

**(2024) 05 KL CK 0150**  
**In the High Court Of Kerala**  
**Case No : Writ Petition (C) No.11733 Of 2024**

Justus Karunarajan

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision :** 30-05-2024

**Acts Referred:**

**Citation :** (2024) 05 KL CK 0150

**Hon'ble Judges :** M.A.Abdul Hakhim, J

**Bench :** Single Bench

**Advocate :** V.M.Krishnakumar, P.R.Reena, Abel Tom Benny, P.G. Jayashankar, D.Prem Kamath, Tom Thomas, Amrutha Selvam, Praisya Thomas, Gentle C.D., S.Rajeev, Sajana V.H, Shaiju George, Aadersh R.S. Panicker, Pushpavathi.K, Renjith Thampan, V M Krishnakumar, Benny.P. Thomas, Tom Thomas, Bimal.K. Nath

**Final Decision :** Dismissed

## Judgement

M.A.Abdul Hakhim, J

1. Petitioners are employees and officers of the 2nd respondent who are going to retire on 31.05.2024. The grievance of the petitioners are with respect to non-enhancement of retirement age from 58 to 60. They are seeking consideration of Ext.P6 Representation submitted by them to the 1st respondent and to permit them to continue till the consideration of the Representation.

2. Petitioners filed the Writ Petition contending, inter alia, that the 1st respondent issued Government Order dt. 29.10.2022 taking a policy decision that the retirement age of employees of all State PSUs shall be enhanced uniformly to 60 as in the case of Central PSUs; that as per Ext.P2 Government Order the 1st respondent modified Ext.P1 that the retirement age of employees of public sector units would be considered on individual basis; that as per Ext.P4 Decision No. 423/2018 the Board of Directors of the 2nd respondent decided to enhance the retirement age of the employees from 58 to 60; that Ext.P5

Communication dt. 17.04.2016 was sent by the Managing Director of 2nd respondent to the 1st respondent for approval of the Ext.P4 decision of the Board of Directors of 2nd respondent; that the petitioners have submitted Ext.P6 Representation dated 07.03.2024 to the Principal Secretary of Agricultural Department of the 1st respondent through the Managing Director of the 2nd respondent requesting for enhancing the retirement age to 60; that as per G.O(Ms) No.21/2017(P&EA) dt. 24.10.2017 an Expert Committee was constituted to conduct a comprehensive study of the formulation of common frame work regarding the pay and wages of public sector units in the State of Kerala, which include the question of enhancement of retirement age of the employees and workers of public sector units; that as per G.O(Ms) No.88/2023/ID dt. 21.12.2023 the retirement age of the employees of the Kerala Coir Workers Welfare Fund Board was enhanced from 58 to 60; and that in identical matter this Court by Ext.P7 judgment dt. 29.02.2024 directed the 1st respondent to direct the expert committee to take a decision regarding enhancement of retirement age from 58 to 60 in the case of Kerala Live Stock Development Board and until then permitted the employees to continue. On these contentions petitioners filed this writ petition seeking direction to the 1st respondent to consider and pass orders on Ext.P6 on the basis of Exts.P2 and P4 within a time frame and to declare that in view of Ext.P4, petitioners are entitled to continue in the service of the 2nd respondent until they attain the age of 60 years.

3. The 2nd respondent filed a Counter Affidavit dated 23.05.2024 opposing the prayers in the Writ petition contending, inter alia, that the 1st respondent holds 100% shares of the 2nd respondent and all the members of the Board of Directors are nominated by the Government; that as per clause 115 of the Articles of Association of the 2nd respondent Government approval is required for all service matters including extension of retirement age; that in view of Ext.R2(a) Office Memorandum issued by the Government of India, the first condition is that the PSU has to make net profits for the last three consecutive years prior to the raising the retirement age to 60; that the 2nd Respondent is consistently making losses from 2015-16 until now, a favorable circumstance for raising the retirement age to 60 as envisaged in Ext.P2 and Office Memorandum issued by the Central Government does not exist; that Ext.P4 Decision forwarded as per Ext.P5 was rejected by the 1st respondent; and that when the recommendation was made by the Board of Directors of 2nd respondent in 2016 it was not aware of the specific provisions in the office memorandum of the Central Government.

4. I heard Senior Counsel Sri. Renjith Thampan instructed by Adv.Sri.V.M.Krishnakumar for the petitioner, learned Senior Government Pleader Sri.Bimal.K.Nath for the 1st Respondent and Senior Counsel Sri.Benny P Thomas instructed by Adv. Sri.Tom Thomas for the 2nd Respondent.

5. Senior Counsel Sri Renjith Thampan argued that since the 2nd Respondent has already taken a decision as per Ext.P4 which is communicated to the 1st

respondent as per Ext.P5, the 1st respondent is liable to be directed to consider Ext.P6 Representation on the basis of Ext.P4 Decision of the Board of Directors as there is no other decision of the Board canceling or modifying Ext.P4 decision. He submitted that Ext.P7 judgment is squarely applicable to the case on hand. The learned Single Judge in Ext.P7 ordered to allow the petitioner therein to continue till a decision is taken by the Expert Committee regarding the enhancement of age from 58 to 60 on the recommendation of 4th respondent therein/ KLD Board. He invited my attention on Ext.P5 Government Order dt 19.04.2023 by which the 1st respondent reconstituted the Expert Committee and the terms of reference include to fix the parameters for examination of the enhancement of the retirement age in State PSUs on a case to case basis as ordered in Ext.P2 Government Order. The Senior Counsel also referred to Ext.P9 Interim Order of this Court which is given in favour of the employees of Kerala Feeds Limited permitting them to continue in the post where they are working till final decision is taken by the 1st respondent.

6. Learned Senior Counsel for the 2nd respondent argued that Ext. P7 judgment and Ext.P9 interim order passed by this Court are clearly distinguishable on facts. Since Ext.P5 request submitted by the 2nd respondent is rejected by the Government, there is no pending request before the 1st respondent for enhancing the retirement age of the employees of the 2nd respondent. The financial condition of the 1st respondent is quite unsatisfactory on account of the accumulated losses, for enhancing the retirement age of the employees. The financial condition of the establishment is the crucial one for considering enhancement of retirement age.

7. The learned Senior Government Pleader Sri.Bimal.K.Nath opposed the prayers in the Writ Petition submitting that since Ext.P1 has been modified by Ext.P2 the request for enhancement of retirement age has to be considered individually with respect to different PSUs after considering the relevant parameters including financial condition.

8. After hearing the parties, I am of the view that there is no pending request from the part of the 2nd respondent to the 1st respondent for enhancement of retirement age of its employees since Ext.P5 request is already rejected by 1st respondent in the year 2016 itself. The petitioners have not challenged the order passed by the 1st respondent rejecting Ext.P5. Without any subsisting decision of the 2nd respondent in favour of the petitioner to enhance the retirement age, the petitioners cannot maintain Ext.P6 request before the 1st respondent.

9. Ext.P7 judgment is clearly distinguishable on facts since the establishment therein namely KLD Board took a decision to enhance the age of its employees from 58 to 60 years and the same has been pending before the 1st respondent. In Ext.P9 Interim Order also, the establishment therein has taken decision to enhance the retirement age of its employees and the request for approval has been pending consideration before the 1st respondent. But in the case on hand no such decision is taken by the 2nd respondent and no such request is pending

consideration before the 1st respondent.

10. Though Senior Counsel appearing for the petitioners cited the decision of the Hon'ble Supreme Court in *Sandhya Educational Society and another v. Union of India and others* (2014(7)SCC 701) and submitted that since the learned Single Judge of this Court has passed Ext.P7 judgment and Ext.P9 interim order, the judicial decorum and discipline demands passing of similar orders in favour of the petitioners in this Writ Petition also. Since I have already found that the facts in Ext.P7 judgment and Ext.P9 interim order are clearly distinguishable from the facts in the present case the petitioners are not entitled to get similar orders.

11. The Senior Counsel appearing for the petitioners argued that Government approval is not necessary for enhancing the age of the employees of a company when the Board of Directors of the Company has taken a decision to enhance the retirement age. But as rightly pointed out by the Senior Counsel for the 2nd respondent, the petitioners themselves have sought approval from the Government in Ext.P6 Representation. The 2nd respondent is fully owned Government Company and hence it requires approval from the Government at least in major matters like enhancement of retirement age. The provision for approval from Government is included in the Articles Association also as revealed from the Counter affidavit of the 2nd respondent.

12. None of the contentions raised by the petitioners is sustainable. Accordingly this writ petition fails and the same is dismissed.