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## **S. Suseelamma Vs State of Kerala and The Regional Cancer Centre**

### **Writ Petition (C) No. 34472 of 2010 (H)**

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**Court:** High Court Of Kerala

**Date of Decision:** Nov. 30, 2010

**Hon'ble Judges:** S. Siri Jagan, J

**Bench:** Single Bench

**Advocate:** K. Jaju Babu, for the Appellant; No Appearance, for the Respondent

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### **Judgement**

S. Siri Jagan, J.

The issue involved in this writ petition is as to whether the retirement age of non-academic staff of the 2nd Respondent

Regional Cancer Center is liable to be enhanced to 60 years from 58 years in tune with the retirement age of academic staff. The very same matter

was the subject matter for consideration by this Court in W.P.(C). Nos. 24053/2009 and 30894/2010, in which a learned Judge of this Court

passed the following judgment:

The Petitioners in W.P.(C). No. 24053/2009 have been working as Security Guards and the Petitioners in W.P.(C). No. 30894/2010 have been

working as Driver (Selection Grade), Hospital Attender and Nursing Supervisor respectively, in the Regional Cancer Centre, namely, the second

Respondent herein. These writ petitions are concerned with the retirement age of the Petitioners. Their case appears to be that Ext.P5 order

produced in W.P.(C). No. 30894/2010 passed by the Government enhancing the retirement age of Professors to 65 years and that of other

academic staff to 62 years in Regional Cancer Centre as in Sree Chitra Tirunal Institute of Medical Sciences and Technology, evidently, applies to

non-academic staff also, in the light of various orders. Accordingly, they have prayed for a direction to the second Respondent to allow them to

continue in service upto the age of 60 years. The facts relevant for the disposal of the writ petitions as relevant in W.P.(C). No. 30894/2010 are

the following:

1. In Sree Chitra Tirunal Institute of Medical Sciences and Technology (SCTIMST for short), which is an institute similar to Regional Cancer

Centre, the age of retirement of academic staff is 62 years and that of non academic staff is 60 years. The governing body of the second

Respondent on 06/01/2009 decided to implement the Central Pay Revision in Regional Cancer Centre as that of SCTIMST as evident from

Ext.P2 minutes, produced in W.P.(C). No. 30894/2010.

2. There were steps to have parity with regard to the pay scales and conditions of Regional Cancer Centre, with SCTIMST. The Parity

Committee had made a recommendation with regard to the increase in retirement age also. By Ext.P3, produced in W.P.(C). No. 30894/2010,

the Government while considering the claim of one Shri A. Rajan, Chief Maintenance Engineer took the view that there is no decision to extend the

retirement age or parity with SCTIMST. Accordingly, it was observed that the retirement age of non-academic staff/academic staff of Regional

Cancer Centre cannot be extended. Ext.P4, produced in W.P.(C). No. 30894/2010, is the order by which the Government decided to extend the

pay structure based on 6th Central Pay Revision to the academic and non-academic staff of Regional Cancer Centre. The benefits were extended

to academic and non-academic staff alike.

3. Ext.P5, produced in W.P.(C). No. 30894/2010, the opening paragraph records that the Government was of the view to implement pay and

service conditions being enjoyed by the staff of SCTIMST to the staff of Regional Cancer Centre also. It is therefore contended by the Petitioners

that extension of those service conditions will apply as far as retirement age of non- academic staff even though in the operative portion of Ext.P5,

specifically, the enhancement of the retirement age is with regard to the category of Professors and that of other academic staff to 65 years and 62

years respectively. Exts.P6 and P7 are interim orders passed in various writ petitions.

4. It appears that after the order Ext.P5 was issued by the Government, the second Respondent sought for various clarifications by Ext.P10

communication, produced in W.P.(C). No. 30894/2010, including a clarification as to the extension of retirement age to non-academic staff and

with a further request that an order may be passed unifying the retirement age as well as other conditions of service including service pension.

5. The Petitioners have also sought for a prayer to regularise them in service.

6. The Petitioners are continuing in service in terms of the interim orders passed by this Court. The second Respondent has filed a counter affidavit

in W.P.(C). No. 24053/2009 opposing the prayers of the Petitioners. Reliance is placed on various aspects including the judgment of this Court in

W.P.(C). No. 28204/2008 and connected cases [Ext.R2(g)] wherein recording the policy decision of the Government then in force, this Court

refused to grant relief to the Petitioners therein, with regard to the prayers sought for, for extension of the retirement age of non-academic staff of

the Regional Cancer Centre. Evidently, the stand taken by the Regional Cancer Centre is that there is no policy decision by the Government to

enhance the retirement age of non-academic staff by Ext.P5 order produced in W.P.(C). No. 30894/2010. The Petitioners cannot as a matter of

right seek for a direction to permit them to continue beyond the retirement age, namely, 58 years.

7. The learned Counsel for the second Respondent further relied upon the decision of the Division Bench of this Court in *Prakasan M.P. (Dr.) and*

*Ors. v. State of Kerala and Anr.* 2010 (4) KHC 292 (DB) wherein this Court observed that the extension of the age limit is a policy decision of

the Government and it is not open to this Court to confer the benefits extended to other groups. Since there was a dispute whether Ext.P5 applies

to non-academic staff also, this Court directed the learned Government Pleader to get the views of the Government. No counter affidavits have

been filed by the Government in these writ petitions. The learned Government Pleader on getting instructions submitted that Ext.P5 produced in

W.P.(C). No. 30894/2010 grants extension of retirement age to Professors and academic staff and it will not apply to non-academic staff of the

second Respondent. Evidently, in Ext.P5 the age of retirement of non-academic staff has not been extended. Retirement age as on today if not

specifically extended they cannot rely upon Ext.P5, to seek continuance. Therefore, as far as non-academic staff is concerned, the age of

retirement is 58 years and all the employees have crossed the age of 58 years. Hence, the Petitioners cannot seek continuance beyond 58 years.

8. The learned Counsel for the Petitioners pointed out that the same will be an anomaly as far as service conditions of non-academic staff are

concerned and the action of the Government in not extending the retirement age of non-academic staff will result in discrimination. It is further

pointed out that the second Respondent itself has requested the Government for clarification as per Ext.P10 and, till the Government takes a

decision, they may be allowed to continue in service.

9. As already noticed, the retirement age having not been extended, the Petitioners cannot have a legal right to continue beyond 58 years. Of

course, the second Respondent has sought for clarification of the Government by Ext.P10. It is upto to the Government to communicate their

decision on Ext.P10 to the second Respondent. If there is a change of policy as far as non-academic staff are concerned and if the Petitioners are

benefited by any such decision taken by the Government, it is for the second Respondent to take a decision after such a communication is received

from the Government. Appropriate decision will be taken by the Government within two months from the date of receipt of the copy of this

judgment. The writ petitions are dismissed subject to the above observations. Since the Petitioners were continuing based on the interim orders

passed by this Court and they have received the pay and other benefits, there will not be any recovery as far as the amounts already paid to the

Petitioners. No costs.

2. Following the said judgment, this writ petition is also disposed of in terms of that judgment dated 15-11-2010.