

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 9TH DAY OF OCTOBER 2024 / 17TH ASWINA, 1946

WP (C) NO. 19868 OF 2024

PETITIONER:

P.K. JAYAN
AGED 62 YEARS
S/O.UNNIPARAVAN,
PANNIKOTTIL HOUSE, KARADPARAMBA P.O
MALAPPURAM, PIN - 673632

BY ADV V.MADHUSUDHANAN

RESPONDENTS:

- 1 STATE OF KERALA
REP. BY ITS SECRETARY LABOUR &
SKILL DEPARTMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
REP. BY ITS CHIEF EXECUTIVE OFFICER HARISREE BUILDING,
MWRA-14 KOCHUPILAMOOD,
MUNDAKKAL WEST KOLLAM,
PIN - 691001
- 3 THE CHIEF EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
HARISREE BUILDING,
MWRA-14, KOCHUPILAMOOD,
MUNDAKKAL WEST KOLLAM, PIN - 691001
- 4 THE DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD

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: 2 :

MANGARATHODI BUILDING, 11 FLOOR
PERINTHALMANNA ROAD, KUNNUMMAL,
MALAPPURAM, PIN - 676505

BY ADV
SRI.P.RAMAKRISHNAN
SMT.SHEEJA C.S., SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.09.2024 AND THE COURT ON 09.10.2024
DELIVERED THE FOLLOWING:

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N. NAGARESH, J.

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Dated this the 9th day of October, 2024

J U D G M E N T

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Petitioner, who is a Goods Auto Driver, is before this Court seeking to direct the 3rd respondent to enhance the pension of the petitioner authorised under the Kerala Motor Transport Workers Welfare Fund Board Scheme, taking into account the length of service of the petitioner with all consequential benefits.

2. The petitioner states that while he was engaged as Goods Auto Driver, he was diagnosed with Non-Hodgkin

Lymphoma Stage III. As the petitioner was unable to carry on with his occupation due to ill health, he applied to retire from the Kerala Motor Transport Workers Welfare Fund Scheme. His request was allowed as per Ext.P4.

3. The petitioner states that as per paragraph 46A of the Kerala Motor Transport Workers Welfare Fund Board Scheme, a member of the Scheme who is having not less than 10 years of completed service on superannuation shall be eligible for pension. As per paragraph 46A(2), a member of the Scheme on becoming completely disabled to do his work as a Motor Transport Worker shall be entitled to a minimum pension of ₹500/- irrespective of the length of service, if not otherwise entitled for pension under subparagraph (1).

4. The petitioner states that he has rendered more than 10 years of service and therefore he is entitled to receive the minimum pension of ₹3,500/- upon his retirement. However, the petitioner has been granted only ₹1,600/- as disability pension. As the petitioner is undergoing treatment for his ill-fated

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disease, the amount he receives as pension is insufficient to meet his bare minimum expenses. The petitioner therefore submitted Ext.P8 representation to the Chief Minister of Kerala. However, the 3rd respondent-Chief Executive Officer of the Board has informed the petitioner that the decision to enhance the petitioner's pension would only be made, only if the Government increases the disability pension, since the petitioner is presently receiving disability pension.

5. The petitioner states that non-enhancement of the pension payable to the petitioner upon his retirement from the Kerala Motor Transport Workers Welfare Fund Board Scheme is illegal and arbitrary. The petitioner was a member of the Welfare Fund Scheme from the year 2006 to 2016. As per paragraph 46A of the Scheme, workers with not less than 10 years of service are entitled to receive pension. The petitioner was forced to exit the Welfare Fund Scheme due to his treatment. Therefore, denial of full pension to the petitioner is illegal and unjust.

6. Respondents 2 to 4 resisted the writ petition.

The respondents stated that the petitioner does not come within the ambit of paragraph 46A of the Scheme. The petitioner took voluntary retirement before reaching the age of superannuation. Therefore, he is eligible only to the benefit under paragraph 46B.

7. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing respondents 2 to 4. I have also heard the learned Senior Government Pleader appearing for the 1st respondent.

8. Chapter VI(A) of the Kerala Motor Transport Workers Welfare Fund Board Scheme, 1985 makes provision for payment of pension. Paragraphs 46A and 46B read as follows:

46A. Eligibility for pension:- A member of the Fund who is having not less than ten years of completed service on superannuation shall be eligible for pension under this Chapter:

Provided that a member of the Fund who is not having ten completed years of service but is having nine and half or more completed years of service shall be deemed to have completed ten years of service for the purpose of eligibility for pension.

46B. Rate of pension:- (1) A member of the Fund on superannuation shall be entitled for a minimum pension of 500 per month members having more than ten completed years of service shall be

entitled for enhanced pension at the rate of Rs.25/- per month for stage carriage (Heavy vehicle) stage carriage (Light vehicle), Contract carriage & Luxury buses, Goods vehicle (Heavy) & Goods vehicle (Medium), & at the enhanced rate or Rs.20/- per month for multi utility vehicles (like Omni vans, Toyota Qualis, Tempo traveller, Taxi cab, etc.) Autorickshaws other than those covered under the Kerala Autorickshaws Workers Welfare Fund Scheme 1991, Tractor, Tiller or other similar type of vehicles the enhancement will be for every completed year of service over and above ten years.

(2) A member of the Fund on becoming completely disabled to do his work as a motor transport worker shall be entitled to a minimum pension of Rs.500/- irrespective of the length of service, if not otherwise entitled for pension under subparagraph (1) above.

(3) The Board may subject to the prior approval of the Government, revise the rate of pension payable to the employees from time to time.

It is evident from paragraph 46A that a member will be entitled to pension only if he is having not less than 10 years of completed service on superannuation. Sub-paragraph (2) of paragraph 46B provides that a member of the Fund on becoming completely disabled to do his work as a Motor Transport Worker shall be entitled to a minimum pension of ₹500/- irrespective of the length of service, if not otherwise entitled for pension under subparagraph (1) above.

9. The petitioner's right to receive pension is only under the Kerala Motor Transport Workers Welfare Fund Board Scheme, 1985. The petitioner's entitlement will be therefore solely based on the provisions of the Scheme. Paragraph 46A providing for superannuation pension would apply only if a member retires after attaining the age of superannuation. The petitioner did not serve till the age of superannuation. The petitioner had to take voluntary retirement due to ill health.

10. Having regard to the facts of the case, one may at the first blush, feel discrimination towards employees like the petitioner who retires from service after rendering ten years service but before the date of their superannuation and the workers who retire on superannuation after rendering service of ten years. The former clause is not eligible to pension under paragraph 46A, whereas persons who retire on superannuation will get the benefit of paragraph 46A even if they have lesser service, but more than ten years.

11. One has to appreciate that Welfare Fund Schemes are framed based on empirical data. Such Schemes are framed to give defined benefits under the Scheme to defined persons. The corpus of Welfare Fund comes from limited contributions and subscriptions made by employers and employees. In most of the cases, there will be no significant financial support from the Government, to the Fund.

12. While constituting a Labour Welfare Fund, the Executive decides to give limited and specified benefits to the workmen, based on the limited resources expected from the contributions and subscriptions of the employers and employees. Liberal departure from the provisions of the Scheme ignoring the stability of the corpus, may cause collapse of the Scheme itself.

13. The Kerala Motor Transport Workers Welfare Fund Board Scheme ensures a higher pension to employees who retire on superannuation and a lesser amount to those who leave service due to disability. Any liberal departure from the provisions of the Scheme, is likely to affect the financial

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sustainability and viability of the Scheme itself. Whether employees quitting service due to disability should be treated at par with employees retiring on superannuation, is a policy matter to be decided by the Government, and such decision cannot be taken ignoring financial viability of the Scheme. Unmindful interference by the Courts in the provisions of such Schemes can have disastrous consequences.

14. Therefore, the pension payable to persons becoming disabled to do work as a Motor Transport Worker, can be computed only as per paragraph 46B(2). The petitioner is being paid pension as provided under paragraph 46B(2). As per the provisions of the Scheme as they stand now, the petitioner can be paid pension only as per paragraph 46B(2). The petitioner has no legal right to claim pension under paragraph 46A.

The writ petition is therefore dismissed.

Sd/-
N. NAGARESH, JUDGE

aks/07.10.2024

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APPENDIX OF WP(C) 19868/2024

PETITIONER'S EXHIBITS

- Exhibit P1 A TRUE COPY OF THE MEDICAL CERTIFICATE NO. MB/13023/2016 DATED 20.12.2016 ISSUED BY THE SUPERINTENDENT PANAKKAD SYED MUHAMMEDALI SHIHAB THANGAL MEMORIAL GENERAL HOSPITAL, MANJERI
- Exhibit P2 A TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE SENIOR CONSULTANT, MEDICAL ONCOLOGY & HEMATO ONCOLOGY, MVR CANCER CENTRE, CALICUT DATED 27.4.2024
- Exhibit P3 A TRUE COPY OF THE ORDER NO. A8/3991/17/KMT/10/GVL/1143/4662/GVSE/279 DATED 31.10.2017 ISSUED BY THE 3RD RESPONDENT
- Exhibit P4 A TRUE COPY OF THE LETTER NO. A8-3991/17 DATED 31.10.2017 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- Exhibit P5 A TRUE COPY OF THE RELEVANT PORTION OF THE KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD SCHEME 1985
- Exhibit P6 A TRUE COPY OF THE CHART SHOWING THE LATEST ENHANCED PENSION AMOUNTS FOR VARIOUS CATEGORIES OF THE MEMBERS OF THE SCHEME
- Exhibit P7 A TRUE COPY OF THE REPRESENTATION DATED 05.12.2023 SUBMITTED BY THE PETITIONER BEFORE THE 3 RD RESPONDENT
- Exhibit P8 A TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE PETITIONER BEFORE

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THE HONOURABLE CHIEF MINISTER OF KERALA

Exhibit P9

A TRUE COPY OF THE LETTER NO. G2-1413815/23 DATED 25.3.2024 ISSUED BY THE 3 RD RESPONDENT TO THE PETITIONER

RESPONDENTS' EXHIBITS

Exhibit R4(a)

TRUE COPY OF G.O (MS) 49/2019 DT. 29/10/2019 ALONG WITH ITS ANNEXURE.