(2010) 07 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 6640, 22185, 22320, 28335 of 2008 And W.P. (C) No. 9796 of 2010

T.V. Chandran and others — APPELLANT

Vs

State of Kerala and another — RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:
Companies Act, 1956 — Section 617

Citation : (2010) 07 KL CK 0012

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Jacob P. Alex and C. Unnikrishnan Kollam, for the Appellant; P. Nandakumar, Alexander Thomas, S.C., S.P. Aravindakshan Pillay, N. Santha, S.A. Anand and Peter Jose Christo, for the Respondent

Judgement

Antony Dominic, J.—Issue covered in these writ petitions are common and therefore these writ petitions were heard together and are disposed of by this common judgment.

For convenience, WP (C) No. 9796/2010 is treated as the leading case.

2. The petitioners are employees of the Kerala Artisans Development Corporation Limited, a Government Company as defined u/s 617 of the Companies Act, 1956. They were governed by the provisions of the KSR and. their age of retirement was 55 years. New Service Rules were framed by the 4th respondent-Corporation fixing the age of retirement at 58 years, apparently for the reason that the employees, who are covered under the Employees Provident Funds and Miscellaneous Provisions Act and the Pension Scheme framed thereunder, will get full pension only if they retire at the age of 58 years. From Ext. P1 it would appear that the Public Service Commission had accorded approval to the Rules.

3. However, it is seen from Ext. P2 proceedings of the Secretary to Government dated 28.1.2008, that they were not agreeable for enhancing the age of

retirement as proposed by the Corporation. In pursuance to the decision as reflected in Ext. P3, Ext. P2 letter was issued by the Government on 28.1.2008 requiring the Managing Director of the Corporation to modify the draft Service Rules limiting the retirement age at 55 years. Accordingly modified Rules were submitted, and by Ext. P4 order dated 2.3.2009, the Government approved the Rules.

4. Ext. P5 is an extract of the Rules as approved by the Government and Clause 75 of the Rules provide the age of superannuation. This Rule reads that all employees shall retire from the service on the last day of the month in which they complete 55 years of age. It is challenging Exts. P4 & P5 and for a declaration that the employees of the 4th respondent-Corporation are entitled to continue in service upto the age of 58 years in view of the provisions contained in the EPF Pension Scheme, this writ petition has been filed.

5. Learned Senior Counsel appearing for the petitioners relied on Exts. P6, P8 & P9 produced in the writ petition. He also placed reliance on the judgments of this Court in Kavirajan v. K.S.B.C. Ltd 2007 (2) KHC 389 : 2007 (2) KLT 917 : 2007 (2) KLJ 487. Manoharan C. and others v. Kerala State Warehousing Corporation and another 2007 (3) KHC 17 : 2007 (2) KLJ 427 : 2007 (3) KLT 959, and in WP (C) No. 9460/07 and connected cases.

6. On behalf of respondents 1 and 2, counter-affidavit has been filed. In the counter-affidavit, the Government asserts that in view of the provisions contained in the Articles of Association, the Rules relating to retirement of employees and other conditions of service should have the approval of the Government. They also say that it was the policy decision of the Government to fix the age of retirement of the employees of Public Sector Undertakings at 55 years. They accept that in certain other establishments, the age of retirement has been retained at 58 years. According to them, this was done only not to disturb the status quo prevailing in the establishments. According to the Government, the decision not to enhance the retirement age of the employees of Public Sector Undertakings has been consciously taken for the reason that if such an enhancement is granted, that will affect employment prospectus of the unemployed youth in the State.

7. On behalf of respondents 4 and 5, learned Standing Counsel adopted the contentions of the learned Government Pleader and contended that although they proposed to fix the age of retirement of the employees at 58 years, in view of the Articles of Association of the Corporation, unless the Government approves the proposal, the Corporation cannot give effect to it. It is therefore stated that so long as the Government decision holds the field, the Corporation is bound to follow the age as fixed in Clause 75 of Ext. P5 Service Rules.

8. Admittedly, the employees of the Corporation are not entitled to any Pension Scheme other than the benefit of the EPF Pension Scheme, 1995 framed under the provisions of the EPF and Miscellaneous Provisions Act, 1952. Clause 12 of

the Pension Scheme, 1995 provides for full pension for employees who retire at the age of 58 years. It is seen from the documents produced by the petitioners that in respect of several Public Sector Undertakings of the State Government itself, taking note of the very fact that the employees will get the benefit of full pension only if they retire at the age of 58 years, the Government themselves have enhanced the age of retirement. In this context, Ext. P6 Government Order dated 16.3.2010 issued in respect of Food Craft Institutes is rightly relied on by the learned Counsel for the petitioners. Reference was also made to Ext. P8, the answer given by the Chief Minister on the floor of the Assembly, which also states that the Government had taken a decision to fix the age of retirement at 58 years in respect of employees of the PSUs covered under the EPF Pension Scheme. It is also seen from Ext. P9 order dated 15.3.2010 issued in respect of the employees of the Kerala State Textile Corporation Ltd. that one of the reasons for enhancing the age of retirement to 58 years was that the employees will get full pension only if the enhancement is granted. Therefore, it is obvious that in respect of other Public Sector Undertakings of the State, the Government have allowed similar claims.

9.The contention that it was the policy decision of the Government to retain the age of retirement at 55 years was urged by the Government to resist similar contentions raised by the employees of the Kerala State Beverages Corporation Ltd. in the writ petition filed by them challenging the rejection of the proposal made by the Corporation for enhancement of retirement age. That contention was rejected and the writ petition was allowed by this Court by judgment in Kavirajan v. K.S.B.C. Ltd 2007 (2) KHC 389 : 2007 KLT 917 : 2007 (2) KLJ 917 : 2007 (2) KLJ 487. In that judgment, this Court found that in 90% of the Government Companies, where there is only EPF Pension Scheme, age of retirement was increased to 58 years and in some Government Companies, retirement age is 60 years. For these reasons, this Court held that the Government cannot contend that it was the policy decision of the Government not to increase the age of retirement beyond 55 years. This Court also found that when similar benefit has been given in respect of other Corporations of the Government of Kerala, denial of such claim of the employees of the KSBC Limited was violative of their fundamental rights under Article 14 of the Constitution of India. On these reasoning, the Government order rejecting the proposal of the Company to enhance and fix the age of retirement at 58 years was set aside and relief was allowed by the Division Bench. This judgment fully answers the contentions raised by the respondents.

10.Although on behalf of the respondents it was pointed out that the judgment has been stayed by the Apex Court, having regard to the law laid down by this Court in Abdu Rahiman Vs. District Collector, , even if the judgment has been stayed by the Apex Court, this Court is bound to follow the law laid down by the Division Bench. It is also pointed out that in respect of the employees of the Kerala State Warehousing Corporation Ltd., they approached this Court and in the judgment in Manoharan C. and others. v. Kerala State Warehousing

Corporation and another, 2007 (3) KHC 17 : 2007 (2) KLJ 427 : 2007 (3) KLT 259 the writ petitions were allowed and the age of retirement was fixed at 58 years. The employees of the Kerala Forest Development Corporation Ltd., in whose case also the proposal for enhancened and fixing the retirement age at 58 years has been turned down by the Government, also approached this Court in WP (C) No. 9460/2007 and connected cases. These writ petitions were allowed by the learned Single Judge by judgment dated 18.7.2007 in similar circumstances. In view of these judgments also, the petitioners are entitled to succeed.

11. Therefore, for the aforesaid reasons, Ext. P4 proceedings of the Secretary to Government rejecting the proposal of the 4th Respondent-Corporation and Clause 75 of Ext. P5 Service Rules to the extent it fixes 55 years as the age of superannuation, cannot be sustained and are accordingly quashed. It is declared that the employees of the 4th Respondent-Corporation are eligible to continue in service till they complete 58 years as proposed by the Corporation. This writ petition is disposed of as above.

12. The petitioners in WP (C) Nos. 6640, 22185, 22320 & 28335 of 2008 are also employees of the Kerala State Artisans Development Corporation Ltd. They filed these writ petitions on the eve of their attaining 55 years. Although interim orders enabling them to continue beyond 55 years were not granted, this Court had made it clear that the disbursement of their retirement benefits will be subject to the result of these writ petitions and accordingly, they retired from the service. Now that the writ petitions are allowed and as the petitioners are entitled to continue in service till 58 years, it is directed that the petitioners shall be reinstated in service, it is made clear that if terminal benefits have been received by the petitioners, such benefits will be refunded to the Corporation. It is made clear that although the period during which they are kept out will be treated as continuous service, they will not be entitled to be paid salary or other allowances for the said period.

13. These writ petitions are disposed of as above.

