

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH

WEDNESDAY, THE 29TH DAY OF MAY 2013/8TH JYAISHTA 1935

WP(C).No. 13782 of 2008 (N)  
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PETITIONER(S)/PETITIONERS:  
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1. P.S. HARIDAS, CO-ORDINATOR,  
SEED UNIT, DHONI FARM,  
KERALA LIVESTOCK DEVELOPMENT BOARD LTD.  
PALAKKAD-678 009.
2. D.S. HIPPARGI,  
DEPUTY MANAGER (FD), DHONI FARM,  
KERALA LIVESTOCK DEVELOPMENT BOARD LTD.,  
PALAKKAD-678 009.
3. C.S. LALITHA,  
CONFIDENTIAL ASSISTANT (SR.GR.),  
KERALA LIVESTOCK DEVELOPMENT BOARD LTD.,  
MOOVATTUPUZHA-686 669.
4. V. VIJAYAKUMARI,  
JUNIOR SUPERINTENDENT,  
KERALA LIVESTOCK DEVELOPMENT BOARD LTD.,  
MOOVATTUPUZHA-686 669.
5. A.K. RAVINDRAN, PEON (HR.GR.),  
KERALA LIVESTOCK DEVELOPMENT BOARD LTD.,  
MOOVATTUPUZHA-686 669.

BY ADVS.SRI.B.RAGUNATHAN,  
SRI.V.V.MATHEW,  
SRI.R.SRINATH.

RESPONDENT(S)/RESPONDENTS:  
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1. STATE OF KERALA,  
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,  
AGRICULTURE (ANIMAL HUSBANDRY AND DAIRY  
DEVELOPMENT) DEPARTMENT, GOVT. SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
2. KERALA LIVESTOCK DEVELOPMENT BOARD LTD.,  
REPRESENTED BY MANAGING DIRECTOR,  
KERALA LIVESTOCK DEVELOPMENT BOARD LTD.,  
GOKULAM, PATTOM, THIRUVANANTHAPURAM-695 004.

R1 BY SR. GOVT. PLEADER MR.M.A. FAYAZ.  
R2 BY ADV. SRI.MILLU DANDAPANI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 29-05-2013, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE EXTRACT OF THE MINUTES OF THE 160TH MEETING OF THE BOARD OF DIRECTORS OF THE KLDB LTD.
- EXT.P2 COPY OF THE LETTER DATED 30/07/2007 OF THE 1ST RESPONDENT.
- EXT.P3 COPY OF THE JUDGMENT DATED 11/12/2007 IN W.P.(C) NO. 10071/2007-Y.
- EXT.P4 COPY OF THE REPRESENTATION DATED 04/02/2008.
- EXT.P5 COPY OF THE LETTER DATED 30/01/2008 OF THE 1ST RESPONDENT.
- EXT.P6 COPY OF THE G.O. DATED 11/04/200.
- EXT.P7 COPY OF THE JUDGMENT DATED 03/07/2007 IN W.P.(C) NO. 11794/2006-D.
- EXT.P8 COPY OF THE JUDGMENT DATED 05/10/2007 IN W.A. NO. 2292/2007.
- EXT.P9 COPY OF THE MEMO DATED 16/11/2007.
- EXT.P10 COPY OF THE MEMO DATED 16/11/2007.
- EXT.P11 COPY OF THE JUDGMENT DATED 01/04/2013 IN W.P.(C) NO. 7858/2011-F.
- EXT.P12 COPY OF THE JUDGMENT DATED 11/01/2013 IN W.P.(C) NO. 13660/2007-A.

RESPONDENT'S EXHIBITS:-

- EXT.R2A COPY OF THE GOVERNMENT LETTER NO.28776/AHF1/06/AD DATED 30/07/2007.
- EXT.R2B COPY OF THE EXTRACTS OF THE MINUTES OF THE 166TH MEETING OF THE BOARD OF DIRECTORS HELD ON 23/11/2007.
- EXT.R2C COPY OF THE GOVERNMENT ORDER NO.742/08/AD DATED 11/04/2008.
- EXT.R2D COPY OF THE GOVERNMENT LETTER NO.15604/AHF1/10 DATED 04/10/2010.

//TRUE COPY//

P.A TO JUDGE.

**THOMAS P.JOSEPH, J.**

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**W.P(C).No.13782 of 2008**

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**Dated this the 29<sup>th</sup> day of May, 2013**

**J U D G M E N T**

The petitioners were employees of the second respondent and their retirement age was fixed at 55 years. While so, the Board of the second respondent decided to enhance the retirement age of its staff from 55 to 58 years and referred the matter to the Government for approval (Ext.P1). Pending decision by the Government, the petitioners filed W.P(C).No.10071 of 2007 against relieving them on attaining the age of 55 years. In the said proceeding, this Court issued interim order allowing petitioners to continue beyond 55 years. Pending that Writ Petition, the first respondent issued Ext.P2, order rejecting the proposal in Ext.P1 to enhance retirement age to 58 years. Ext.P2, order was challenged in Writ Petition and this Court set aside Ext.P2, order observing that it is not a decision based on Ext.P1 and directed fresh consideration of Ext.P1, proposal. Later, the Government came with Ext.P6, Government order dated 11.04.2008 rejecting the proposal on the ground that it is against the policy of the Government. Ext.P6, order is under challenge in this Writ Petition.

2. The petitioners pray that this Court may issue a writ of certiorari or other appropriate writ, direction or order calling for the records leading to Ext.P6 and quash the same, issue a writ of mandamus or other appropriate writ, direction or order to the first respondent to approve the decision contained in Ext.P1 to enhance the age of the staff and officers of the second respondent from 55 to 58 years, declare that petitioners are entitled to continue in the service of the second respondent till they attain the age of 58 years as decided in Ext.P1 and get all service benefits like promotion and other attendant benefits. Certain other reliefs are also prayed for.

3. The first respondent has filed a counter referring to the circumstances leading to Ext.P6, order. It is contended that direct recruits (staff and officers) come under purview of the Employees Provident Fund and Miscellaneous Provisions Act and Rules, 1952 and the Employees' Pension Scheme, 1995 as per the Staff Rules and Regulations, Part III of Sec.69 and the proposal for enhancement of retirement age from 55 to 58 years was placed before the Board of Directors. The proposal was considered by the Board of Directors and as per resolution No.2277 it resolved that sanction be and is accorded to enhance retirement age of the staff and officers of the second respondent. The said resolution was

received by the first respondent for approval. The Government have issued Ext.P1, order after examining the resolution in detail. The Government denies the statement that the petitioners had attended the interview for promotion to higher post in the Board. It is also contended that the Government have examined the proposal for enhancement of retirement age of employees of the Board and rejected the same on the ground that it is against the government policy.

4. The third respondent also has filed a counter affidavit referring to the decision it has taken to enhance the retirement age from 55 to 58 years and forwarding the same to the first respondent for approval.

5. The learned counsel for the petitioners has contended that as per interim orders this Court issued, petitioners have worked for certain period after they attained the age of 55 years and before attaining the age of 58 years. It is submitted that in W.P(C). No.7858 of 2011, by Ext.P11, judgment dated 01.04.2013 this Court quashed Ext.P6 (which was marked as Ext.P14 in that proceeding) and issued appropriate directions so far as petitioners in that Writ Petition are concerned. The learned counsel submits that benefit of Ext.P11, judgment should enure to those petitioners as well and

hence this Court may dispose of the Writ Petition in the light of Ext.P11, judgment.

6. The learned Government Pleader for the first respondent and the learned Standing Counsel for the second respondent have contended that petitioners cannot be deemed to be in service from the age of 55 to 58 years. It is contended that the petitioners are not entitled to get salary during the said period and at any rate, entitlement of the petitioners who have already crossed the age of 58 years is only for pensionary benefits treating the petitioners as notionally on duty.

7. The learned counsel for the petitioners asserted that petitioners have worked under the second respondent for some period on the strength of the interim orders passed by this Court.

8. In the light of Ext.P11, judgment and so far as that judgment stands Ext.P6, order has to be treated as quashed and retirement age of employees of the second respondent as enhanced from 55 to 58 years. Hence so far as Ext.P11, judgment stands petitioners are also entitled to its benefit.

9. So far as the claim of petitioners that they have worked under the second respondent based on the interim order passed by this Court is concerned, that is a matter which the second

respondent has to look into and if actually petitioners have worked for any period as per the interim order passed by this Court between 55 to 58 years, it is declared that petitioners are entitled to get salary for such period, which the second respondent has to compute. Otherwise, petitioners who have already retired cannot be deemed to have been in the service, nor, are they entitled to reinstatement. But, they are entitled to get pensionary benefits as if they were in the service till the age of 58 years.

Resultantly this Writ Petition is allowed as under:

(i) In the light of Ext.P11, judgment dated 01.04.2013 in W.P(C).No.7858 of 2011 setting aside Ext.P6, order (Ext.P14, order in the said proceeding) it is directed that so far as Ext.P11, judgment stands, retirement age of employees of the second respondent is enhanced from the age of 55 to 58 years.

(ii) In case the petitioners have worked under the second respondent on the strength of interim order passed by this Court between the age of 55 and 58 years, they are entitled to get salary for the period for which they are actually worked thus. The second respondent shall look into the matter, compute and disburse the salary for such period within a period of three (3) months from the date of receipt of a copy of this judgment.

(iii) It is directed that since all the petitioners have crossed the age of 58 years , they are not entitled to get reinstatement but, for computation and disbursement of pensionary benefits, they shall be deemed to have been in the service from 55 to 58 years.

(iv) The pensionary benefits thus due to the petitioners shall be computed and disbursed to the petitioners within six (6) months from the date on which a copy of this judgment is received.

(v) Petitioner shall produce a copy of the Writ Petition and judgment before the appropriate authority as early as possible.

Sd/

**THOMAS P.JOSEPH, JUDGE**

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