

Kerala High Court

P.J.Andrews vs Government Of Kerala on 28 January, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 24790 of 2007(A)

1. P.J.ANDREWS,
... Petitioner
2. SUDHAKARA KAMATH,
3. K.V.PRABHAKARAN,
4. K.J.GEORGE,
5. K.R.RAGHUVARAN,
6. A.S.ANCALI,
7. V.J.JOSEPH,

Vs

1. GOVERNMENT OF KERALA, REPRESENTED BY
... Respondent
2. DIRECTOR OF MUNICIPAL ADMINISTRATION,
3. CORPORATION OF COCHIN REPRESENTED BY

For Petitioner :SRI.M.C.CHERIAN

For Respondent :SMT.M.K.PUSHPALATHA,SC,COCHIN CORPORATI

The Hon'ble MR. Justice T.R.RAMACHANDRAN NAIR

Dated :28/01/2009

O R D E R

T.R. Ramachandran Nair, J.

W.P.(C) Nos.24790, 30787
& 35094 of 2007

Dated this the 28th day of January, 2009.

JUDGMENT

Common questions arise in these writ petitions and therefore they are disposed of by a common judgment.

2. In Writ Petition Nos.30787 and 35094 the petitioners respectively are widows of ex-employees of the Corporation of Cochin and in Writ Petition No.24790 the petitioners are retired employees of the Corporation. The relevant facts in respect of W.P.(C) No.24790 show the following:

3. The petitioners herein are getting pension and DR pursuant to Exts.P1 to P4 and similar orders. All these petitioners retired from service between 31.1.1984 and 31.10.1995. They were working in the Vypeen Ferry Service under the Cochin Corporation. While in service, they were being paid D.A. on salary just like all other employees in the Cochin Corporation which was same as in the case of other Government employees. They are also being paid D.R. on pension at the same rate as being paid to all other retired employees of Cochin Corporation. The petitioners contend that they are not being paid D.R. payable as per Exts.P6 and P7 orders WPC 24790, 30787 which resulted in them submitting Ext.P8 representation and later, a lawyer notice, Ext.P9. The petitioners have been served with a communication, Ext.P10 by the Accounts Officer on 6.8.2007 proposing various recoveries from their pension amounts. Ext.P10 was issued on the basis of the communication dated 18.8.2006 issued by the Director of Urban affairs, whereby the same relief has been denied by the Government to three other retired employees. The effect of Ext.P11 is that the ex-employees of Vypeen Ferry Service would be governed by the conditions for grant of pension and rates of D.A. as are applicable in the Kerala State Road Transport Corporation and not that was being paid to Government employees.

4. In Writ Petition No.30787/2007 it is averred that on retirement, the husbands of the petitioners were being sanctioned and given pension and D.A. just like all other Government employees. Exts.P1 to P4 are the respective orders. Upon death of their husbands, the petitioners were granted family pension as per the orders issued by the second respondent. Orders granting pension in respect of petitioners 9 and 10 have been produced as Exts.P5 and P6 respectively. The other petitioners are also getting family pension in a similar manner. All the petitioners were getting WPC 24790, 30787 monthly family pension at Rs.1,275/- and D.R. admissible to retired employees of Cochin Corporation which is at the same rate as made applicable to all other Government employees. Payment was made at the rate of Rs.2620/- till May, 2007 and thereafter it was drastically reduced without any intimation to the petitioners. But they were given a communication dated 21.6.2007 of the Accounts Officer of Cochin Corporation wherein recovery has been ordered from July, 2007 onwards. According to the petitioners, they are also entitled for increased rate of D.R. as reflected in Exts.P11 and P12. Recoveries have been effected on the basis of Ext.P9 also, wherein the stand taken is that the ex-employees of Vypeen Ferry Service are not entitled to D.A. at the rate applicable to Government employees and they are entitled for payment of pension and other benefits as applicable to employees of K.S.R.T.C. and the retired employees of K.S.R.T.C. have not been given revised pension from 1997 and their D.A. rate has also not been revised and thus the recovery has been ordered.

5. In Writ Petition No.35094/2007 the husbands of the petitioners were being sanctioned and paid pension and D.A. Just like all other Government employees. Upon death of their husbands, the

petitioners were WPC 24790, 30787 granted family pension as per orders of the second respondent (Exts.P1 and P2). Ext.P3 is the letter dated 19.10.2007 issued by the Accounts Officer intimating that the pension amount of the petitioners is revised and reduced and the excess amount will be recovered from the monthly pension from November 2007 onwards. The petitioners understood that the recoveries are being effected since the husbands of the petitioners were employees of Vypeen Ferry Service under the Cochin Corporation and the stand taken in respect of those employees is that they are being granted pensionary benefits at the rate applicable to the employees of K.S.R.T.C. and after 1997 there had not been any revision of pension in respect of the employees of K.S.R.T.C. Hence, the petitioners are not entitled to the pension at the rate applicable to Government employees.

6. The respondents have filed counter affidavits opposing the averments in the various writ petitions. In the statement filed by the third respondent, it is pointed out that in the judgment in Writ Petition NO.168/2006 this court directed that the pensionary benefits to the ex- employees of Vypin Ferry Service should be given in parity with the stipulation and conditions applicable to that of the retired employees of K.S.R.T.C. In compliance with the directions contained in the said WPC 24790, 30787 judgment the Department of Local Self Government passed an order dated 10.7.2006 (G.O.(Rt) NO.1631/2006/LSGD) and thereafter, the second respondent vide communication dated 18.8.2006 directed the third respondent that the retired employees of Vypeen Ferry Service are not entitled to get pension and D.A. at the rate given to the Government employees. It is further directed that the pension and D.A. in respect of Vypeen Ferry Service employees should be paid in accordance with the norms and conditions which are applicable to the employees of K.S.R.T.C. and there was a direction to recover the surplus amount already paid.

7. In the counter affidavit filed on behalf of the second respondent, it is pointed out that as per the judgment in Writ Petition No.168/2006 this court directed the Government that the pensionary benefits to the ex- employees of Vypin Ferry Service should be given in parity with the stipulation and conditions applicable to that of the retired employees of K.S.R.T.C. In compliance with the said directions, the Government issued Ext.R2(a) order dated 10.7.2006. Further instructions were given to the Secretary of Cochin Corporation by letter dated 18.8.2006 to the effect that retired employees of Vypin Ferry Service are not entitled to get pensionary benefits at the rate applicable and given to the Government employees. WPC 24790, 30787

8. A reading of Ext.R2(a) produced by the second respondent shows the following: The Government have considered the representations which were directed to be considered by this court in the judgment in Writ Petition No.168/2006. As per reference (1), order therein dated 23.12.1966, the employees of Vypeen Ferry Service were considered as a separate wing. In the orders appointing them, it had been made clear that the service conditions of the K.S.R.T.C. are applicable to them including pay and allowances. As per reference (2) which is an order issued in the year 1968, the rates of wages as applicable to K.S.R.T.C. Employees with effect from 1.4.1968 were made applicable to the employees of Vypeen Ferry Service. As per reference third cited, order dated 13.7.1992, a general order was issued making it clear that the benefits of grade and other service benefits which are enjoyed by the employees of K.S.R.T.C. as per the agreement dated 2.2.1987, will be applicable to the employees of Vypeen Ferry Service also. Accordingly, Ext.R2(a) maintains that the employees

who have retired from Vypeen Ferry Service are entitled to the pensionary benefits and D.A. as applicable to K.S.R.T.C. Employees.

9. The petitioners have filed a reply affidavit producing a copy of the judgment in Writ Petition No.168/2006. It is pointed out that no binding WPC 24790, 30787 directions have been issued therein and this court only directed the concerned respondent to dispose of the representation. It is pointed out that the Secretary of the Cochin Corporation had forwarded his recommendation to the Director of Municipal Administration for issuing an order granting the request of the three petitioners therein to give them the pension benefits including D.A. just like other employees of Cochin Corporation. (Ext.P9 in Writ Petition NO.35094/07). It is further pointed out that Ext.R2(a) is not only a general order but in respect of the three retired employees mentioned therein. The petitioners have also produced the agreements executed between the management of K.S.R.T.C. and their employees as per Exts.P10(a) and P10(b) produced in Writ Petition No.35094/2007.

10. Learned counsel for the petitioners submitted that even going by the agreements between the management and the employees of the K.S.R.T.C., the petitioners are eligible to be paid DA at the rate applicable to Government employees. In Ext.P10(a) produced in Writ Petition No.35094/2007, the said clause is clause III. It states that " the Corporation employees are entitled to D.A. at the revised rates as applicable to Government employees. The same is clause III in Ext.P10(b) also. It is submitted that the reason for reduction is therefore clearly wrong as there WPC 24790, 30787 cannot be a difference in the rates. Merely because the employees of K.S.R.T.C. are not given any pension revision from 1997 onwards, it cannot adversely affect the petitioners. As regards KSRTC, their employees are not getting the benefit because of various factors like adverse financial conditions, etc. But that is not the case herein. Petitioners therefore are entitled for such benefits as are made applicable to KSRTC employees from time to time. Factors like any delay in implementation by the KSRTC, or not implementation by them cannot deprive the petitioners of their legitimate rights. It is therefore stated that the stand taken in the communication issued by the Accounts Officer (Ext.P10 in W.P.(C) No.24790/07, Ext.P7 in W.P.(C) No.30787/07 and Ext.P3 in W.P.(C) No.35094/07) is not correct.

11. It is true that in Ext.R2(a) the Government has specified that the former employees of Vypeen Ferry Service are entitled for the pension and D.A. at the rate applicable to the employees of K.S.R.T.C. including revision of pay. But merely because K.S.R.T.C. is not releasing the same or is not revising the same, the petitioners cannot be denied the benefits. Even accepting the order Ext.R2(a) itself, they are entitled for the benefits as applicable to the employees of K.S.R.T.C. which are revised from time to WPC 24790, 30787 time.

12. In that view of the matter, the recovery ordered against the petitioners cannot be justified and it is declared as illegal. The orders impugned herein, viz. Ext.P10 in Writ Petition No.24790/07, Ext.P7 in Writ Petition No.30787/07 and Ext.P3 in Writ Petition No.35094/07 are quashed. The petitioners cannot be denied the benefit merely for the reason that after 1997 there has not been any implementation of revision of pay and pensionary benefits, D.A. etc. for the KSRTC employees. Fresh proceedings will be issued in accordance with the findings rendered above, by making applicable the corresponding revision of pay, rates of DA and other monetary benefits as applicable

to KSRTC employees, to the petitioners herein also. The same shall be done within a period of two months from the date of receipt of a copy of this judgment.

The writ petitions are disposed of as above. No costs.

(T.R. Ramachandran Nair, Judge.) kav/