(2021) 01 KL CK 0257

In the High Court Of Kerala

Case No : Writ Appeal No. 19 Of 2021, Writ Petition (C) No. 22741 Of 2020

Kerala Small Industries Development Corporation And Ors — APPELLANT

Vs

V. Suresh And Ors — RESPONDENT

Date of Decision : 06-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0257

Hon'ble Judges : Alexander Thomas, J;T.R. Ravi, J

Bench : Division Bench

Advocate : G. Biju, Molly Jacob

Final Decision : Disposed Of

Judgement

Alexander Thomas, J

1. The above said writ appeal has been filed by the respondents in WP(C) No.22741 of 2020 filed by the respondents herein seeking to set aside the

impugned interim order dated 18.12.2020 rendered by a learned Single Judge of this Court in WP(C) No.22741 of 2020 filed by the respondents in this

appeal.

2. Heard Sri.G.Biju, learned standing counsel for the Kerala Small Industries Development Corporation appearing for the appellants and Smt.Molly

Jacob, learned counsel appearing for the respondents in the appeal/writ petitioners. The impugned interim order dated 18.12.2020 in WP(C)

No.22741/2020 rendered by a learned Single Judge of this Court reads as follows:

â??Read order dated 09.12.2020.

The SIDCO has not filed a statement as ordered therein even until today.

The learned Standing Counsel for the SIDCO, however, concedes that the arrears of salary of all employees have now been paid, including the Senior

Managerial Cadre.

I am amazed by the stand taken by the SIDCO that the salary of the Senior Managerial Cadre are being honoured, but not the retiral benefits of the

hapless petitioners and similarly place persons.

In the afore circumstances, I order that until at least 50% of the retiral benefits of the petitioners are paid, none of the officers in the Senior

Managerial Cadre will be entitled to draw their salary.

List this case for further consideration on 12.01.2021â??

3. The main case projected by the appellants in this case is broadly as follows:

1. Appellants herein are the respondents and the respondents herein are the petitioners in the Writ Petition.

2. The Writ Petition is filed alleging inaction on the part of the respondents in disbursing the terminal benefits due to the petitioners.

3. The respondents filed statement, stating the serious financial crunch being faced by the Corporation, due to which the terminal benefits

of the retired employees could not be disbursed in time and also produced the Judgment passed by this Hon'ble Court in identical cases in

respect of the payment of terminal benefits of retired employees of SIDCO. In identical cases filed by the retired employees, this Hon'ble

Court directed to pay the retiral benefits, strictly in accordance with the seniority of the date of retirement. Further it was also directed to

pay the entire retiral benefits within a period of one year. The Corporation is trying its best to pay the retiral benefits in accordance with

the directions issued by this Hon'ble Court, according to the availability of fund.

4. The petitioners filed reply statement praying to release their retiral benefits discarding the contentions of the respondents.

5. The learned Single Judge passed order dated 9.12.2020 observing that, â??it will be in-equitable for the officers of senior management

level to draw salary and benefits, when the retiral benefits are being denied on the ground that there is financial crisisâ? and ordered to

place on record the list of officers in the senior managerial cadre, including the Managing Director along with their salary details and

posted the case to 18.12.2020.

6. On 18.12.2020, the Standing Counsel submitted the details sought as per order dated 9.12.2020 on the basis of the instructions and

sought one day's time to place it on record. The learned Single Judge without appreciating the submission proceeded to pass the impugned

order dated 18.12.2020, ordering that, â??until at least 50% of the retiral benefits of the petitioners are paid, none of the officers in the

senior managerial cadre will be entitle to draw salaryâ??.

7. It is submitted that the above order is passed without considering the financial condition of the Corporation, especially in view of the

COVID-19 pandemic situation and the series of Judgments followed by this Hon'ble Court in identical matters with regard to the payment of

terminal benefits to the retired employees of SIDCO. The interim order, denying salary to the employees, are passed without hearing them

and it will affect the sincerity and efficiency in their service, which in fact reflect in the entire running of the Corporation.

4. It is in the light of these averments and contentions, the appellants have filed the abovesaid Writ Appeal as intra-court appeal seeking to impugn the

above said interim order rendered by the learned Single Judge of this Court on 18.12.2020. Both sides have been heard. One of the main submissions

made by Sri.G.Biju, learned counsel appearing for the appellants is to the effect that as per Annexure R1(a) judgment dated 30.01.2020 rendered by a

learned Single Judge of this Court in WP(C) No.3810 of 2019 as well as by an yet another judgment rendered by this Court on 24.01.2018 in WP(C)

No.1875/2018 (produced as Ext.P25 in Annexure R1(a)), it has been ordered that the retirement benefits of the appellant-establishment may be

disbursed on the basis of the seniority of the pensioners, taking note of the financial difficulties faced by the appellant organization.

5. After hearing both sides, it is seen as per the additional statement dated 22.12.2020 filed by the appellants herein before the learned Single Judge in

the above WP(C) that the monthly salary amounts due to the serving officers which is now directed to be withheld temporarily, comes to about Rs.8

lakhs, whereas, going by the case projected in Ext.P1 dated 24.09.2019, the retirement benefits for the 1st petitioner comes to Rs.15,20,583/- as well

as to the 2nd petitioner comes to about Rs.9,43,000/- and thus total amounts in that regard comes to about Rs.24,63,583/-. Hence 50% of the said terminal benefits of the two petitioners comes to about Rs.12,31,000/-. Hence hardly the pay amounts due to the serving employees amounts for about

1 Â½ months may be more than sufficient to clear the 50% of the arrears of terminal benefits due to the petitioners. Moreover, directions issued by

the learned Single Judge as per the impugned interim order dated 18.12.2020 is considering the peculiar facts and circumstances of the case and

cannot be said to be arbitrary or perverse exercise of powers in exercise of the discretion. As at present, we are not prepared to countenance the plea

of the counsel for the appellants that if the impugned interim order of the learned Single Judge has been complied with, then it will amount to

disobedience of the directions issued by the other Single Bench judgments referred to in Ext.R1(a), inasmuch as the directions issued in the present

case has been rendered by the learned Single Judge taking into account the peculiar facts and circumstances of the case and need not be construed as

an overall deviance of above said general norm. However, we order that after the appellants clear 40% of the terminal benefits of arrears due to the

two writ petitioners, they may move for appropriate modification of the impugned interim order dated 18.12.2020 passed by the learned Single Judge

and for final disposal of the main WP(C) in the light of Annexure R1(a) judgment, if the same shall holds the field. We are sure that if the appellants

can convince the learned Single Judge about the bonafides of the appellants by taking concrete action as aforestated, certainly the pleas of the

appellants to enable them to abide by the general norms and guidelines issued by this Court in the judgments referred to in Annexure R-1(a) to

disburse terminal benefits to the pensioners of the establishment, in accordance with the seniority, could be effectuated etc. In the present view all

what we have found is that the aforesaid interim order rendered by the learned Single Judge of this Court on 18.12.2020 cannot be said to be

unreasonable or perverse exercise of discretion, which would warrant intra-court appellate interference. All issues raised in this case are left open to

be raised and decided in the WP(C) and in the manner known to law. As of now, in the light of the aforesaid view now taken, no interference is called

for as at present except as aforementioned. We make it clear that the above said impugned interim order dated 18.12.2020 rendered by the learned

Single Judge of this Court, cannot be treated as a modification of the earlier final judgment rendered by this Court referred to in Annexure R1(a) if the same holds the field and also need not be treated as a precedent in other similar cases and the said interim order need be construed only as one

rendered by the learned Single Judge in exercise of discretion taking into account the peculiar facts and circumstances of this case.

With these observations and directions, the above Writ Appeal will stand disposed of.

