

(2007) 03 KL CK 0093

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 36864, 39147 of 2003 etc.

R. Kavirajan and Others

APPELLANT

Vs

Kerala State Beverages (M and M) Corpn. Ltd.

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) 2 KLJ 487

Hon'ble Judges : T.R. Ramachandran Nair, J;J.B. Koshy, J

Bench : Division Bench

Advocate : V.P. Seemandini, P.S. Divakaran, Viju P. Vijayan, Elvin Peter P.J., S. Ramesh, P.N. Santhosh, S.D. Asokan, Naveen T., T.G. Sunil, Antony Bendit, C.X. Antony Benedict, Koshy George, B. Suresh Kumar, M.A. Thasnim and peepu Thankan, for the Appellant; K.P. Dandapani and N. Manoj Kumar (GP), for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—All these writ petitions are filed by the employees of the Kerala State Beverages Corporation Ltd. (hereinafter referred to as the Corporation) for enhancing the age of superannuation. Kerala State Beverages Corporation Ltd. is a Company registered under the Companies Act and it is fully owned by the Government of Kerala. As per the Articles of Association, service conditions of the employees including retirement age can be changed only with the permission of the Government. Management and administration of the company is done by the Board of Directors of the company. Decisions of the board are not generally interfered by the Government unless it is against the policy of the Government or against the interest of the Government. Board of Directors of the company unanimously decided to increase the retirement age to 58 subject to consonance of the Government. But, the Government of Kerala refused to concur with the decision of the Board of Directors by order dated 02-07-2005 (produced as Ext.P3 in W.P.(C) No. 15337 of 2006) on the ground that Government policy is against increasing the age of superannuation to 58 from the age of 55. This order is

challenged in all these writ petitions. There are 113 public sector undertakings owned by the Kerala Government out of which in seven undertakings like Kerala Agro Industries Corporation Ltd. etc. the ? retirement age of employees is 60 years. In majority of the undertakings, now the retirement age is 58 years. In Public sector undertakings of Central Government in State of Kerala the age of superannuation is 60. In Travancore Sugars & Chemicals I td., one of the Kerala Government company, the age of retirement is 60 and it is a sick industry. The Board of Directors decided to reduce the age to 58 as it is a sick industry, but, Government decided to roll back the retirement age to 60 years itself as can be seen from Ext.P8 in W.P.(C) No. 15337 of 2006 dated 24-6-2006. However, even though in five companies the retirement age is 55 years, in majority of the public sector undertakings owned by the Kerala Government, the retirement age is 58. The retirement age of the Government employees in Kerala is only 55, but, Government employees have got various chances of promotion and they are entitled to get Government pension. Even though in five of the Government Companies the age of retirement is 55, the major Government Companies where retirement age is fixed as 55 are four in number viz., Kerala State Road Transport Corporation, Kerala State Electricity Board, Kerala Water Authority and Kerala State Housing Board. In those undertakings there is a good pension scheme. But, as far as Kerala State Beverages Corporation is concerned, there is no pension scheme. Of course, they will be entitled to some sort of contributory pension because of the pension scheme under the Employees Provident Fund Pension Scheme. But, for entitlement of full pension, they have to attain the age of 58. In another similarly placed public sector undertaking (LBS Centre), Directors decided to extend the age of retirement from 55 to 58 so as to get the pension from EPF pension scheme. Ext.P4 is produced to prove the same. In paragraph 1 of Ext.P4 it is stated as follows:

The Director, LBS Centre for Science and Technology has reported that the centre is following the EPF pension scheme and as per the EPR pension scheme 1995 a member is eligible for Superannuation after attaining the age of 58 years. Hence the Governing Body of the centre at its 19th meeting held on 22-10-2001 had decided to fix the retirement age of its members at 58 years.

The Government approved the above decision. There is no need to discriminate Beverages Corporation employees.

2. In 90% of the Government companies, where mere is no pension scheme like.Government companies, age of retirement was increased to 58 and in some Government companies retirement age is 60. Hence it cannot be contended that policy of the Government is not to increase the retirement age to 58. This Corporation is one of the few Government companies which earns profits and no grounds are stated in Ext.P3 indiseminating this corporation from other Government companies on the ground of policy. Petitioners have to be treated at par with other Government employees especially when Board of Directors decided so considering the fact of absence of pension scheme etc.

3. During the pendency of the writ petitions, the employees were allowed to continue up to the age of 58 by various interim orders of this court. The whole question is whether the Government Order in not approving the resolution age to 58 is arbitrary so as to get interference from this court as it is violative of Article 14 of the Constitution of India. It is true that this court by its own cannot direct the Government or Government Corporation to increase the age of superannuation in a petition under Article 226 of the Constitution of India. It is a well settled principle that Government employees' age cannot be increased by an order of the court. It is for the Government to take a policy decision. Here, the entire scenario is different. The respondent Corporation is a profit making Corporation. Board of Directors decided to increase the age of superannuation considering various circumstances especially considering the fact that in majority of the similarly placed public sector undertakings, the age of retirement was adopted as 58 and also considering the fact that even for getting contributory pension under the Employees Provident Fund Scheme, the employees have to attain the age of 58 and majority employees of the Corporation, superannuation age is 60 and 58 and the Board decided so, of course, subject to the Government concurrence. The case of the petitioners is that even in sick industries, the age of retirement is 60 in certain cases and 58 in majority cases unless there is a separate beneficiary pension scheme. There is no rhyme and reason for the Government to reject the recommendation of the Board of Directors. In this connection, we refer to the decision of the Supreme Court in *British Paints (India) Ltd. Vs. Its Workmen*, where it was held by the Supreme Court as follows:

But time in our opinion has now come considering the Improvement in the standard of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level, and we consider that generally speaking in the present circumstances fixing the age of retirement at 60 years would be fair and proper, unless there are special circumstances justifying fixation of a lower age of retirement.

4. After considering reports of various committees, the retirement age of Central Government employees was enhanced to 60. The present conditions cannot be lost sight of. The total number of employees employed in the Corporation is about 2700 out of which 339 employees are regular workers, about 1500 workers are abkari workers and about 650 employees are deputed from other Corporations where retirement age is 58. These deputationists are allowed to work in the corporation on deputation even beyond their age of 55 years up to 58 years. For getting pension under the Abkari Welfare Scheme, abkari workers have to work up to the age of 60. Government Pleader submitted that they have no objection in extending the age of superannuation of the abkari workers of Beverages Corporation to 60. The orders are passed and Government decision is mentioned in the counter affidavit. These abkari workers were also absorbed by the Corporation when retail shops were nationalized. These abkari workers are members of the Abkari Workers Welfare Fund Board which has the superannuation age as 60 years. Hence the permanent abkari workers who are

employees of the Corporation have their retirement age fixed as 60 years. Hence, majority of employees in this Corporation itself can work beyond 58 years whereas only minority of 339 regular workers have to retire at the age of 55.

5. In this connection, we also refer to the decision of the Apex Court in *Osmania University Vs. V.S. Muthurangam and others*, . The employees of the Corporation are members of Employees* Provident Fund. In the Employees Provident Fund a separate Employees Provident Fund Pension Scheme has been a separate Employees Provident Fund Pension Scheme has been introduced effective from 1995. The pension fund scheme envisages pension contribution by the employee/ employer up to the age of 58 years of an employee for the employee to get the full benefit of pension under the scheme. Hence, the following resolution was passed by the Corporation:

Resolved to recommend to Government the raising of retirement age in the Corporation from 55 years to 58 years as is followed in Public Sector Companies and place proposals before the Government.

We request that the decision of the Corporation's Board of Directors to raise the retirement age of the employees of KSBC from 55 years to 58 years and incorporate suitable amendment in clause 43 of the Service Rules.

When the abkari workers' age is also increased to 60 and the deputed workers at working up to 58, there is no rhyme or reason to say that regular workers should be retired at the age of 55. Even though they are not entitled to the pension like the Government employees, there is no reason for rejecting the proposal of the Corporation in extending the age of superannuation up to 58 and that rejection is in violation of Article 14 Constitution of India. There is hostile discrimination between similarly placed employee in other Corporations and even the employees working in the same Corporation. We hold that the regular employees of the Kerala State Beverages Corporation are entitled to continue till the age of 58 as decided by the Director Board of the Corporation and rejection of the above request by Government is violation of Article 14 of the Constitution of India. Of course, as decided by the Government, abkari workers can continue up to the age of 60 and we are not interfering with the above order.

All the writ petitions are allowed to the above extent.