(2010) 08 KL CK 0076

In the High Court Of Kerala

Case No : W.A. No. 1909 of 2007

State of Kerala APPELLANT

Vs

Mohanabalan RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Kerala State Warehousing Corporation Staff Regulations, 1963 — Regulation 13
Warehousing Corporations Act, 1962 — Section 18, 19, 2, 20, 20(1)

Citation : (2010) 4 KLT 95

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Ranjith Thampan, A.A.G. and M.H. Hanil Kumar, Government Pleader, for the Appellant; O.V. Radhakrishnan Preethi Karunakaran, Deepu Thankan, K.S. Jaykar and Manju Komath, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—All the connected Writ Appeals are filed by the State challenging the (Writ Appeal is against the decision reported in 2007 (3) KLT 469) judgment of the learned Single Judge declaring that the age of superannuation of the employees of the Kerala State Warehousing Corporation shall be 58 years in terms of Resolution No. 2525 dated 15.3.2006 passed by the then Board of Directors of the Corporation. Connected Writ Petitions which led to the judgments were filed by various employees of the Kerala State Warehousing Corporation, hereinafter called the "Corporation", who were on the verge of retirement at the age of 55 in terms of Regulation 13 of the Kerala State Warehousing Corporation Regulations, 1963, hereinafter called the "Regulations". The common respondent in all the Writ Appeals is the Corporation itself, which is supporting the State in the appeals filed by them. We have heard Additional Advocate General appearing for the appellant, senior counsel Sri. O.V. Radhakrishnan and Adv. Sri. Deepu Thankan appearing for the employees, who are party respondents in the Writ Appeals and standing counsel for the Corporation.

2. The Corporation is established u/s 18 of the Warehousing Corporation''s Act,

1962, hereinafter called the "Act". Regulations were framed by the Corporation with the previous sanction of the State Government u/s 42(1) of the Act and the same was published on 18.6.1964. Under Clause 13 of the Regulations, the retirement age of employees was 55 years, which continued until 2006 when the Board of Directors of the Corporation passed the resolution on 15.3.2006 proposing to increase the retirement age of employees from 55 to 58. This resolution is produced as Ext.P2 in the Writ Petition against which W.A. No. 1909/07 was filed. However, when the Corporation sought approval from the Government vide Managing Director''s letter dated 29.3.2006, which is produced as Ext.P3, the Government vide Ext.P9 dated 17.7.2006 declined to approve the proposal. The Government decision was challenged by the writ petitioners before this Court and during the pendency of the Writ Petitions, the Board of the Corporation passed another resolution on 29.3.2007 recalling the earlier resolution recommending increase in the retirement age of employees. The learned single Judge allowed all the Writ Petitions vacating the decision of the Government rejecting request for approval of increase in the retirement age and after quashing the later resolution passed by the Board of the Corporation. This Court declared that the retirement age of employees shall be 58 in terms of the original resolution passed by the Board of Directors on 15.3.2006. Appellant''s case is that State has the authority to decide all the policy matters and regulation itself was framed with the previous sanction of the Government and so much so, without prior permission of the Government, Corporation cannot amend the regulations or increase the retirement age of the employees. On behalf of the Corporation, standing counsel supported the view taken by the State and according to him when Government declined permission to increase the retirement age, the Board, in consonance with such decision of the Government, recalled the earlier resolution, based on which, Writ Petitions were filed, Sr. Counsel Sri. O.V. Radhakrishnan and Adv. Sri. Deepu Thankan appearing for the respondents, on the other hand, referred to Section 20(1) of the Act and contended that since the management of the Corporation is vested in the Board of Directors, their decision in regard to retirement age of employees, evidenced by Ext.P2 resolution, shall bind the Government. Alternatively, they contended that, the Government, through a single sentence order, cannot turn down the recommendation of the Board with regard to the increase in the retirement age of the employees in an arbitrary manner. The Additional Advocate General and Standing Counsel for the Corporation on the other hand contended that even u/s 20(4) of the Act, policy decisions in regard to Corporation are taken by the State Government and the same are binding on the Board of Directors of the Corporation.

3. After hearing both sides and after going through the provisions of the Act and Regulations, particularly Clause 13 of the Regulations, we are of the view that the judgment of the learned Single Judge is not tenable. Admittedly, the State Warehousing Corporation constituted u/s 18 in terms of the issue of share capital u/s 19 is actually under the control of the State and Central Governments with

Central Warehousing Corporation also retaining their investment in the Corporation. The management of the Corporation is done in terms of the Regulation framed u/s 42 of the Act, which is as follows:

42.(1). A Warehousing Corporation may, with the previous sanction of the appropriate Government, by notification in the official Gazette, make regulations not inconsistent with this Act and the Rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act;

(2) In particular, and without prejudice to the generality of the foregoing power, such regulation may provide for:

(a) the conditions of service of, and the remuneration payable to, the officers and other employees of a Warehousing Corporation;

(b) the manner in which, and the conditions subject to which, shares of the Central Warehousing Corporation may be transferred;

(c) the manner in which meeting of a Warehousing Corporation and the Executive Committee thereof shall be convened, the fees for attending such meetings and the procedure to be followed thereat;

(d) the duties and conduct of officers and employees of a Warehousing Corporation;

(e) the powers and duties which may be entrusted or delegated to the Managing Director of a Warehousing Corporation;

(f) generally, the efficient conduct of the affairs of a Warehousing Corporation,

(3) The appropriate Government may, by notification in the official Gazette, rescind any regulation which it has sanctioned and thereupon the regulation shall cease to have effect.

4. From the above it is clear that detailed management of the Corporation has to be covered by Regulations to be framed and such regulations have to be framed with the previous sanction of the appropriate Government, which, in this case; is the State Government in terms of definition u/s 2(b) of the Act because, the Corporation is a State Warehousing Corporation. The retirement age of the employees ever since the constitution of the Corporation and until the decision by this Court was covered by Clause 7 of the Staff Regulations, which in unequivocal terms states that, the retirement age of the employees is 55 years. This position remains for the last over 40 years. We are of the view that, any modification in the retirement age of employees of the Corporation is possible only through proper amendment of Clause 13 of the Regulations, which requires prior approval from the Government. In our view, the decision taken by the Board of Directors to increase the retirement age on 15.3.2006 will be effective only after Government approves the decision of the Board to amend the regulation. In fact, the Board rightly sought approval of the Government for their

decision to increase the retirement age and only for this purpose the Managing Director requested the Government to consider the Board''s decision. Rightly or wrongly, the Government declined approval for the Board''s decision vide Ext.P7 dated 17.7.2006. In our view, the view taken by the learned single Judge that the Board resolution by itself is amendment to the regulation is thoroughly unsustainable because, power for amendment also has to be found only u/s 42(1) itself which speaks about prior sanction of the Government for framing the regulations. Since the regulations are to be framed after obtaining prior sanction from appropriate Government, any amendment also requires prior sanction of the Government and therefore the Board decision to increase the retirement age requires prior sanction, which is the one sought by the Board of Directors. When Government declines permission, then the Corporation has no other way but to give up the proposal for amendment of the Regulation in regard to increase in the retirement age of the employees. The Corporation is not like a statutory body and since it is formed with the investment of the State Government, Central Government and Central Warehousing Corporation it is a delegate of all these authorities and it cannot decide all matters through decisions of the Board of Directors. The Board of Directors constituted is the governing body u/s 20 of the Act. However, they have to manage the Corporation strictly in terms of the Regulation framed u/s 42 which should have the approval of the State Government in the case of State Warehousing Corporation. So much so, the judgment of the learned single Judge, declaring increase in the retirement age of employees from 55 to 58 is based on a resolution by the Board of Directors of the Corporation, is untenable. The Board rightly treated the resolution as their recommendation for increase in the retirement age of the employees and when the Government does not grant approval in terms of Section 42 of the Act, then the Board resolution will be ineffective and incapable of implementation. The Board is only a delegate of the Government in this case and all policy matters not covered by the regulations already approved by the Government has to be referred to the Government for approval in terms of Section 20(4) of the Act and wherever it required, the Board resolution approved by the Government has to be incorporated in the regulations which has to be notified. So much so, the learned Single Judge went wrong in holding that the decision taken by the Board of Directors can be implemented without the approval of the Government

5. The question to be considered is whether the Government is bound to give a reasoned order, if the recommendation of the Board is rejected. Here, again the respondents have no case that the decision is not one pertaining to the policy of the Corporation with regard to the age of retirement of the employees. We do not think the Government Order needs any separate reasoning since the same is on a policy matter. Even though Ext.P9 issued by the Government cannot be challenged as arbitrary for want of reasoning, we feel it is a matter which requires detailed consideration of the Government because, the respondents have furnished data which shows the change in the policy decision of the Government itself by increasing and retaining the retirement age of the

employees of large number of public sector corporations under the control of the State Government itself at 58 and in some case even 60 years. According to the respondents, out of 113 public sector companies in the State, in as many as 103, retirement age is 58. They also state that three Corporations, K.S.R.T.C., K.S.E.B. and K.W.A stand on a different footing because, retired employees are provided pension at par with the Government service, whereas in the case of Government companies, including the State Warehousing Corporation, pension payable is a small amount. It is also pointed out that in the Central Warehousing Corporation and in very many State Warehousing Corporations discharging same functions, the retirement age of the employees is 58 and in some cases even 60 years. The respondents have relied on Government Orders, GO.MS. No. 56/10/ID dt. 15.3.2010 and GO.MS. No. 84/10/TSM dt. 16.3.2010 whereunder the age of retirement of the employees of the Food Craft Institute has been increased from 55 to 58. Therefore, according respondents, there is a change in the policy of the Government and so much so, there is every case for considering the increase in the age of retirement of employees of State Warehousing Corporation. What is to be noted from March, 2006 onwards is that employees of the State Warehousing Corporation were also allowed to continue beyond 55 years though under orders of Court and even as of now they are continuing. In other words, the benefit of extended three years of service has been obtained by large number of employees during the course of last four years. Obviously, if retirement age is now restored to 55 based on our judgment, probably there will be extensive retirements leading to problems for management because, recruitment for replacements takes its own time. We, therefore, feel it is a fit case for the Government to re-consider the matter, particularly in view of the change in the policy of the Government in the decision shown in the case of some other corporations referred above. We, therefore, dispose of the Writ Appeals by vacating the judgment of the learned single Judge and dispose of the Writ Petitions directing the Government to re-consider the issue considering the original resolution passed by the Board of Directors on 15.3.2006 which will be treated as a recommendation waiting for decision of the Government. The Corporation with permit the employees to continue until the Government decides the matter and communicates their decision. The Government is directed to take a decision within two months from receipt of this judgment.

