

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

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THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 03RD DAY OF FEBRUARY 2020 / 14TH MAGHA, 1941

RP.No.1 OF 2020 IN WA. 1690/2015

AGAINST THE ORDER/JUDGMENT IN WA 1690/2015 OF HIGH COURT OF
KERALA

REVIEW PETITIONERS:

- 1 T.S.AKBAR KHAN, AGED 64 YEARS
S/O.LATE T.M.SAHIB,NOW RESIDING AT
T.C.3/1118/(4),SAIBA, HOUSE NO.54,
VYASA NAGAR, PATTOM, THIRUVANANTHAPURAM.
- 2 E.M.RAJENDREAN NAIR,S/O.LATE P.K.MADHAVAN
PILLA,CHAITHRAM, PALACE ROAD,
PALIAKKARA, THIRUVALLA.

BY ADVS.
SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.N.K.KARNIS

RESPONDENTS:

- 1 TRAVANCORE SUGARS AND CHEMICALS LTD.
VALANJAVATTOM, THIRUVALLA,
REPRESENTED BY ITS MANAGING DIRECTOR,
PIN-689104.
- 2 MANAGING DIRECTOR,
TRAVANCORE SUGARS AND CHEMICALS LTD.,
VALANJAVATTOM, THIRUVALLA, PIN-689104.

R1-2 BY ADV. M.GOPIKRISHNAN NAMBIARFOR R

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
03.02.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Dated this the 03rd day of February, 2020

Vinod Chandran, J.

The review petition is filed on the premise that, though the appeal has been rejected there is no benefit to the appellant especially since it has been held by this Court that "the period in which the writ petitioners had not worked in the Company between the order of termination and the resumption of their service as per the interim order in the present writ petition will have to be treated as leave without allowance". It is not the interim order but the judgment in the writ petition which was challenged in the appeal that enabled the writ petitioners to seek resumption of their service. The Company refused to do so despite there being no stay in the appeal and hence there is an

error apparent on the face of the record. By the time the stay was granted in the writ appeal, the petitioners had reached their age of superannuation. However, when the judgment was passed, setting aside the termination of the petitioners there was still time and the company ought to have resumed the services of the petitioners, argue the learned Counsel for the review petitioners.

2. We noticed that there is an error apparent from the face of the record and directed the learned Standing Counsel also to get instruction in the matter. We are of the opinion that the review petition itself can be disposed of which would modify the terms of the judgment passed.

3. We have to take into consideration the

peculiar facts arising in the above case. The employees and the officers of the respondent Company were to be superannuated at the age of 60 years. The Government had been contemplating a proposal to reduce the retirement age to 58 years. Though a Government Order was issued, that was kept in abeyance and both the officers and the employees were directed to be continued till the age of 60 years. Subsequently Ext.P5 was issued by the Government after deliberation, reducing the retirement age to 58 years. Even at that point, there were two writ petitions filed wherein the officers association and the employees association were parties.

4. Writ petitions of the officers association was numbered as WP(C) No. 32856/2006 and that of the employees numbered as WP(C)

No.25956/2006. Both the writ petitions were concerned with the retirement age of the officers and the employees of the company. When Ext.P5 was issued both the associations challenged the same in the respective writ petitions. There was an order of stay granted in both writ petitions, one of which is evidenced from Ext.P6 on 24.08.2006. Later WP(C) 32856/2006 was withdrawn on 18.06.2014 which is evidenced by Ext.R1(a). Immediately on the next day, ie, 19.06.2014 both the review petitioners, who had crossed 58 years of age were terminated.

5. It was alleged that one of the office bearers of the association who did not stand to loose since he was much younger, to curry favour with the management, had withdrawn the writ petition, without authorisation. Immediately on termination, the review petitioners filed RP

NO.1014/2014 in WP(C) No.32856/2006. Simultaneously they also challenged their termination in WP(C) No.17683/2014. The RP was heard by allowed on 15.10.2015. It was also noticed by us in the judgment itself that WP(C) No. 32856/2006 and WP(C) No.25956/2006, were later disposed of directing continuance of the officers and the employees till the age of 60 years until the Government took a decision on the recommendations of the One-man Commission appointed. It was also noticed in our judgment that the Government has not taken any decision on the said Commission recommendation.

6. By the time the RP was disposed of both the review petitioners had reached superannuation age, which for the 1st petitioner was 17.05.2015 and for the second petitioner on 08.07.2015. The crucial fact is that in the

meanwhile WP(c) 17683 of 2014 which challenged the termination was allowed on 05.02.2015, which was impugned in the writ appeal. On 05.02.2015 the petitioners had not reached the age of superannuation. The petitioners approached the Company on the basis of the judgment, but however, the company refused resumption of their service on the ground that there is an appeal filed and a stay granted.

7. Here we look at the records, which make it clear that though the appeal was filed on 23.07.2015 when the matter came up for admission 27.07.2015, the same was adjourned. It was not even admitted. The appeal remained in this Court without even being admitted till 27.09.2016 on which date the I.A filed for interim stay was allowed. By that time, the revision petitioners

had reached the age of superannuation.

8. What is significant is that between 05.02.2015 and 27.09.2016 there was no stay of the judgment. The judgment being in full force, the respondent company ought to have resumed the services of the petitioners. We are clear in our mind that on the principle of no work no pay the petitioners cannot be permitted to be paid their pay and allowances during the period in which they were kept out of employment which was due to the circumstances noticed above. However, when there was an order setting aside the termination, the company, a public sector undertaking had a duty to resume their service or obtain a stay in the appeal filed. In such circumstance we are of the opinion that the directions in the judgment require modifications to the following effect:-

(a) The petitioners shall be deemed to have been restored in service on 05.02.2015 and they would retire at the age of 60 years; the 1st petitioner on 17.05.2015 and the second petitioner 08.07.2015, during which period the petitioners would be entitled to the entire pay and allowances, though having not worked in the company.

(b) The computation of pay and allowances due from 05.02.2015 shall be made by granting eligible increments and fixing the pay as on 05.02.2015, notionally, deeming the petitioners to have continued in the employment between 18.06.2014 and 05.02.2016, notionally.

(c) The Services are not pensionable, but however, Provident Fund is payable to the petitioners which has been already paid. The Company would pay the Employers contribution of the

Provident Fund computed on the notional fixation of pay and allowances for each month starting from 18.06.2014 to the date of retirement.

(d) The gratuity shall be fixed on the basis of the last pay drawn as on the date of retirement and if any excess amounts are due to the petitioners, that shall also be paid

The review petition shall stand allowed in the above manner modifying the judgment to the extent directed above. There is no order as to costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE.

Sd/-
V.G. ARUN,
JUDGE.

Jma/