IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 28309 of 2014 (K)

PETITIONERS:

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1. S.RAJENDRAN
   PLUMBER, CHITHRANJALI STUDIO
   THE KERALA STATE FILM DEVELOPMENT CORPORATION LTD.
   THIRUVALLAM, THIRUVANANTHAPURAM.

2. G. SASI,
   GATE KEEPER, KALABHAVAN THEATRE
   THE KERALA STATE FILM DEVELOPMENT CORPORATION LTD
   THIRUVANANTHAPURAM.

3. P. SURENDRAN,
   AC PLANT OPERATOR, KAIRALI/SREE
   THE KERALA STATE FILM DEVELOPMENT CORPORATION LTD
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.R.SASITH

RESPONDENTS:

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1. STATE OF KERALA
   REPRESENTED BY SECRETARY, CULTURAL AFFAIR DEPARTMENT
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA STATE FILM DEVELOPMENT CORPORATION LTD.,
   REPRESENTED BY ITS MANAGING DIRECTOR
   CHALACHITHRAKALABHAVAN
   VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.

3. THE MANAGING DIRECTOR,
   THE KERALA STATE FILM DEVELOPMENT CORPORATION
   CHALACHITHRAKALABHAVAN, VAZHUTHACAUD
   THIRUVANANTHAPURAM-695B014.

BY ADVS. SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI
GOVERNMENT PLEADER SMT. A. LOWSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015, ALONG WITH WPC. 31059/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28309 of 2014 (K)

APPENDIX

PETITIONERS' EXHIBITS:-

EXHIBIT P1	**-**	**COPY OF THE RELEVANT PAGE OF PROVISION OF THE SERVICE RULES OF THE 3RD RESPONDENT.**
EXHIBIT P2	**-**	**COPY OF THE REPRESENTATION SUBMITTED TO THE MINISTER AND SAME FORWARD TO 3RD RESPONDENT.**
EXHIBIT P2A	**-**	**COPY OF THE ENGLIGH TRANSLATION OF EXT.P2.**
EXHIBIT P3	**-**	**COPY OF THE REPLY DATED 02.05.2013**
EXHIBIT P3A	**-**	**COPY OF THE ENGLIGH TRANSLATION OF EXT.P3.**
EXHIBIT P4	**-**	**COPY OF THE JUDGMENT IN WRIT PETITION NO.27353/2013.**
EXHIBIT P5	**-**	**COPY OF THE MINUTES OF 171 OF MEETING.**
EXHIBIT P6	**-**	**COPY OF THE COMMUNICATION SENT BY THE 3 RESPONDENT TO THE 1ST RESPONDENT.**
EXHIBIT P6A	**-**	**COPY OF THE ENGLIGH TRANSLATION OF EXT. P6.**
EXHIBIT P7	**-**	**COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.**
EXHIBIT P7A	**-**	**COPY OF THE ENGLIGH TRANSLATION OF EXT.P7.**
EXHIBIT P8	**-**	**COPY OF THE INTERIM ORDER IN WRIT PETITION NO.22778/2014.**
EXHIBIT P9	**-**	**COPY OF THE LIST OF RANKING ENTERPRISES IN TERM OF PROFITABILITY.**
EXHIBIT P10	**-**	**COPY OF THE LIST OF STATE ENTERPRISES ACCUMULATED LOSS.**
EXHIBIT P11	**-**	**COPY OF LIST OF ENHANCED GRATUITY OF THE 3 RESPONDENT EMPLOYEES.**
EXHIBIT P12	**-**	**COPY OF THE ORDER BEARING NO. MS 108/2014 DATED 31-7-2014.**
EXHIBIT P13	**-**	**COPY OF THE JUDGMENT IN WRIT PETITION NO.5826/2014.**

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). Nos.28309 & 31059 of 2014

Dated this the 16th day of September, 2015.

JUDGMENT

The petitioners in the above writ petitions are aggrieved with the shifting stand of the Board with respect to the retirement age of the employees. The learned counsel for the petitioners also rely on a decision of this Court in WP(C) No.24381 of 2014 dated 11.02.2015, in which according to him, a similar question had come up for consideration and the same was directed to be considered by the Government exercising its executive functions, after placing it before the Council of Ministers. Petitioners therein were also directed to be continued, till orders are issued by the Government, is the specific contention raised.

2. Admittedly, the Board had, on the representation of the Employees' Organisation, taken a decision at Ext.P5 to enhance the retirement age to 60 years. The said decision was

specifically on the ground that the superannuated employee would get on by a meagre pension under the Employees' Provident Fund Scheme and also on the additional finding of the Board that the post in the KSFDC are highly technical in nature, requiring continuous service of senior staff for the smooth running of the Corporation. After having decided to enhance the retirement age to 60 years, the Managing Director was authorised to take up the matter before the Government.

3. The Government, however, rejected the said proposal by Ext.P7. The rejection was on the ground that the Government had decided to continue the retirement age of the employees in the Public Sector Organisations at 58 years itself. Subsequently, the Board also, without reference to the rejection of the Government, but however on a review of the earlier decision and probably dissatisfied with the working of the earlier decision for a period, found that many of the works, require services of young hands well-versed in the applicable technologies. True, on the same grounds, the Board once continued the existing staff on the basis of their experience and later on decided to discontinue their

service on the ground of infusing young blood into the organisation. It is also to be noticed that, it is not technical hands alone, who have come up before this Court, since the cause title shows that there were technical hands, Managers, Clerks, Peons and so on and so forth, who have raised the contention that they ought to be continued on the basis of their experience.

4. The decision cited by the learned counsel for the petitioner would not apply, since the bye-laws of the organisation in the said case referred to "a prior approval of the Governor". It was on such terms that the learned Single Judge of this Court directed the Government to take a decision untrammeled by the policy of not continuing the persons in any Public Sector Organisations beyond the age of 58. The decision to be taken was directed to be specifically with respect to the said organisation. What is essentially indicated is that a policy cannot interdict the executive powers of the Government, when the bye-laws confer specific power.

5. In the present case, no such provision has been pointed out to this Court. The petitioners rely on the Service Rules, which

indicates so by Clause 22 of Chapter I as hereunder:-

> *"**22. AGE OF RETIREMENT***
> *The employees of the Corporation shall retire from the service of the Corporation on superannuation on attaining the age of 58 according to the records of the Corporation. The Corporation shall have the powers to extend the age limit in exceptional case subject to the Orders issued by Government from time to time."*

6. Though the learned counsel would submit that the extract produced as Ext.P1 is an extract of the Articles of Association, a reading of the same does not indicate so and the learned counsel appearing for the respondent Corporation asserts that it is an extract of the Service Rules. In any event, the specific power given to the Corporation to extend the age limit is in exceptional cases, hence such power can be exercised only in the case of individuals and no blanket order could be passed by the Corporation, extending the age of all the employees to 60 years. Even in exceptional circumstances, the orders passed, extending the retirement age, are subject to the orders issued by the Government from time to time. The specific prescription that the orders shall be subject to the orders issued by the Government from time to time indicates that the provision for

retirement would be governed by the policy of the Government, which is categorically expressed in Ext.P6.

In such circumstances, this Court does not find any reason to permit the continuance of the petitioners, since the Government policy as expressed in Ext.P7 is not to continue employees in the Public Sector Organisations beyond the age of 58. Further the Board also has taken a decision to resile from the earlier decision taken at Ext.P5. However the petitioners having been continued by virtue of the interim orders passed by this Court, which orders were passed only on the basis of the earlier decision of the Board of Directors, necessarily the pay and allowances as applicable to the petitioners shall be paid for the period they have worked beyond the age of superannuation of 58 years. The petitioners shall be liable for retirement forthwith.

The writ petitions shall stand dismissed.

Sd/-

K. VINOD CHANDRAN,
JUDGE

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