioners and the learned Standing Counsel Shri Ajith Prakash C.S. appearing for BEVCO.

4. The employees in the regular service of BEVCO have to retire on attaining the age of 58 years as per the Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. Employees Service Rules, 1986. As per the Abkari Policy 2001 of the Government,

the monopoly right of sale and purchase of liquor in the State of Kerala was entrusted to BEVCO. On account of this, large number of Abkari workers rendered jobless as the Abkari workers who were members of the Abkari Workers Welfare Fund Board wherein the retirement age is 60 years.

5. BEVCO entered into an agreement with the Union representing the Abkari workers on 28/10/2002. Accordingly, the workers who were registered with the Abkari Workers Welfare Fund Board prior to 01/04/2000 numbering 1073 were agreed to be absorbed in BEVCO. This copy of settlement is produced as Annexure-A4 along with the memo filed by the respondents 2 and 3 in W.P.(C).No.14524/2014. It is specifically agreed in the agreement that the workers are guided by the working conditions of BEVCO as stipulated in the Service Rules of BEVCO (except Rule 22) and various guidelines issued from time to time. The Abkari workers after regularisation would also be entitled for benefits in addition to the wages such as leave,

medical facilities, contribution to provident fund and retirement gratuity. In view of the fact that they are the members of the Abkari Workers Welfare Fund Board, it is agreed that contribution thereon would be remitted and they can continue the membership. Thus, the Abkari workers were allowed to continue upto the age of 60 years taking note of the fact they are members of the Abkari Workers Welfare Fund Board.

6. The learned Senior Counsel appearing for the petitioners Dr.K.P.Satheesan submitted that once the Abkari workers are absorbed into regular service, there cannot be any discrimination among the employees under BEVCO in the matter of retirement. It is further argued that birth mark of the employee is not the criteria to determine the age of retirement. It is submitted that classification among employees based on source of recruitment is *per se* illegal and violative of equal protection under Article 14 of the Constitution. The other counsel also reiterated the same arguments. *Per contra*, the learned Standing

Counsel for BEVCO argued that the Abkari workers form a separate class within the organisation and they are not entitled for promotion. It is further submitted that they have no other benefits. It is taking note of this retirement they are allowed to retire at the age of 60 years. It is argued that the Abkari workers form a separate class and it is a vanishing tribe. Once this class of Abkari workers vanish, Special Scheme giving retirement age of employees will also disappear. The permission granted to the Abkari workers to continue upto the age of 60 years considering the benefit to be derived from the Abkari Welfare Fund cannot be said to be discriminatory.

7. Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. However, in order to sustain permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are

left out of the group and, (ii) that the differentia must have a rational relation to the objective sought to be achieved by the action in question. The classification may be founded on differential basis according to objects sought to be achieved. The validity of classification must be adjudged with reference to the purpose of law (see **Budhan Choudhry and others v. State of Bihar [AIR 1955 SC 191], State of Kerala and another v. N.M.Thomas and others [AIR 1976 SC 490] and Deepak Sibal and another v. Punjab University and another [(1989) 2 SCC 145]**. In the light of facts in law, it has to be found out whether Abkari workers in the organisation, constitute a separate identifiable class governed by a special scheme chalked out to rehabilitate them.

8. Some of the writ petitioners are helpers working in the organisation. They claim that they discharge the same duties and functions which have been discharged by the Abkari workers. It is their case that though absorbed workers are referred as Abkari

workers in the organisation, nevertheless, there is no difference in the duties attached to helpers from Abkari workers. Shri Babu Kuruvathazha, learned counsel appearing for some of the helpers, submitted that there are 3 categories of Abkari workers i.e., Abkari workers working under the private foreign liquor shops, children of abkari workers who committed suicide and the employees who were absorbed to BEVCO on account of shortage of employees. It is further pointed out that though for the purpose of welfare fund contribution benefits, age is restricted to them at 60 years, those workers otherwise could have continued in the private establishment without any fixation of age of superannuation, depending upon their willingness to continue. Therefore, it is submitted that non fixing of retirement age at par with Abkari workers is irrational and unsustainable.

9. It is mentioned in Annexure-A4 agreement produced in W.P.(C).No.14524/2014 that on regularisation, the workers who have registered with

the Kerala Abkari Workers Welfare Fund Board prior to 01/04/2000 would be employees of BEVCO. It is also agreed that the regularised Abkari workers shall be placed in the regular pay scale of BEVCO It is also agreed that all workers after regularisation will be eligible for the benefits in addition to wages such as leave, medical facilities, contribution to Provident Fund and retirement gratuity. It is also agreed that the workers are bound by the working conditions of BEVCO and the guidelines issued from time to time. Thus, for all other purposes service conditions as applicable to other employees in BEVCO are made equally applicable to the Abkari workers. The only difference is that they will enjoy the Abkari Workers Welfare Fund Scheme to which they are otherwise attached before the regularisation. The facts revealed as above clearly indicate that the Abkari workers when they were absorbed to BEVCO are treated in par with other employees of the BEVCO for all the service conditions. It may be true that Abkari workers were never considered as a feeder category for promotion under the service rules of BEVCO. That does not mean they are denied promotion on account of absorption. It is perhaps for the reason that the Abkari workers want to continue to enjoy the benefits under the welfare fund scheme they do not want to change their category known as the Abkari workers, as they otherwise discharge same responsibilities and duties of that of other employees of BEVCO. Merely for the reason that Abkari workers want to continue to enjoy certain benefits which they were enjoying before the absorption will not indicate that they form part of a different class in the stream of employees, separately identifiable for the purpose of retirement age. The yardstick of the retirement age cannot be denied to other employees of BEVCO. Equality is the concept i.e. equal protection to all in equal circumstances. The only rationale that has come out for fixing of different age of retirement for the Akari workers is only to enable them to obtain the benefit under the welfare fund. There is no rationale in fixing therefore lower age for other employees for the simple reason that they are not entitled to claim welfare fund. In an organisation, fixation of upper age for employees is based on the organisational need and not upon the requirement of particular class of employees. Therefore, in organisational perspective, different age can be fixed with an objective to secure any of the organisational moto or scheme. However, different age cannot be fixed in an organisation to suit the need of some of the employees. It is nothing but discrimination. The Hon'ble Supreme Court in **Union of India and others v. Atul Shukla and others [(2014) 10 SCC 432]** held that so long as the two employees are a part of the same cadre/rank, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation. In **State of Uttar Pradesh v. Dayanand Chakrawarty and others [(2013) 7 SCC 595]** it was held by the Hon'ble Supreme Court that classification made by 2005 Regulations betweent the employees of the erstwhile Local Self-Government Engineering Department transferred to U.P. Jal Nigam and employees directly recruited by U.P. Jal Nigam, by prescribing different age of superannuation i.e. in former case it was 60 years and in the latter case 58 years was discriminatory and such differential treatment is impermissible in the matter of conditions of service, including age of superannuation, in the absence of intelligible differentia distinguishing them from each other.

10. In view of the discussions as above, these writ petitions are allowed.

The following directions are issued:

It is declared that all regular employees of BEVCO are entitled to continue till the age of 60 years.

i. It is further declared that fixation of different age of retirement among employees of BEVCO is violative of Article 14 of the Constitution.

ii. All the workers, who are continuing based on the interim order of this Court shall be paid salary and other allowances in accordance with law.

iii. If any of the workers, who have filed the writ petitions happen to be retired, pending the writ petition, they shall be reinstated in the service immediately. BEVCO need not pay salary or any other allowances to those employees during the period of absence. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms