

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WA.No. 1000 of 2014 () IN WP(C).20579/2011

AGAINST THE JUDGMENT IN WP(C) 20579/2011 of HIGH COURT OF KERALA
DATED 20-06-2014

APPELLANT(S)/RESPONDENTS 1 AND 2 :-

1. THE KERALA STATE PHARMACY COUNCIL,
REPRESENTED BY ITS REGISTRAR
M.N.V.G.ADIYODI MEMORIAL, PHARMACY BHAVAN
P.H.LAB CAMPUS, THIRUVANANTHAPURAM-695 035.
2. THE EXECUTIVE COMMITTEE,
KERALA STATE PHARMACY COUNCIL
REPRESENTED BY ITS PRESIDENT
M.N.V.G.ADIYODI MEMORIAL, PHARMACY BHAVAN
P.H.LAB CAMPUS, THIRUVANANTHAPURAM-695 035.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENTS/PETITIONER AND 3RD RESPONDENT :-

1. SATHEESH KUMAR.B,
SINDHU NIVAS, ANTHIYOORKONAM, MALAYANKEEZHU
KOLLODE.P.O, THIRUVANANTHAPURAM-695 571.
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

R1 BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
R2 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-05-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.1000 of 2014

Dated this the 29th day of May 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellants and the learned Government Pleader.

2. This writ appeal has been filed against the judgment dated 20.6.2014 in W.P.(C) No.20579 of 2011, by which, the writ petition filed by the first respondent was allowed by the learned Single Judge.

3. The brief facts giving rise to the writ petition are :-

The first respondent herein shall be referred to as the writ petitioner, who was initially engaged on temporary basis as driver in the appellants' council with effect from 22.11.1999. The Government sanctioned the post of driver in the Council and necessary order was issued on 30.11.2000 appointing the writ petitioner on the basis of provisional basis. The petitioner, after the said appointment, has been continuing in the said post. A decision was taken on 5.3.2010 asking the petitioner to proceed on compulsory leave without allowances for a period of six months. After more than a period of six months, another order

was issued on 3.7.2010 informing the decision of the Executive Committee dated 4.3.2010 to terminate the services of the writ petitioner as his continuance is uneconomical for the Kerala State Pharmacy Council. Against the said termination, he has filed the writ petition, which was allowed by the learned Single Judge. The learned Single Judge took the view that the termination of the petitioner was done in undue haste without any justifiable reason. The petitioner having continued on a sanctioned post for more than 10 years, his service could not have been simply terminated without getting sanction from the Government. The Council is in appeal against the said judgment.

4. Sri.P.B.Sahasranaman, the learned counsel appearing for the appellant, challenging the judgment dated 20.6.2014, submits that the Council has taken a decision to discontinue the employment since the vehicle was not being regularly used by the Council. It is submitted that in fact, no other driver was even appointed by the Council and the vehicle is lying idle. Since the petitioner having been continued for more than 10 years on a sanctioned post even though referred to as a provisional employee, he has right to continue in the said post unless his service is terminated in accordance with law.

5. Present is not a case where the post has been abolished or any proceedings have been initiated for termination. A letter dated 3.7.2010, by which, service was terminated does not indicate that the post has been abolished and as observed by the learned Single Judge, when a post having been sanctioned by the Government, for abolition of the said post, sanction of the Government is also necessary. Since the post being continuing, a mere statement in the letter dated 3.7.2010 that the continuance is uneconomical cannot be justified for termination. Since the posts are sanctioned by the Government to the Council looking into the requirement of the employees and sanction to the post is for a particular purpose, simply by taking a decision in the Executive Committee for abolition of the said post, issuance of termination order cannot be justified. Hence, we do not find any error in the judgment of the learned Single Judge dated 20.6.2014. We, thus, confirm the judgment of the learned Single Judge.

6. The writ petitioner, in pursuance of the judgment of this Court has not been allowed to join the post. In the above view of the matter, this Court has also passed an interim order dated 22.7.2014 staying the impugned judgment during the pendency of the appeal. Thus, we come to the conclusion that the judgment of

the learned Single Judge deserves to be affirmed.

With the above observation, this writ appeal is dismissed directing the appellant to permit the writ petitioner/first respondent herein to join the service as early as possible, at any rate, within a period of one month from today. The writ petitioner shall be entitled for his wages after the appointment in the Council.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//TRUE COPY//

P.A. TO JUDGE