

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 23RD DAY OF MARCH 2023 / 2ND CHAITHRA, 1945

WA NO. 545 OF 2023

AGAINST THE ORDER IN WP(C) 2607/2022 OF HIGH COURT OF KERALA

APPELLANTS:

- 1 PREMARAJ.M.A,AGED 67 YEARSS/O LATE K.V.R. NAIR, H-20, KB
NSS COLONY, MALOORKUNNU P.O., KOZHIKKODE, 673012.
- 2 ASOK KUMAR.N,AGED 64 YEARSS/O K. NARAYANAN, FLAT NO. 3 -
A1, SAMRUDHI ENCLAVE, TKD ROAD, PATTOM P.O,
THIRUVANANTHAPURAM, PIN - 695004
- 3 BHAKTHA MEERA .KAGED 63 YEARS/O SREEDHARAN, SASIPRIYA,
ALUNGAL, THENHIPALAM, MALAPPURAM, PIN - 673636
- 4 N.RAMANANDA PANICKAR,AGED 75 YEARS/O MADHAVA MANDIRAM, CMC -
11, CHERTHALA, ALAPPUZHA, PIN - 688524
- 5 BASHEER.T.MUSTHAFA,AGED 67 YEARSS/O MUSTHAFA, T.C
16/1723(6), T.BEEZ LAND, KALLADIMUGOM, MANACADU PO ,
THIRUVANANTHAPURAM, PIN - 695009
- 6 S.RAVEENDRAN NAIRAGED 70 YEARSS/O SANKARA PILLAI,
JAYANILAYAM, KARIYAM, SREEKAARYAM PO, THIRUVANANTHAPURAM,
PIN - 695017
- 7 RAMACHANDRAN NAIRAGED 73 YEAR/O THEKKEVILA VEEDU,
SREEKRISHNA LANE, CHAVADIMUKKU , SREEKAARYAM,
THIRUVANANTHAPURAM, PIN - 695017
- 8 SAKUNTHALA C.,AGED 78 YEARS/O REVATHI, T.C 30/306-1,
MADHUMUKKU ,AANAYARA PO, THIRUVANANTHAPURAM, PIN - 695029
- 9 K.S.V NAYAKAM,AGED 76 YEARSS/O K.K.SIVARAMAKRISHNA
PILLAI, AMRUTHAM,T.C 23/364, KOWADIAR GARDENS,B-21, GOLF
INKS, THIRUVANANTHAPURAM, PIN - 695003
- 10 JAYACHANDRA SARMA .G.,AGED 77 YEARSS/O GOPALAKRISHNA
BHATTATHIRI, MOOTHEDATHU MADOM,PERUVELIKARA PO, KOLLAM,
PIN - 691500

- 11 N.VASUDEVAN,AGED 69 YEARSS/O KESAVAN, MAHESH VILLA,
PEROORKARANMA, CHAARUMOODU PO, ALAPPUZHA, PIN - 690505
- 12 SEBASTIAN T.J.,AGED 73 YEARSS/O JOSEPH T.V, THEKKETHAYIL,
THEJAS, THUMBOLI PO, ALAPPUZHA, PIN - 688008
- 13 M.SANKAR SEN,AGED 77 YEARSS/O SANKARA PILLAI , 4A,JJ
VISTA APPARTMENT, KANJIRAMPAARA PO, THIRUVANANTHAPURAM,
PIN - 695030
- 14 P.RAMAN PANICKERAGED 78 YEARSS/O PADMANABHAN, RADHIKA
BHAVAN,PLAVODU, PLRA266, KODUNGANNOR PO,
THIRUVANANTHAPURAM, PIN - 695013
- 15 SREELATHA SUKUMAR,AGED 59 YEARS/O SUKUMARAN AISWARYA,
ORIENTAL ESTATE LANE, KALOOR, ERNAKULAM, PIN - 682017
- 16 P.D. PRASADAGED 64 YEARSS/O DIVAKARAN, AISWARYA, ORIENTAL
ESTATE LANE, KALOOR,ERNAKULAM, PIN - 682017
- 17 G.S. CHANDRASEKHARAN NAIR,AGED 77 YEARSS/O G. SANKARA
NARAYANAN NAIR, T.C 14/638, NRA-206, VIKAS BHAVAN P.O,
THIRUVANANTHAPURAM, PIN - 695033
- 18 R.GOPINATHAN NAIR,AGED 79 YEARSS/O RAMAKRISHNA PILLAI,
T.C 64/519, KOOTTAFLAVILA VEEDU, EDAGRAMAM, KARUMOM P.O,
THIRUVANANTHAPURAM, PIN - 695002
- 19 G.RAVEENDRAN NAIR,AGED 79 YEARSS/O M.GOPALA PILLAI, N.V
SADANAM, KARAMKODE, NETTAYAM P.O, THIRUVANANTHAPURAM, PIN
- 695013
- 20 N.G. DIVAKARANAGED 80 YEARSS/O N.GOVINDAN,ASWATHY BHAVAN,
T.C 3/1420, G-6, LEKSHMI NAGAR, PATTOM P.O,
THIRUVANANTHAPURAM, PIN - 695004
- 21 K.E PADMANABHAN NAIRAGED 74 YEARSS/O SARASI JANABHA
KURUP, KADAMATTIL HOUSE, CMC-X, KALIKULAM, CHERTHALA P.O,
ALAPPUZHA, PIN - 688524
- 22 M. KATHIRKUNJUAGED 69 YEARS/PUTHENPURAYIL,
PADINJATTINKARA, THEVALAKKARA, KOLLAM P.O., PIN - 690524
- 23 K.S. SASEENDRANAGED 68 YEARSS/O SIVARAMAN, SNRA-101,
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM, PIN - 695011
- 24 K.R RAJAGOPAL,AGED 75 YEARSJANAKI NIVAS, SARAS-55,
SREEVARAHAM, MANACAUD P.O, THIRUVANANTHAPURAM, PIN -
695009
- 25 V.M CHEKKU,AGED 74 YEARSS/O RAMAN, VADAKKEDATHU ,
CHELANNOOR P.O, KOZHIKODE, PIN - 673616

- 26 M.SHAJIHAN, AGED 76 YEARS/O MOHAMMED HANEEFA, BIJIAS HOUSE, THEVALLY, KOLLAM, PIN - 691009
- 27 K.M. JAYALEKSHMI PILLAI AGED 81 YEARS/O K. MADHAVAN PILLAI, LEXMI, SEKT-40, KURUP'S LANE, SASTHAMANGALAM P.O., THIRUVANANTHAPURAM, PIN - 695010
- 28 K.P. ANNAMMA, AGED 65 YEARS/O PAULOSE, NEDUMPOIKAYIL HOUSE, MEENADOM P.O, KOTTAYAM, PIN - 686516
- BY ADVS.G.RAJAN POTAYILV.R.GOPUURMILA.M.G

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NEW DELHI - 110001
- 2 SANJEEV KAUSHIK, IAS (KERALA CADRE), ADDITIONAL SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NEW DELHI. *STRUCK OFF, PIN - 110001
- 3 THE EMPLOYEES PROVIDENT FUND ORGANIZATION, REPRESENTED BY ITS REGIONAL COMMISSIONER, ZONAL OFFICE, BHAVISHYA NIDHY BHAVAN, P.B NO. 1016, PATTOM PALACE P.O, THIRUVANANTHAPURAM, PIN - 695004
- 4 THE STATE OF KERALA, REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF FINANCE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 5 THE BOARD OF DIRECTORS, REPRESENTED BY ITS CHAIRMAN, KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM, PIN - 695033
- 6 THE KERALA FINANCIAL CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM. *R2 IS STRUCK OUT FROM THE ARRAY OF RESPONDENTS AS PER ORDER DATED 23/3/23 IN CM APPLN.1/2023 IN WA 545/23., PIN - 695033
- BY ADVS.SHRI.M.R.VENUGOPAL, SC, KFCDHANYA P.ASHOKANS. MUHAMMAD ALIKHAN

OTHER PRESENT:

ADV DHANYA P ASHOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S.V.Bhatti, J.

We have heard Adv.G.Rajan Potayil for the appellants, Adv.Dhanya P.Asokan for respondents 5 and 6 and Government Pleader Mr.Bijoy Chandran for the 4th respondent.

2. Writ Petitioners are the appellants. The appellants were the permanent employees of the Kerala Financial Corporation, Thiruvananthapuram/6th respondent and admittedly, they retired from service on different dates of superannuation prior to 2010. On 21.01.2022, the Writ Petition is filed for the following reliefs:

(i) Call for the records leading to cancellation of Exts.P1 and P2 pension scheme vide Ext.P5 order and issue an order in the nature of certiorari to quash the same.

(ii) Declaring that the petitioners are entitled to get statutory pension at par with 4th respondent

government servants since Kerala Financial Corporation is included as a portfolio of Finance Department as item No.9 of 'D' of the First Schedule of Part II, Kerala Government Business Rules by which the transaction of the business of Government is governed and also considering statutory pension granted to similarly situated retired employees of the Kerala State Housing Board (KSHB) as Government servants.

(iii) issue an order or writ in the nature of mandamus or direction directing the 1st respondent Government of India to implement a viable pension scheme for the retired employees of 6th respondent within a time frame to be fixed by this Hon'ble Court treating the Financial Corporations as Union subject as item No.43 under Seventh Schedule of the Constitution of India and also considering 6th respondent KFC is an exempted institution under Section 17 of EPF Act.

OR

Issue an order or writ in the nature of mandamus or direction directing the 6th respondent to implement Exhibits P1 and P2 pension scheme in a time bound manner with adequate pension fund.

OR

Issue an order or writ in the nature of mandamus or direction directing the 4th respondent State to take over the liability of Exts.P1 and P2 orders or to implement suitable pension scheme to the petitioners at par with the Government employees in a time bound manner with budget allocation of adequate pension fund.

(iv) Issue order or writ in the nature of mandamus or direction directing respondents 4 and 6 to implement

Ext.P6 medical scheme for the benefit of the retired employees of the 6th respondent like the petitioners who are suffering from acute illness and senility at the cost of the 6th respondent.

(v) Any other order or direction this Hon'ble Court may deem fit in the nature of the case and to render justice considering senility and old ageing of the petitioners.”

Through the impugned judgment, the learned Single Judge dismissed the Writ Petition. Hence the appeal.

3. The judgment under appeal recorded the circumstances preceding the filing of the Writ Petition, the basis for the reliefs claimed by the writ petitioners and the reasons for rejecting the prayers. To appreciate the controversy, the following brief narrative is given.

4. Vide letter No.Psl/3625/2000 dated 24.10.2000, the Managing Director of the 6th respondent Corporation requested the Government to accord sanction for the implementation of a pension scheme for the employees of the Corporation with effect from 31.03.1998. By G.O.(MS)No.669/2001/Fin. dated 5.4.2001, the 4th respondent

approved the request of the 6th respondent Corporation. The 6th respondent initiated steps for framing the rules and regulations. The 6th respondent/Corporation will have to make one-time contribution of Rs.3.63 crores to the pension fund for bringing pension cover to all his employees. The one-time contribution of Rs.3.63 crores is against the initial estimation of Rs.25 lakhs with which the pension scheme was conceived for implementation by the 6th respondent Corporation. By G.O.(MS) No.1174/01/Fin. dated 16.10.2001, the State Government approved pension regulations and called upon the 6th respondent Corporation to take steps in accordance with Section 48 of the State Financial Corporations Act, 1951.

5. On 10.5.2022, the Board of 6th respondent decided not to implement a pension scheme in the Corporation. By communication dated 3.6.2002 addressed to the Principal Secretary (Finance), the 6th respondent made the following request.

“The Principal Secretary (Finance),
Finance Department,
Government Secretariat,
Thiruvananthapuram.

Madam,

Sub: Non-implementation of Pension scheme in Kerala
Financial Corporation-reg.

Ref: G.O.(MS) No.669/2001/Fin.dtd.5.4.2001.

.....

The Government vide the reference cited have accorded consent to introduce the pension scheme in the Corporation. However taking into account the present financial position, the Board held on 10.5.2002 has decided not to implement pension scheme in the Corporation. The Board minutes in this regard is extracted below.

The Board considered the Actuarial Revaluation of the Government approved pension proposal. Considering the present financial situation of the Corporation further contribution of 3.63 crores to the Pension Fund is not feasible. Hence the Board decided not to implement the scheme and authorised Managing Director to inform Government accordingly.”

Yours faithfully,

Sd/-

Managing Director”

6. It is contextual to appreciate that a few of the employees assailing Ext.P3 communication dated 3.6.2002

moved the Hon'ble Lok Ayukta, State of Kerala. The Lok Ayukta directed implementation of the decision of the Board of 6th respondent to pay pension to the retired employees. The 6th respondent Corporation filed WP(C) No.5046 of 2014 challenging the directives of the Lok Ayukta. By judgment dated 19.7.2018, the Writ Petition was allowed. The operative portion reads thus:

9. We must also note that the absence of a finding on the aspect of delay in filing the complaint before the Lok Ayukta, more so in the context of a specific averment in the counter affidavit filed by the Financial Corporation pointing out the belated nature of the complaint, also vitiates the report/order of the Lok Ayukta. When the contention regarding delay, taken in the context of examining the jurisdiction of Lok Ayukta, was brought to its notice, the Lok Ayukta ought to have examined the said aspect and rendered its finding in the matter before proceeding further with the examination of the complaint. We also note that the directions issued by the Lok Ayukta in paragraph 14 of the impugned report/order are such as would take it outside the ambit of the term "recommendation as contemplated under the Lok Ayukta Act. The decisions of this Court in *State of Kerala v Bernad* (2002 (3) KLT 254) and *Sudha Devi.K v. District Collector, Thiruvananthapuram and others* (2017 (2) KHC 850] are authorities for the view that the Lok Ayukta can only make a report to the authority concerned, with a recommendation,

and it is not competent to issue positive directions under Section 12 of the Act. The recommendation cannot partake the nature of positive directions, much less peremptory in nature.

9. Before parting with the case, we might add that, while we have heard elaborate arguments on the merits of the case, we deem it unnecessary to deal with the said contentions since we are allowing the writ petition on the limited finding that Ext.P14 report/order of the Lok Ayukta, that is impugned in the writ petition, is one that is passed without jurisdiction. The contentions on merits are left open to be considered in appropriate proceedings.

The writ petition is thus allowed as above.”

7. The writ petitioners, for that matter, none of the retired employees has taken recourse in law to assail the Board Resolution dated 10.5.2002 as communicated by Ext.P3 letter dated 3.6.2002. The 4th respondent, on 08.11.2019 issued impugned Government order which reads as follows:

“ GOVERNMENT OF KERALA

Abstract

Kerala Financial Corporation-Introduction of Pension Scheme for the employees of the Corporation-Orders cancelled.

FINANCE (PU-A) DEPARTMENT

G.O.(Rt) No.8842/2019/FIN Dated, Thiruvananthapuram 08/11/2019

Read 1 G.O.(MS) No.669/2001/Fin. Dated 5.4.2001

2 G.O.(MS) No.1174/2001/Fin dated 16.10.2001

3 Letter No.KFC/HO/F&A/475/2019 dated 21.06.2019 from MD, KFC

ORDER

Managing Director, Kerala Finance Corporation has reported that the Board of Directors of KFC has approved the introduction of National Pension Scheme in the Corporation and had earlier decided not to implement pension scheme as per G.O. cited above. In view of this, Government are pleased to cancel the G.O. read as 1st and 2nd above.

The Board of KFC may amend KFC Staff Regulations 1966 for implementing NPS.

(By order of the Governor)

SANJEEV KAUSHIK IAS

PRINCIPAL SECRETARY”

8. The admitted position is that Ext.P5 is dated 08.11.2019 and the decision of the Board as communicated in Ext.P3 was dated 03.06.2002. The 6th respondent through letter dated 21.6.2019 informed the inclination of the 6th respondent Corporation to implement National Pension Scheme in the Corporation. The National Pension Scheme

could be implemented only upon recalling or cancelling Exts.P1 and P2. Therefore, it is in the above background, Ext.P5 is questioned.

9. Adverting to the grounds of challenge to Ext.P5, we notice that the writ petitioners are substantially re-agitating the very grounds which were urged before the learned Single Judge. The judgment of the learned Single Judge is under challenge and after going through the judgment, we do not find a reason to take a different view against what has been recorded in the judgment under appeal. We further notice that Ext.P5 has two limbs viz. takes note of the proposed implementation of National Pension Scheme to the employees on rolls and necessitates recalling or cancelling Exts.P1 and P2 Government orders dated 5.4.2001 and 16.10.2001. The legal grounds urged against Ext.P5 dated 08.11.2019 independently do not validly arise at all. The learned single judge has given sufficient reasons justifying recalling Exts.P1 and P2. We do not wish to burden the judgment re-iterating the same

contentions and conclusions. The crux of the matter is that Ext.P3 is a resolution made by the 6th respondent. The consequential steps taken are either in addition to or in furtherance of the Board resolution dated 10.5.2002. Ext.P5 lays the path for implementation of National Pension Scheme to the employees working in 6th respondent organization. The petitioners are getting confused with available prayer against Ext.P3 and the consequential steps being taken by the respondents. Till Ext.P3 holds as a binding resolution, the decision taken in Ext.P5 by the Government recalling Exts.P1 and P2 does not warrant interference. The writ petitioners retired from service long ago have received the benefits due to them and the present writ petition is filed without establishing a right to claim pension in law. The decision to implement pension was aborted to financial constraints. The communication in Ext.P5 by itself does not present any cause of action. The petitioners since are retired from service can't contend for implementation of an otherwise unimplementable decision

by the 6th respondent. The writ prayers for the reasons recorded by the learned Single Judge are rightly rejected. Hence we confirm the order under appeal.

The Writ Appeal, for the reasons stated above, fails and dismissed accordingly.

Sd/- S.V.BHATTI, JUDGE

Sd/- BASANT BALAJI, JUDGE