

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WA.No. 2114 of 2010 IN WP(C).19002/2008

AGAINST THE JUDGMENT IN WP(C) 19002/2008 DATED 24-11-2008
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APPELLANT/PETITIONER :

E.N.SUKUMARI, W/O.SUKUMARI,
EASWARAMANGALATH HOUSE, KALPAKANCHERI, SULTHAN BATHERI
WAYANAD DISTRICT.

BY ADV. SRI.M.DINESH

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
HOME DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. THE SHERISTADAR K.V.VIJAYAN,
DISTRICT COURT, WAYANAD.P.O. 673 122.
3. REGISTRAR,
SUBORDINATE JUDICIARY, HIGH COURT OF KERALA.
4. SMT.SIJI A.K., D/O.LATE KUNHANANDAN,
AGED 32 YEARS, AYANIKANDI HOUSE.P.O.
PADINJARATHARA.P.O. 673 121, WAYANAD.

R1 BY SR. GOVERNMENT PLEADER, SRI. P.I. DAVIS.
R3 BY ADV. SRI.ELVIN PETER P.J.
R4 BY ADV. SRI.M.P.ASHOK KUMAR
R4 BY ADV. SRI.P.C.GOPINATH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2114 OF 2010

Dated this the 1st day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned counsel for the appellant as well as learned Government Pleader and learned counsel appearing for the contesting respondent. This Writ Appeal has been filed against the judgment dated 24.11.2008 in W.P.(C) No. 19002 of 2008. The appellant had filed the writ petition seeking for the following reliefs:

"a) Issue a writ in the nature of certiorari or any other writ, order or direction calling for the records leading to Ext.P1 and in so far as it is against the petitioner, quash the same;

b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent to regularise the service of the petitioner as part time sweeper in the Munsiff Magistrate Court, Sulthan Bathery.

c) to issue such other appropriate writ, order or direction as may be prayed for and which this Hon'ble Court may deem fit to grant under the circumstances of the case."

2. Petitioner's case in the writ petition was that she was working as Part Time Sweeper in the Munsiff's Court, Sulthan Bathery with effect from 12.01.2001. By Government Order dated 07.11.2007 two posts of Part Time Sweepers

were created. One in the Court of Additional Sessions Court for Abkari Act cases in Neyyattinkara and second in the Munsiff Magistrate Court, Sulthan Bathery. Petitioner's case was that with regard to the post of Part Time Sweeper, Sulthan Bathery in the Government Order it is directed that a person is to be engaged through Employment Exchange whereas with regard to the another post of Part Time Sweeper at Neyyattinkara a direction was issued to regularise the casual sweeper, Smt.J. Suseela, which was clearly discriminatory. It was further averred that after Government Order dated 07.11.2007, the process was initiated for filling the post at Sulthan Bathery by calling a list from the Employment Exchange and name of 12 candidates were forwarded, who were invited for interview. After completing the procedure, on 17.07.2008, Smt.Siji A.K., the 4th respondent to the appeal was appointed as Part Time Sweeper. The petitioner had filed W.P.(C) No. 19002 of 2008 giving rise to the present appeal where an order of status quo was passed. Consequently, the 4th respondent was not permitted to work.

3. The learned Single Judge heard the writ petition and noticing the fact that appointment of 4th respondent has not been

challenged by the petitioner and petitioner is a daily rated employee cannot claim regularisation, the writ petition was dismissed.

4. Aggrieved by the said order, the petitioner has come up with this appeal. We have considered the submission of learned counsel for the parties and perused the records.

5. The main contention urged by learned counsel for the appellant is that Government, as per Ext.P1, has created two posts of Part Time Sweeper and against one post of Part Time Sweeper at Neyyattinkara the incumbent who was only a casual labourer was appointed whereas with regard to the post of Part Time Sweeper at Sulthan Bathery direction was issued to engage a person through Employment Exchange, which order is clearly discriminatory and petitioner was also entitled for appointment.

6. Learned counsel for the 4th respondent has refuted the above submission and submitted that the direction for engagement through Employment Exchange was issued with regard to the post at Sulthan Bathery, since the earlier incumbent, i.e the petitioner, was not engaged following the procedure. In the counter affidavit filed on behalf of High Court it

is clearly mentioned that the petitioner was working in the post without being forwarded by Employment Exchange. Paragraph 3 of the Counter Affidavit reads as follows:

"3. It is submitted that the petitioner was working as Sweeper on daily wages at Rs.50/- per day. In accordance with the provisions contained in Part Time contingent Special Rules, the method of appointment of Sweeper under Rule 3 prescribed is recruitment through Employment Exchange. Since the petitioner was appointed on daily wages, she was not entitled to be for regularisation."

7. The mere fact that another incumbent working at Neyyattinkara was appointed and with regard to the post at Sulthan Bathery a direction was issued to engage a person through Employment Exchange cannot read as any discrimination with the petitioner. Admittedly petitioner having not been engaged through Employment Exchange, no exception can be taken by the petitioner for engaging a person through Employment Exchange. When the petitioner was not engaged by following any process, petitioner cannot claim that no procedure has been followed for filling the post which has been newly created. More so, the appointment of 4th respondent was made consequent to the Government Order dated 07.11.2007, who after being selected, has also reported for duty. Admittedly the

petitioner did not challenge the selection of 4th respondent which has been rightly relied on by learned Single Judge for dismissing the writ petition.

8. In view of the judgment of the Apex Court in **Secretary, State of Karnataka & others v. Umadevi (3) and others** [(2006) 4 SCC 1] the daily wage employees cannot claim any regularisation unless any scheme has been framed by the Government or they are covered by any statutory provisions. Petitioner has also not completed 10 years of service as daily wage basis.

We do not find any error in the judgment of learned Single Judge. The Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**