

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 30972 of 2014 (V)

PETITIONER(S):

**P.SOBHANA AGED 55 YEARS
ACCOUNTS OFFICER
KERALA STATE BEVERAGES CORPORATION LTSD.
SASTHAMANGALAM, THIRUVANANTHAPURAM**

**BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN**

RESPONDENT(S):

**1. THE MANAGING DIRECTOR
KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.
PB NO.50, HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM 695 001**

**2. THE ADMINISTRATIVE OFFICER
KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.
PB NO.50, HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM 695 001**

R, BY ADV. SMT.K.K.RAZIYA, SC, SMALL INDUSTRIES DEVP. CORPN., SIDCO

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 COPY OF THE ORDER NO.PER(1)/6978/08 DATED 11/7/2008 ISSUED BY THE FIRST RESPONDENT
- EXHIBIT P2 COPY OF THE PROCEEDINGS ISSUED BY THE 2ND RESPONDENT DSATED 8/12/2009
- EXHIBIT P3 COPY OF THE ORDER NO. PER(2)/5244/09 DATED 11/1/2010 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P4 COPY OF THE PROCEEDINGS ISSUED BY THE 2ND RESPONDENT OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT DATED 15/11/2010
- EXHIBIT P4(A) ENGLISH TRANSLATION OF THE RELEVANT PAGES OF EXHIBIT P4
EXHIBIT P5 COPY OF THE REPLY GIVEN BY THE KERALA STATE COIR CORPORATION LTD., DATED 16/11/2010
- EXHIBIT P5(A) ENGLISH TRANSLATION OF EXHIBIT P5
- EXHIBIT P6 COPY OF THE VERIFICATION CERTIFICATE DATED 30/6/2008 ISSUED BY THE KERALA STATE BEVERAGES CORPORATION
- EXHIBIT P7 COPY OF THE CIRCULAR NO.4/3/FIN DATED 1/1/2003 ISSUED BY THE GOVERNMENT OF KERALA
- EXHIBIT P8 COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 8/3/2010
- EXHIBIT P9 COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 24/2/2011
- EXHIBIT P10 COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 10/10/2012
- EXHIBIT P11 COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 4/4/2013
- EXHIBIT P12 COPY OF THE LIST OF THE EMPLOYEES OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT FROM SIDCO DATED 21.10.2010

RESPONDENT(S)' EXHIBITS

nil

// True copy //

das

PA to Judge

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 30972 of 2014

Dated this the 25th day of June, 2015

JUDGMENT

The petitioner, who is presently working as Accounts Officer at the Kerala State Beverages Corporation, was formerly working as a Junior Accountant under the Kerala Small Industries Development Corporation Ltd. (hereinafter referred to as the 'Corporation'). He had joined the respondent Corporation in the year 1986, and left the services of the Corporation at a time when he was Junior Accountant, for joining the services of the Kerala State Beverages Corporation. At the time of relieving the services of the respondent Corporation, he had completed 22 years of service with the respondent Corporation. The issue raised in the writ petition is with regard to the entitlement of the petitioner for Earned Leave Surrender. Although the petitioner had applied for the grant of the benefit of Earned Leave Surrender, and was initially granted the same by Ext.P2 order dated 14.07.2008 of the respondent Corporation, the said order was subsequently cancelled by Ext.P3 order dated 11.01.2010. A perusal of Ext.P3 order would reveal that the decision, to cancel the Earned Leave Surrender amount granted to the petitioner, was taken by placing reliance on Circular No.4/03/Fin. Dated 01.01.2003, which according to the respondent, contemplated that, when an employee resigned or quit

service to take up appointment in Government Companies/Corporations or other autonomous institutions, he would not be entitled to any benefit by way of Earned Leave Surrender. Ext.P3 order of the respondent Corporation is impugned in the writ petition, inter alia, on the ground that it relies on a circular which has no application to the case of the petitioner and further, that the said order was passed, without hearing the petitioner.

2. A statement has been filed by the respondent, wherein it is stated that the petitioner was sanctioned with Earned Leave Surrender on 14.07.2008 based on a Circular dated 22.05.1997 which permitted the grant of such benefit. Apparently, it was later on found, that by Ext.P7 circular, the benefit of Earned Leave Surrender was not available to persons like the petitioner, and it was under those circumstances that Ext.P3 order was issued cancelling Ext.P2 order by which the petitioner was granted the benefit of Earned Leave Surrender. It is also stated in the statement that in the respondent Corporation, the grant of leave and related matters are governed by the Provisions of the KSR, and that the respondent Corporation does not deviate from the

same.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that as per the provisions of Rules 77 and 79 of Part I KSR, an employee would be entitled to a maximum of Earned Leave of 180 days. It is not in dispute that, if the provisions of the KSR are applicable to the respondent Corporation, then the petitioner would be entitled to the Earned Leave Surrender, that was initially granted to him by Ext.P2 order. The only issue that remains to be considered is whether the reliance placed by the respondent on Ext.P7 Circular, to cancel Ext.P2 order, was justified. Ext.P7 Circular, which was relied upon by the respondent for denying the benefit of Earned Leave Surrender to the petitioner reads as follows:

“In the Circular first cited it was clarified that candidates provisionally recruited through Employment Exchange are not eligible for surrender leave salary at the time of termination of service.

As temporary officers, officers appointed on contract basis and re-employed pensioners are also governed by the same leave rules as are applicable to provisional hands,

namely rules in Append VIII Kerala Service Rules, Government hereby clarify that employees on contract and re-employed pensioners are not eligible for the benefit of surrender of earned leave at their credit at the time of termination of service as in the case of provisional recruits.

Since the benefit of surrender of earned leave stands confined to cases of superannuation alone, the circular second cited permitting surrender of half of earned leave at the credit of those who quit/resign Government service for taking up appointment in Government Company/Corporation or other Autonomous Bodies also is hereby cancelled. In short, it is hereby clarified that the benefit of surrender of earned leave will be admissible only in cases of superannuation or death while in service.”

5. It will be seen from a perusal of the aforesaid Circular, therefore, that what was cancelled by the said Circular, was the earlier Circular dated 22.05.1997, which permitted surrender of half of Earned Leave at the credit of those who quit /resigned from Government Service for taking up appointing in a Government Company/Corporation or other autonomous Body. It is not in dispute that the petitioner in the instant case, did not quit or resign from the Government Service insofar as the employees of the respondent Corporation cannot be treated as Government servants, as the respondent Corporation is an autonomous body. It follows therefore, that Ext.P7 circular has no application to the case of the petitioner when it comes to the grant of Earned Leave

Surrender. If that be the case, and in the absence of any provision dis-entitling the petitioner for the benefit of Earned Leave Surrender, his entitlement to the same would have to be governed by the provision of KSR. Insofar as by Ext.P2 order, the respondent Corporation had already granted the benefit of Earned Leave Surrender to the petitioner, I am of the view that the subsequent order namely, Ext.P3 dated 11.01.2010, that cancelled Ext.P2 order cannot be legally sustained. It is also to be noted that Ext.P3 order was passed without hearing the petitioner and without prior notice to him. For that reason also the said order cannot be legally sustained. Thus, I quash Ext.P3 order and declare that the entitlement of the petitioner for Earned Leave Surrender will be in accordance with Ext.P2 order, that is already passed by the respondent Corporation.

The writ petition is allowed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE