

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.10640 & 17941 of 2005 and 9677 of 2006

COMMON ORDER:

Since the petitioners in these writ petitions being similarly situated and the questions raised being one and the same, these writ petitions are disposed of by this common order.

2. Questioning the impugned letters dated 04.04.2005, 08.06.2005, 17.03.2006 issued by the respondent-Visakhapatnam Port Trust ordering the petitioners in these writ petitions to retire on 30.06.2005 AN; 31.08.2005 AN; and 30.06.2006 AN respectively, the present writ petitions are filed.

3. The brief facts in these writ petitions are as follows:

W.P.No.10640 of 2005:

Petitioner started working as Casual Kalasi in Visakhapatnam Port Trust, respondent, with effect from 27.10.1970 and after completion of 7½ years of service, his services were regularised as Kalashi Shore with effect from 13.02.1978. Thereafter, the petitioner got promotions and working under various positions for about 35 years and is working as Carpenter Grade II.

W.P.No.17941 of 2005:

Petitioner started working as Casual Labour in Visakhapatnam Port Trust, respondent, with effect from 29.10.1970 and after completion of 7½ years of service, his services were regularised as

Kalashi Shore with effect from 13.02.1978. Thereafter, the petitioner got promotions and worked under various positions for about 27 years of service and is working as Carpenter Grade II.

W.P.No.9677 of 2006:

Petitioner started working as Casual Labour in Visakhapatnam Port Trust, respondent, with effect from 24.12.1969 and after completion of 6 years of service, his services were regularised as Kalashi Shore with effect from 12.12.1975. Thereafter, the petitioner got promotions and worked under various positions and is working as Dry Dock-Sagrang, which is a Class IV Service.

In normal circumstances, the age of retirement for the class of the workmen like the petitioners in these writ petitions is 58 years. The board of trustees of the respondent-port trust by resolution dated 25.09.2000 had resolved the date of retirement of their employees as 60 years. However, on account of the decision of the Government of India, as communicated by the Joint Secretary, Government of India, under letter dated 28.09.2007, the age of retirement of every employee of all major port trusts and dock level boards was enhanced to 60 years and an employee shall retire from the services of the port on the afternoon of the last date of the month in which he/she attains the age of 60 years. While the matter stood thus, the respondent-Port Trust has issued the impugned letters ordering the petitioners to retire on the respective dates. Hence these writ petitions.

4. Learned counsel for the petitioners submits that this court had earlier considered similar matters viz., W.P.Nos.269 & 11152 of 2003 and the same were allowed, against which W.A.Nos.551 & 729 of 2004 were filed, which also came to be dismissed on 29.06.2004 and 16.09.2008 respectively. Learned counsel also placed on record orders of the Supreme Court dismissing SLP (Civil) Nos.16505-16507 of 2005 filed by the Port Trust.

5. On the other hand, learned counsel appearing for the respondent-Port Trust, would attempt to make a distinction while submitting that the petitioners came to be appointed as casual labourers and the case of the petitioners fall under Regulation No.3 of VPE (Retirement) Regulations, 1989 (for short, "Regulations"), particularly, Regulation No.3(1). Learned counsel further submits that the case of the petitioners does not fall under Regulation 3(3) as admittedly petitioners' cases would be considered only from their respective dates of regularization.

6. I have considered the respective submissions and perused the entire record. Apparently, the orders relied upon by the learned counsel for the petitioners are clearly applicable to the facts of the present cases. However, to appreciate the contentions of the learned counsel for the respondent, Regulation Nos.1 to 4 of the Regulations may be noted as under:

1. Except on otherwise provided in these Regulations, every employee who joined Board's service on or after 18.07.1974 shall retire on

superannuation on the afternoon of the last day of the month in which he attains the age of fifty eight years.

2. All employees in Class I, II and Class III posts, other than workmen, appointed prior to 18.07.1974 shall also retire from service on the afternoon of the last day of the month in which they attain the age of fifty eight years.
3. All workmen and an employee in Class-IV post, who joined Board's Service prior to 18.07.1974, shall retire from service on the afternoon of the last day of the month in which he attain the age of sixty years.
4. Extension of Service/Re-employment after Retirement
 - (a) A workman referred to in sub-Regulations (3) of Regulation 3 may be granted extension of service or re-employed under very special circumstances to be recorded in writing, after he attains the age of sixty years with the sanction of the appropriate authority.
 - (b) An employee to shall sub-Regulation (1) and (2) of Regulation 3, applies, may be granted extension of service or re-employed after he attains the age of sixty years with the sanction of the appropriate authority if such extension is in the public interest and grounds there for are recorded in writing.
 Provided that no extension/re-employment under this Regulation shall be granted beyond the age of sixty years except in very special circumstances.
 Provided further that the appropriate authority shall have the right to terminate the extension of service or re-employment before the expiry of such extension/re-employment by giving a notice in writing of not less than three months in the case of a permanent employee, or one month in the case of temporary employee or pay and allowances in lieu of such notice.
 The criteria and procedure for extension re-employment is given in Annexure-I to these Regulations.
5. Compulsory Retirement before the age of superannuation
 Not withstanding anything contained in these Regulations the appropriate authority shall, if it is of the opinion that is in the public interest as to do have the absolute right to retire any employees by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.
 - i) After the employee attain the age of ...
 - a. Fifty years in the case of employees holding a Class-I or Class-II post in a substantive or temporary capacity and had entered Board's service before attaining the age of 35 years.

7. It may be noticed that while Regulation (1) deals about every employee, Regulation (3) speaks about workmen and an employee in Class IV post, thereby giving a scope for contending that such of those workmen and an employee in clause IV post, who joined service prior to 18.07.1974, alone shall be eligible to be continued up to the age of 60 years. In the present context, viewed from any angle, it cannot be

said that the petitioners were appointed only in 1975. The fact that the seniority was fixed with effect from the initial date of appointment itself would go to show that for all purposes petitioners' appointments were taken as 27.10.1970, 29.10.1970 and 24.12.1969, in which event the specific benefit extended to the workmen and the class IV employees in Regulation 3(3) cannot be denied to the petitioners. As a matter of fact, a specific question to this effect was raised by the similarly appointed persons as petitioners in these writ petitions in W.P.Nos.269 & 11152 of 2003 and so also in W.A.No.551 of 2004 and batch, which was answered in favour of the petitioners therein.

8. In the facts and circumstances of the cases and following the orders relied upon by the learned counsel for the petitioners, which are binding on this court, the case of the petitioners herein also can be considered and the writ petitions deserves to be allowed. As it is submitted by the learned counsel for the petitioners that the petitioners have already retired from service, the service benefits shall be settled forthwith, at any rate, especially within a period of eight weeks from the date of receipt of a copy of this order.

Writ Petitions are accordingly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

December 5, 2016
LMV