

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 16TH DAY OF DECEMBER 2021 / 25TH AGRAHAYANA, 1943

WP(C) NO. 11179 OF 2021

PETITIONER/S:

- 1 MOLLY V.M.,
AGED 62 YEARS
W/O. UTHAMAN OUSEPH, CHEMBAKASSERY, MADUKKA P.O.,
PANAKKACHIRA, KOTTAYAM DISTRICT, PIN-686 513
- 2 LEEELAMMA.M.C.,
THYKKADAVIL, RPC P.O., VANDAMPATHAL, KOTTAYAM
DISTRICT, PIN-686 513
- 3 NANDHINI.K.D.,
PUTHENPURAKAL, KALEKETTY P.O., KOTTAYAM DISTRICT, PIN-
686 515
- 4 SHEELA.P.N.,
VELAMTHUNDIYIL, ANACKALLU P.O., KOTTAYAM DISTRICT, PIN-
686 508

BY ADV NOBLE MATHEW

RESPONDENT/S:

- 1 CHILD DEVELOPMENT PROJECT OFFICER
KANJIRAPALLY BLOCK, KANJIRAPPALLY P.O., KOTTAYAM
DISTRICT, PIN-686 507
- 2 THE DIRECTOR,
WOMAN AND CHILD DEVELOPMENT DEPARTMENT, POOJAPPURA
P.O., THIRUVANANTHAPURAM, PIN-695 004
- 3 THE SECRETARY TO GOVERNMENT,
SOCIAL JUSTICE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001
- 4 CHIEF EXECUTIVE OFFICER,
ANGANWADI WORKERS AND HELPERS WELFARE FUND (AW AND
H), SOCIAL JUSTICE ANNEXE, POOJAPPURA P.O.,
THIRUVANANTHAPURAM, PIN-695 004
- 5 STATE OF KERALA

REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT OF
KERALA, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001

6 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT, INTEGRATED
CHILD DEVELOPMENT DEPARTMENT, MINISTRY OF WOMEN AND
CHILD DEVELOPMENT, SHASTRI BHAWAN, NEW DELHI-110
001

BY ADV GOVERNMENT PLEADER PARVATHY KOTTOL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 5.11/2021 ALONG WITH WPC 9951/21 AND CONNECTED CASES, THE
COURT ON 16/12/2021 DELIVERED THE FOLLOWING:

COMMON JUDGMENT

All the writ petitioners are Anganwadi teachers/helpers employed in various anganwadis run under Child Development Project officer and the Woman and Child Development Department. All of them were employed long back and have put in around 30 years or more service. The common case of all the writ petitioners, as can be assimilated from the various facts disclosed in their writ petitions, can be summarized as follows;

2. The above Anganwadi teachers/workers are receiving a gross salary of Rs.12,000/- per month. Out of it, the major share of the expenses is borne by the Union of India, medium share by the Government of Kerala and a small portion by the local Panchayath. The Chief Executive Officer of Anganwadi Workers and Helpers Welfare Fund is specifically assigned the duty to formulate adequate welfare measures and schemes to provide retirement benefits and pension to Anganwadi workers/helpers. The retirement age of the Anganwadi workers was originally 60 years. Some of the persons approached this court by filing W.P.(C) No.4755/2009 seeking a writ of mandamus commanding the respondents therein to formulate adequate welfare scheme to provide retirement benefits and pension to the employees. That writ petition was disposed of directing the Government to consider the same and to pass appropriate orders within three months from

the date of receipt of a copy of that judgment. Accordingly, the Government by G.O.(MS) No.523/2016/SJD dated 11/11/2016 introduced a Welfare Fund with Contributory Scheme from the Anganwadi workers/helpers. The Government of Kerala also contributed a share.

3. Subsequently, several persons approached this court seeking a direction to the Government to increase the retirement age. The writ petition was filed to enhance the retirement age from 60 years to 62 years. It was also noticed that the Union Government had evolved the policy to fix the retirement age as 65 years, which was accepted by most of the State Governments. The writ petitions filed by the employees were dismissed, against which Writ Appeal No.1479/2020 and connected writ appeals were filed. All the above writ appeals were disposed of by a Division Bench of this Court directing that retirement age is a policy matter which the court has no say. However, it was noticed that Anganwadi workers were given an extended facility in terms of the Central Government Rules by providing retirement age at 60 years. However, noticing the fact that the recruitments were not made for filling up vacancies arising on account of retirement of Anganwadi workers, the Division Bench held that post of Anganwadi teachers/workers shall not be kept vacant and hence, the respondents should engage retired employees on contract basis paying them the same wages on daily wages so that as and when regular recruitments were made in accordance with procedure, vacancies available could be filled up by replacing the contract employees engaged after retirement. It was also

noticed that. it was subject to the condition that they are physically and mentally fit which enable them for re-appointment on contract basis.

4. All the writ petitioners have approached this court contending that on attainment of their age of superannuation, all of them have been issued with notices of termination. They sought enhancement of retirement age to 65 years and till regular persons are appointed after the retirement, they may be permitted to engaged on contract basis.

5. Since all the writ petitions arise from similar facts and circumstances and similar reliefs are sought, they were heard together. Heard the learned counsel for the respective petitioners and the learned Government Pleader.

6. Separate counter affidavits were filed in most of the writ petitions. In W.P.(C) No.9951/2021 and W.P.(C) No.11179/2021 and in some of the other writ petitions, counter affidavits were filed stating that pursuant to the Government Orders, the vacancies, that arose consequent to the attainment of age of superannuation of the respective petitioners, were proposed to be filled up by persons already in the list or by transfer of those persons who are already employed elsewhere and who have requested for transfer. Pending the writ petitions, all the writ petitioners were permitted to continue, if no other permanent employee has been appointed against their respective posts.

7. In the light of the directions given by this Court in W.P. (C)11653/2014 and connected cases as well as the direction in 10891/2014, the Government had considered the question of enhancing the retirement

age of Anganwadi helpers/workers. It was noticed that by virtue of G.O(MS)33/2012 of the Social Welfare Department dated 31/5/2012, the age of retirement of Anganwadi workers/teachers was fixed as 62 years. Request were made by several persons to enhance the age of retirement to 65 years. Pursuant to the direction of this court in the above mentioned writ petitions, the matter was heard by the Government after giving a reasonable opportunity of being heard to both sides, decision was taken. The Government had taken note of the observation that, for effective implementation of health care programmes, aged Anganwadi employees are unable to carry out the implementation of healthcare programmes effectively, though it was prescribed in the ICDS Mission Board that retirement age can be enhanced to 65 years,. The Government after having considered the entire facts, had resolved to fix the enhanced age of Anganwadi teachers/helpers as 62 years and to fix the date of retirement as April 30th of every year. The retirement age being a policy decision, in the light of the above there is no scope for any further interference.

8. The learned counsel for the petitioners in W.P.(C) No.11348/2021 vehemently contended that the Government had formulated guidelines for the constitution of selection committee for the selection of Anganwadi teachers/helpers by G.O.No.74/2012 dated 22/12/2012. A learned Single Judge of this court by the Judgment in W.P.(C) No.24893/2018 had set aside the above G.O.to the extent it provided for inclusion of five social workers in the selection committee. It was stated that thereafter, though a writ appeal

was filed , matter is still pending consideration. Accordingly, proper selection is not being conducted .

9. The learned counsel for the writ petitioners vehemently contended that, in the light of the present scenario and where an effective mechanism is not put in place, the recruitment of new employees were not possible. It was also contended that the intention of the respective Panchayath was to terminate the service of contract employees and to bring in another set of contract employees and such method has been deprecated by the Hon'ble Supreme Court in ***Hargurpratap Singh v. State of Punjab and Others (2007) KHC 7838***). In that decision it was held that, the course adopted by the Management was to displace one ad hoc arrangement by another ad hoc arrangement, which was not at all appropriate for those type of persons, who have gained experience. Hence, it was directed that the appellants shall be continued in service till regular appointments are made, on minimum of the pay scale. It was further directed that the appellant however was not entitled to regularization.

10. In the light of the above facts, it is true that, the committee is not in place for selection of the candidates. However, it seems that several G.Os have been issued regarding the service conditions of the employees and their selection process. By virtue of G.O No.1/2020 of Social Justice Department dated 6/1/2020, Rules in relation to the Anganwadi workers/helpers Welfare Fund Act, were framed by the Government and published. The Government had noticed that, Central Government had issued direction that 25% of the

Anganwadi workers shall be reserved for appointment by promotion of qualified helpers. Such a direction was issued by the Central Government by G.O No.1/9/2006-CD-1 dated 6/10/2006. It was reiterated in G.O.(MS) No.74/2012 of Social Welfare Department dated 22/12/2012. Hence, G.O.No.254/2018 dated 30/4/2018 was issued to ensure that specific and separate reservations were made for various categories of persons. 25% for the helpers who had completed 10 years of service and who passed SSLC/SSLC equivalency course was also provided. Thereafter, the priority list for fixing the process of filling up the vacancies by rotation for various eligible candidates was issued by G.O B2/406/2019 of Social Justice Department dated 22/2/2020, which was also placed on record. These show that specific portion of the vacancies are set apart for certain specified categories. Having considered this, though the selection committee is not put in place, the method of selecting the candidates by various preferences stands fixed. In the light of the above, I am inclined to direct that wherever, persons who are available by virtue of the priority list and requested for posting at places wherein other candidates are available, it shall be dealt with in accordance with law.

11. In the above circumstances, I am inclined to dispose of the writ petitions with the following direction;

All the posts of the petitioners herein, if they are not filled up, in accordance with the Government Rules, Guidelines and Regulations and G.Os mentioned above, the employees who had

retired from that post shall be engaged on contract basis till persons engaged by due process of law are brought in.

No further orders are required in these writ petitions. Writ petitions are disposed of as above.

Sd/-

SUNIL THOMAS

Judge

dpk

APPENDIX OF WP(C) 11179/2021

PETITIONER EXHIBITS

- EXHIBIT P1 PHOTOSTAT COPY OF THE JUDGMENT DT
05.01.2017 IN W.P(C) NO.4755 OF 2009
- EXHIBIT P2 PHOTOSTAT COPY O EVIDENCING THE
INADEQUATE BENEFITS IN THE WELFARE FUND
SCHEME FORMULATED BY RESPONDENT NOS.4 AND
5 AS PER GO (MS) NO.523/2016/SJD
DT,11/11/2016
- EXHIBIT P3 PHOTOSTAT COPY OF THE ORDER OF THIS
HON'BLE COURT IN W.A.NO.1465 OF 2010 DT
31.08.2010
- EXHIBIT P4 PHOTOSTAT COPY OF THE MODIFIED ORDER OF
THIS HON'BLE COURT IN W.A.NO.1465 OF 2010
DT 29.9.2010
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION SUBMITTED
TO SMT.SMRITI IRANI, HON'BLE UNION
MINISTER OF INDIA ON 02.03.2021
- EXHIBIT P6 PHOTOSTAT COPY OF THE ORDER OF THIS
HON'BLE COURT IN W.P(C) NO.9951/2021 DT
27.04.2021

RESPONDENTS EXHIBITS:

- EXT.R2(A): COPY OF THE GO(MS) NO.60/2014/SJD DATED 19/7/2014
- EXT.R2(B): COY OF THE JUDGMENT IN WPC NO.11653/2014 AND CONNECTED
CASES.
- EXT.R2(C): COPY OF THE GO(RT) NO.1863/2021/FIN.DATED 26/2/2021.
- EXT.R2(D):COPY OF THE GO(MS) NO.04/2015/SJD DATED 17/1/2015
- EXT.R2(E): COPY OF THE GO(P) NO.12/02/WD DATED 10/4/1992.
- EXT.R2(F): COPY OF GO(P)NO.1/2020/SJD DATED 16/1/2020
- EXT.R2(G): COPY OF THE GO(P)NO.353/2020/SJD DATED 28/7/2020
- EXT.R2(H): COPY OF THE GO(MS) NO.254/2018/SJD DATED 30/4/2018

EXT.R2(I): COPY OF THE CIRCULAR NO.SJD-B2/406/2019-SJD DATED 22/2/2020

ANNEXURE A1: COPY OF THE GO(RT) NO.254/2018/SJD DATED 30/4/2018

ANNEXURE A2: COPY OF THE CIRCULAR WITH NO.SJD-B2/406/2018/SJD DATED 22/2/2020