

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP(KAT).No. 350 of 2015 (Z)

**AGAINST THE ORDER/JUDGMENT IN OA 1116/2015 of KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM DATED 23.6.2015**

PETITIONER/PETITIONER IN O.A.:

**RANI C.K.,
POTTAKUZHI HOUSE, TC 2/1993(4), PATTOM,
THIRUVANANTHAPURAM - 695 004.**

**BY ADVS.SRI.P.NANDAKUMAR
SRI.S.ANEESH**

RESPONDENTS/RESPONDENTS IN O.A:

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF URBAN AFFAIRS,
PUBLIC OFFICE BUILDING, MUSEUM P.O,
THIRUVANANTHAPURAM 695 033.**
- 3. THIRUVANANTHAPURAM CORPORATION,
MUSEUM P.O, THIRUVANANTHAPURAM -695 033,
REPRESENTED BY ITS SECRETARY.**

**R1 & R2 BY SR. GOVERNMENT PLEADER SMT.REKHA VASUDEVAN
R3 BY SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION**

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP(KAT).No. 350 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF ORDER IN OA NO.1116 OF 2015 DATED 23.06.2015.

P2 - TRUE COPY OF OA NO.1116 OF 2015.

P3 - TRUE COPY OF ORDER DATED 01.10.2012 ISSUED BY THE 1ST RESPONDENT.

P4 - TRUE COPY OF ORDER DATED 25.06.2013 ISSUED BY THE 1ST RESPONDENT.

P5 - TRUE COPY OF ORDER DATED 20.07.2013 ISSUED BY THE 2ND RESPONDENT.

P6 - TRUE COPY OF MINUTES OF MEETING DATED 28.08.2014.

P7 - TRUE COPY OF ORDER DATED 26.03.2015 ISSUED BY THE GOVERNMENT.

RESPONDENT(S)' EXHIBITS NIL

/TRUE COPY/

P.A. TO JUDGE

VPV

P.N.RAVINDRAN & ALEXANDER THOMAS, JJ.

=====

O.P.(K.A.T.)No.350 of 2015

=====

Dated this the 2nd day of December, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioner was appointed as Bill Collector on daily wage basis through the Employment Exchange in Thiruvananthapuram Corporation as per order dated 10.04.2000 issued by the Secretary, Thiruvananthapuram Corporation. Along with the petitioner, 29 others were also likewise appointed. While the petitioner was thus working on daily wages, the Director of Urban Affairs issued a communication dated 4.12.2010 to the Secretaries of all Corporations and Municipalities calling upon them to submit a list of persons who have, as on 30.11.2010 worked for ten years or more on daily wage basis in the regular establishment. The Secretary, Thiruvananthapuram Corporation thereupon submitted a list of names to the Director of Urban Affairs. The name of the petitioner was not included therein. She thereupon submitted a representation dated 14.12.2010 before the Director of Urban Affairs pointing out that her name is also liable to be included in the list of persons forwarded by the Secretary, Thiruvananthapuram Corporation, pursuant to the letter dated 4.12.2010 sent by the Director of Urban Affairs. It appears, no action

was taken pursuant to the letter dated 4.12.2010 sent by the Director of Urban Affairs.

2. Shortly thereafter, the Government issued a circular dated 10.07.2012 to the Director of Urban Affairs with copy to the Mayors of all Corporations in the State of Kerala, the Secretaries and Chairmen of all the Municipalities to the effect that the services of those employees appointed on daily wage basis through the Employment Exchange should be terminated if they have completed the term for which they were appointed. Consequently, services of all the Bill Collectors working in Thiruvananthapuram Corporation on daily wage basis including the petitioner were terminated. The petitioner, along with three others, thereafter submitted a representation dated 27.8.2013 before the Government requesting the Government to regularise them in service. That request was rejected and the decision communicated to the petitioner and others by Annexure A5 letter dated 15.5.2015. The petitioner thereupon moved the Kerala Administrative Tribunal by filing O.A.No.1116 of 2015 wherein she prayed for an order directing the respondents therein to regularise her in service as Bill Collector and to forthwith reinstate her in service.

3. The Kerala Administrative Tribunal dismissed O.A.No.1116 of 2015 by Ext.P1 order passed on 23.6.2015 on the ground that the petitioner has no right to claim regularisation in service. Though it was

contended before the Kerala Administrative Tribunal that in the light of the observations made by the Apex Court in **Secretary, State of Karnataka and Others v. Umadevi and Others** (AIR 2006 SC 1806) the petitioner who has completed ten years of service prior to the date on which her service was terminated, is entitled to be regularised in service, that contention was rejected on the ground that the regularisation contemplated by the judgment of the Honourable the Supreme court is regularisation of those persons who were lawfully appointed and who had continued in service for ten years or more as on the date of the decision of the Supreme Court namely 10.4.2006 and that it can have no application to persons like the petitioner who completed ten years of service thereafter. The petitioner has, aggrieved thereby, filed this original petition under Article 227 of the Constitution of India.

4. The main ground raised in the instant original petition is that Smt.M.Chitralekha, who was appointed along with the petitioner on daily wage basis as Bill Collector and whose services were also terminated along with the petitioner, has since been reinstated in service on account of the directions issued by the Government in Ext.P3 letter dated 1.10.2012 and Ext.P4 letter dated 25.6.2013 and therefore, there is no reason why the petitioner who is similarly situated should not be likewise reinstated. Relying on Ext.P7

Government order it is contended that the Government have regularised the services of other daily wage employees working in the Directorate of Higher Secondary Education on the ground that they have worked for more than 12 years and are now overaged.

5. We heard Sri.P.Nandakumar, learned counsel appearing for the petitioner, Smt.Rekha Vasudevan, learned Senior Government Pleader appearing for the State of Kerala and Sri.P.K.Manojkumar, learned standing counsel appearing for the Thiruvananthapuram Corporation. We have also gone through the pleadings and the materials on record. Shorn of details, what the petitioner claims is regularisation in service relying on the observations made by the Honourable the Supreme Court in **Secretary, State of Karnataka and Others v. Umadevi and Others** (supra) on the ground that she had completed more than ten years of service prior to the date on which her services were terminated. It is contended that she was lawfully appointed and her continuance in service was not based on the orders passed by this court and therefore, in the light of the observations made by the Honourable the Supreme Court in paragraph 44 of the aforesaid decision, she is entitled to have her appointment regularised and reinstated in service. We are afraid, the said contention is without merit and was rightly repelled by the Kerala Administrative Tribunal. Paragraph 44 of the decision of the Apex

Court in **Secretary, State of Karnataka and Others v. Umadevi and Others** (supra) reads as follows:

"44. On aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (supra), R.N.Nanjundappa (supra) and B.N. Nagrajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

6. It is evident from a reading of the aforesaid paragraph that regularisation contemplated therein is a one time measure applicable to persons who have completed ten years of service or more as on 10.04.2006. The Apex Court has in the aforesaid paragraph directed that the measure contemplated therein must be set in motion within six months from 10.4.2006, meaning thereby that it is a one time measure and not a measure to be adopted as and when an employee, who is

appointed on daily wage basis, completes ten years of service. We therefore find no merit or force in the submission of the learned counsel for the petitioner that as she had completed ten years of service on the date on which her services were terminated, she is entitled to have her service regularised. The petitioner did not, as on 10.04.2006 have ten years of service and therefore, her service could not have been regularised applying the principles laid down by the Apex Court in **Secretary, State of Karnataka and Others v. Umadevi and Others** (supra).

7. Then the only other question is whether in view of the facts disclosed by Exts.P3 and P4 Government letters, Ext.P5 communication sent by the Director of Urban Affairs to the Secretary, Thiruvananthapuram Corporation and Ext.P6 resolution adopted by the Thiruvananthapuram Corporation, the petitioner is entitled to be reinstated in service. The aforesaid letters disclose that on the directions issued by the Government, Smt.M.Chitralkha, whose service was also terminated along with the petitioner, was later reinstated in service. The Government order directing her reinstatement does not regularise her in service. The petitioner has no case that the service of Smt.M.Chitralkha has been regularised. As Smt.M.Chitralkha, who was appointed along with the petitioner, did not possess ten years of service as on 10.4.2006 her service could not have been regularised.

Such being the situation, merely for the reason that the Government have deemed it appropriate to reinstate her in service, we are not persuaded to hold that the petitioner has been discriminated against. The petitioner has not so far challenged the directions issued by the Government in that regard. The directions issued by the Government run counter to its own circular dated 10.7.2012. The petitioner cannot, in such circumstances, contend that the Government should repeat the illegality committed by it when it appointed Smt.M.Chitralekha and direct her reinstatement in service. As held by this court in a series of decisions, the petitioner cannot claim equality in illegality and contend that the same treatment as was meted out to Smt.M.Chitralekha should be meted out to her.

The challenge to the impugned order is in our opinion without any merit. The original petition fails and it is accordingly dismissed.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ALEXANDER THOMAS
JUDGE**