

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 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WA.No. 1674 of 2015 () IN WP(C).16415/2014

AGAINST THE JUDGMENT IN WP(C) 16415/2014 DATED 07-11-2014

APPELLANT(S)/5TH RESPONDENT :-

THALAVADY GRAMA PANCHAYATH
THALAVADY.P.O., ALAPPUZHA
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 4 :-

1. DINU MATHEW, W/O. VINOD.P. MATHAI
VALELPUTHENPARAMBIL ANAPARAMPAIL HOUSE,
THALAVADY.P.O., ALAPPUZHA DISTRICT.
2. UNION OF INDIA REPRESENTED BY ITS SECRETARY
MINISTRY OF RURAL DEVELOPMENT, GOVERNMENT OF INDIA
KRISHI BHAVAN, DR. RAJENDRA PRASAD ROAD
NEW DELHI-110 001.
3. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, PRINCIPAL SECRETARY
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, ANNEX
5TH FLOOR, THIRUVANANTHAPURAM-695 001.
4. THE MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE
CELL, REPRESENTED BY ITS MISSION DIRECTOR/
RURAL DEVELOPMENT COMMISSIONER
COMMISSIONERATE OF RURAL DEVELOPMENT, LMS COMPOUND
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM-695 033.
5. THE DISTRICT COLLECTOR
COLLECTORATE, ALAPPUZHA-688 001.

R1 BY ADV. SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND

R2 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R3 & R5 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R4 BY SRI.P.C.SASIDHARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-
10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.1674 of 2015

Dated this the 13th day of October 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard.

2. This writ appeal has been filed against the judgment dated 7.11.2014 in W.P.(C) No.16415 of 2014, by which, the writ petition was closed as infructuous by the learned Single Judge with certain observations. Aggrieved by the same, the Panchayat, who was the 5th respondent in the writ petition has come up in appeal. The first respondent herein was the writ petitioner, who was engaged as Data Entry Operator by the Panchayat under the Mahatma Gandhi National Rural Employment Scheme. The appointment was made on 10.4.2008. The appointment was renewed from time to time till 2014. After 2014, the appointment was not renewed. The petitioner, thereafter filed the writ petition seeking for the following reliefs :-

- “i. Call for the records leading to the issuance of Exhibit P3 and P11 and to quash the same by way of issuance of a Writ of Certiorari.

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- ii. Issue a writ of Mandamus directing the 5th respondent to reconsider the decision in Exhibit P3 order by considering Exhibit P5 representation and till a decision is taken on Exhibit P5, all further proceedings pursuant to Exhibit P5 may be kept in abeyance.
- iii. To issue a writ of mandamus directing 1st respondent to formulate a proper procedure for termination of service of the Accountant cum Data Entry Operator who is working in a Panchayat, as a part of the **Mahatma Gandhi National Rural Employment Scheme** under Mahatma Gandhi National Rural Employment Act.
- iv. To issue a writ of mandamus directing respondent No.4 for disposing of Exhibit P6 application, by affording a reasonable opportunity of being heard to the petitioner or her authorised representative."

3. When the writ petition was pending, the Panchayat passed a Resolution dated 2.8.2014. The said Resolution indicates that several members expressed their opinion that the petitioner be taken back, whereas, some members expressed their opinion that the writ petition be contested by engaging an Advocate. The Resolution and affidavit of the Secretary were handed over to the petitioner and the petitioner had filed an interlocutory application, I.A.No.14595 of 2014, for producing the said Resolution and affidavit in the Court. The learned Single Judge, after noticing the Resolution and affidavit, opined that the writ petition has become infructuous and hence, it was closed. The learned Single Judge, in the last line of the judgment, observed as follows :-

“..... The 5th respondent will be free to proceed in accordance with Exts.P12 resolution and P13 affidavit, caused to be filed before this Court through the petitioner.”

The Panchayat, aggrieved by the same, has filed this writ appeal.

3. Learned counsel for the appellant contended that the Resolution dated 2.8.2014, Ext.P12, cannot be read to mean that the Panchayat has decided to reinstate the petitioner. It is submitted that in fact no clear decision was taken and the affidavit of the Secretary could not be read in the manner that the Panchayat has decided to reinstate the petitioner. It is further submitted that the Panchayat has not decided to reinstate the petitioner and has filed this writ appeal challenging the observation made by the learned Single Judge as quoted above.

4. Learned counsel for the writ petitioner submits that the writ petition was closed only on account of the Resolution to be read in the manner that decision was taken by the Panchayat to reinstate the petitioner.

5. From the facts brought on record, it is clear that the Panchayat did not appear in the case and the affidavit and the Resolution was handed over to the petitioner, who filed the same

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in the writ petition. Now, the Panchayat is contesting the Resolution as well as the claim of the petitioner for reinstatement. In the facts of the present case, we are of the view that the issue raised in the writ petition can be decided on merit and it shall be open for the Panchayat to make their appearance and take such pleas as permissible under law. We also leave it open to the petitioner to make her submission on the basis of the Resolution dated 2.8.2014.

With the aforesaid observation, this writ appeal is disposed of. We set aside the judgment dated 7.11.2014 and remit the matter back for fresh consideration by the learned Single Judge.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE