

Vijaykumar S.G., vs State of Kerala,

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Court : Kerala

Decided On : Jul-30-2021

Judge : Honourable Mr. Justice a.M.Badar

Appeal No. : WP(C)/15216/2021

Appellant : Vijaykumar S.G.,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.M.BADAR FRIDAY,
THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 WP(C) NO.
15181 OF 2021 PETITIONER/S: RAJAN K.R., AGED 60 YEARS, S/O.
RAGHAVAN PILLAI, SHYLAJA MANDIRAM, CHENDHAPUR, DECENT
JUNCTION P.O. KOLLAM DISTRICT 691 577. BY ADV
B.RENJITHKUMAR RESPONDENT/S: 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF INTERNAL
SECURITY, KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT 695 001. 2 KERALA EX-
SERVICEMEN WELFARE AND REHABILITATION CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR, KEXCON, OPP.

AMRITHA HOTEL, THYCAUD, THIRUVANANTHAPURAM. 695 001. 3 KERALA STATE ELECTRICITY BOARD, REP. BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM DISTRICT 695 004. 4 THE DEPUTY CHIEF ENGINEER, KSEB (ELECTRICAL CIRCLE OFFICE) KOLLAM, KOLLAM 691 001. OTHER PRESENT: SMT. THUSHARA JAMES, SPL GP SRI. SUDHEER GANESH KUMAR, SC SRI. R. S. KALKURA, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, ALONG WITH WP(C).15205/2021, 15216/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.M. BADAR FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 WP(C) NO. 15205 OF 2021 PETITIONER/S: VIJAYAN GOPALAN, AGED 60 YEARS, S/O. GOPALAN, VEDISSRIL, MARU SOUTH, ALUMKADAVU, KOLLAM DISTRICT-690573. BY ADVS. B. RENJITH KUMAR CLARA SHERIN FRANCIS RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF SAINIK WELFARE, KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM DISTRICT-695001. 2 KERALA EX-SERVICEMEN WELFARE AND REHABILITATION CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, KEXCON, OPP. AMRITHA HOTEL, THYCAUD, THIRUVANANTHAPURAM 695001 3 KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM DISTRICT-695004. 4 THE EXECUTIVE ENGINEER, KSEB 66 KV SUB STATION, KARUNAGAPPALLY, KOLLAM DISTRICT-690518. OTHER PRESENT: SRI. SUDHEER GANESH KUMAR, SC SRI. R. S. KAIKURA, SC, SPL GP. SMT. THUSHARA JAMES THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, ALONG WITH WP(C).15181/2021 AND

CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.M.BADAR FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 WP(C) NO. 15216 OF 2021 PETITIONER/S: VIJAYKUMAR S.G., AGED 61 YEARS S/O. M.O. GOPINATHAN UNNITHAN, AVITTAM, NEAR GANGADHARAM ROAD, CHAVAR KODU, PARIPPALLY P.O., PIN-691574. BY ADV B.RENJITHKUMAR RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF INTERNAL SECURITY, KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 KERALA EX-SERVICEMEN WELFARE AND REHABILITATION CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, KEXCON, OPP. AMRITHA HOTEL, THYCAUD, THIRUVANANTHAPURAM-695001. 3 KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM DISTRICT-695004. 4 THE EXECUTIVE ENGINEER, KSEB 66KV GIS SUB STATION, KOLLAM, KOLLAM DISTRICT-690518. OTHER PRESENT: SRI.SUDHEER GANESH KUMAR, SC SRI.R.S.KALKURA, SC SMT.THUSHARA JAMES, SPL GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, ALONG WITH WP(C).15181/2021 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.M. BADAR, J.

----- Dated
this the 30th day of July, 2021

JUDGMENT

Heard learned counsel for the petitioners.

2. The learned counsel for the petitioners argued

that the 2nd respondent is a Corporation established by the State of Kerala which is deploying temporary security staff to various organisations in the State. It is argued that the petitioners were deployed by the 2nd respondent as Security Guards in the establishments run by respondents 3 and 4. Learned counsel for the petitioners further argued that petitioners are aggrieved by communication at Ext.P1 by which the 2nd respondent Corporation has communicated to the respondent Electricity Board that the 2nd respondent Corporation has taken a decision to replace all the Ex- Servicemen of the security staff deployed to the Electricity Board, who have crossed the prescribed age limit. It is further informed that the Ex- servicemen/petitioners will be replaced within next two months. The respondent Electricity Board was requested by the communication of the 2nd respondent Corporation to convey the decision to the concerned Ex-Servicemen deployed with the Electricity Board.

3. The learned counsel for the petitioners submits

that the prescribed age limit of the security guards as per the provisions of the Private Security Agents (Regulation Act), 2005 is 65 years. It is argued that Section 10 of the said Act prescribes that security guard is eligible to continue in service up to 65 years. It is further argued that even the 2nd respondent in its board meeting dated 19.05.2015 has decided to increase the age of retirement of employees from 60 years to 62 years. Hence according to the learned counsel for the petitioners, the communication of the 2nd respondent to replace all Ex-Servicemen/security staff who have crossed the prescribed age limit, so also the decision of the board of directors fixing the retirement age of petitioners at 62 years is liable to be quashed and set aside.

4. It is thus clear that petitioners are working as

security guards in the State Electricity Board being deployed by the 2nd respondent Corporation. They are aggrieved by the communication of terminating

their services issued by the 2nd respondent, who seems to be their principal employer.

5. Section 2(s) of the Industrial Disputes Act reads thus:

workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity,

draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

6. It is thus clear that the petitioners are doing work as Security Guards and as such they are workmen. Section 2(oo) of the Industrial Disputes Act defines the term retrenchment which reads thus:

retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a

result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

7. It is thus clear that termination by the

employer of services of the workmen for any reason whatsoever including termination on account of the alleged crossing of prescribed age limit also amount to retrenchment. According to the petitioners they have not attained the age of superannuation and their age of superannuation is 65 years.

8. The term Industrial Dispute is also defined by the Industrial Disputes Act, 1947 and Section 2(k) reads thus:

industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

9. It is thus clear that what is sought to be

adjudicated before this Court is certainly an industrial dispute between the petitioners and their employer, the adjudication of which requires adducing of evidence.

10. The petitioners have an alternate and most

efficacious remedy of raising the Industrial Dispute in the matter of their termination for the alleged reason of crossing the prescribed age limit in the wake

of age of superannuation prescribed by the Statute. Section 2A of the Industrial Disputes Act becomes relevant in that regard.

11. In this view of the matter as alternate and

most efficacious remedy of raising the Industrial Dispute and getting it adjudicated by adducing necessary evidence before the Labour Court/ Tribunal is available to the petitioners, petitioners are rejected. Needless to mention that if the petitioners register Industrial Dispute, the authorities of the State shall take expeditious decision on the dispute in respect of referring that dispute to the concerned Tribunal. The Writ Petitions are accordingly dismissed. Sd/- A.M. BADAR JUDGE
rkc APPENDIX OF WP(C) 15181/2021 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE LETTER DATED 13.7.2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER. Exhibit P2 TRUE COPY OF THE EXTRACT OF THE DECISION DATED 19.5.2015 ISSUED BY THE BOARD OF DIRECTORS OF THE 2ND RESPONDENT WITH TRANSLATION. APPENDIX OF WP(C) 15205/2021 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE LETTER DATED 13/07/2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER. Exhibit P2 TRUE COPY OF THE EXTRACT OF THE DECISION DATED 19/05/2015 ISSUED BY THE BOARD OF DIRECTORS OF THE 2ND RESPONDENT WITH ENGLISH TRANSLATION. APPENDIX OF WP(C) 15216/2021 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE LETTER DATED 13/07/2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER. Exhibit P2 TRUE COPY OF THE EXTRACT OF THE DECISION DATED 19/05/2015 ISSUED BY THE BOARD OF DIRECTORS OF THE 2ND RESPONDENT WITH TRANSLATION.

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