

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No.4962 of 2011 (U)

PETITIONERS:

1. OIL PALM EMPLOYEES CENTRE,
REG.NO.02-36/2001, H.O.VILAKKUPARA,
BHARATHEEPURAM.(P.O) YEROOR, ANCHAL, KOLLAM-691330,
REPRESENTED BY ITS SECRETARY, SABU.K.D.
2. BIJU.K., WORKER, CHITHARA ESTATE,
OIL PALM INDIA LIMITED, RESIDING AT KUTTIVILA PUTHEN VEEDU,
VILAKKUPARA.P.O., ANCHAL.

BY ADVS.SRI.MANOJ RAMASWAMY
SRI.K.T.THOMAS (KANNAMPALLIL)
SMT.K.G.SAROJINI

RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
AGRICULTURE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. OIL PALM INDIA LIMITED, REPRESENTED BY
THE MANAGING DIRECTOR, REGD. OFFICE-OLD STAR THEATRE ROAD,
KOTTAYAM-686039.
3. K.N.RAVINDRAN, MANAGING DIRECTOR,
OIL PALM INDIA LIMITED, REGD. OFFICE-OLD STAR THEATRE ROAD,
KOTTAYAM-686039.
4. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM.P.O.,
THIRUVANANTHAPURAM.
5. UNNIKRISHNAN NAIR.K.C.,
(WORKING AS DRIVER, OPIL)., ARACKAL HOUSE,
PERUMBIAKADU.P.O., KOTTAYAM.
6. M.S. BIJI,
(WORKING AS DRIVER, OPIL)., MULLAMANGALAM HOUSE,
VEROOR.P.O., CHANGANACHERRY, KOTTAYAM DISTRICT.
7. ABHILASH.M.P.,
(WORKING AS DRIVER, OPIL). MUPPATHIL CHIRA VEEDU,
KARAPPUZHA.P.O., KOTTAYAM.

8. PRIYA RAJ.P.
(WORKING AS TECHNICAL ASSISTANT, OPIL), SIVAMANGALAM,
AITHOTTUVA, WEST KALLADA.P.O., KOLLAM DIST-691500.
9. V.S. SMITHA,(WORKING AS TECHNICAL
ASSISTANT, OPIL), THADATHIL VADAKKATHIL,
MELOOD.P.O., PERINGANAND, ADOOR.
10. SAIJU N SANUJAN,(WORKING AS
JUNIOR ASSISTANT, OPIL), SANJU NIVAS,
NEDIYAKALATHI, OPP. PEAL HILL, KOTTAYAM-686001.
11. PRIYA.V.V. (WORKING AS
JUNIOR ASSISTANT, OPIL) NISHA BHAVAN, EZHUKONE.P.O
KOLLAM.
12. SURYAKUMARI.M.S.,(WORKING AS
JUNIOR ASSISTANT, OPIL), SUNIL MANDIRAM,
CHITHARA, AYIRAKUZHAY.P.O., KOLLAM.
13. SYAMA.C.S., (WORKING AS
JUNIOR ASSISTANT, OPIL), JEEVAN NIVAS,
KADAKKAL, KOLLAM.
14. KARTHIKA S. NAIR,(WORKING AS
JUNIOR ASSISTANT, OPIL), CHERIYIL SAUBHAGYA,
S.PURAM.P.O., KURICHY, KOTTAYAM-686532.
15. RETHEESH.P.R.,(WORKING AS
PBX OPERATOR, OPIL), PLATHANAM HOUSE,
MANNANAM.P.O, KOTTAYAM-686561.
16. JAGADAMBIKA.S., (WORKING AS
DRAFTSMAN, OPIL), SHAJI MANDIRAM,
YEROOR.P.O., KOLLAM-691312.
17. LEKSHMI R. PILLAI,(WORKING AS
DRAFTSMAN, OPIL), SHREE LEKSHMI HOUSE,
CHENNITHALA.P.O., MAVELIKARA, ALAPPUZHA-690105.
18. ANILKUMAR.B.K., (WORKING AS
DRAFTSMAN, OPIL), JALAJAMANDIRAM,
VETTIKAVALA.P.O, KOTTARAKARA, KOLLAM-691538.
19. RAJESHMON.R.K., (WORKING AS
ENGG. SUPERVISOR, OPIL) RAJESH SADANAM,
KUDAVECHOR.P.O., VAIKOM, KOTTAYAM.
20. RAJAN.G.(WORKING AS ENGG.SUPERVISOR,
OPIL) RAJA VILASAM, PAMA MANNARA, VALACODE.P.O.,
PUNALUR, KOLLAM DISTRICT.
21. JAYA B.S.,(WORKING AS NURSE, OPIL)
PANAVELIKONATHU VEEDU, PANAVELI.P.O.
KOTTARAKARA-691544.

22. SHOAM.C.J., (WORKING AS ELECTRICIAN, OPIL)
CHITHIRA, BHARATHIPURAM.P.O., YEROOR (VIA),
KOLLAM DIST-691330.

R4 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R2 &3 BY ADV. SRI.E.K.NANDAKUMAR
R2 &3 BY ADV. SRI.K.JOHN MATHAI
R2 &3 BY ADV. SRI.P.BENNY THOMAS
R2 &3 BY ADV. SRI.P.GOPINATH
R13 BY ADV. SRI.KALEESWARAM RAJ
R12&14 BY ADV. SRI.A.JAYASANKAR
R12 &14 BY ADV. SRI.MANU GOVIND
R8-9 BY ADV. SMT.SREEDEVI KYLASANATH
R8-9 BY ADV. SMT.SHALEENA RAJAN
R-7,10 & 15 BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
R-7,10 & 15 BY ADV. SRI.GEORGE VARGHESE KIZHAKKAMBALAM
R5,6 BY ADV. SMT.R.RANJINI
R5,6 BY ADV. SRI.S.RENJITH
R11,17,18,19,20 BY ADV. SRI.K.SASIKUMAR
BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :-

- EXT.P1 : COPY OF THE CERTIFICATE OF REGISTRATION OF THE 1ST PETITIONER ISSUED BY THE DEPUTY REGISTRAR OF TRADE UNIONS.
- EXT.P2 : COPY OF THE MINUTES (RELEVANT PORTION) OF THE 169TH MEETING OF THE BOARD OF DIRECTORS OF OIL PALM INDIA LTD.
- EXT.P3 : COPY OF THE RECRUITMENT AND PROMOTION RULES OF OIL PALM INDIA LTD. (RELEVANT PORTION).
- EXT.P4 : COPY OF THE NEWSPAPER REPORT IN MATHRUBHUMI DAILY DTD.23.1.11.
- EXT.P5 : COPY OF THE REPRESENTATION DTD.18.12.10.
- EXT.P6 : COPY OF THE REPRESENTATION DTD.7.1.11.
- EXT.P7 : COPY OF THE EXTRACT OF THE MINUTES OF THE 171ST MEETING (RELEVANT PORTION) OF THE BOARD OF DIRECTORS OF OIL PALM INDIA LTD. AT KOTTAYAM DTD.27.2.2011.
- EXT.P8 : COPY OF THE PROCEEDINGS NO.OP/PD/211/3654 DTD.13.5.99.

RESPONDENTS' EXHIBITS :-

- EXT.R5(1) : COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT.
- EXT.R5(2) : COPY OF RECOMMENDATION DTD.9.4.08 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.
- EXT.R5(3) : COPY OF COMMUNICATION DTD.30.1.08 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXT.R5(4) : COPY OF THE LETTER DTD.9.9.10 OF THE 2ND RESPONDENT.
- EXT.R10(a) : COPY OF RELEVANT PAGE OF MATHRUBHOOMI DAILY DTD.7.6.08.
- EXT.R10(b) : COPY OF PROCEEDINGS DTD.29.7.08 OF THE 1ST PETITIONER.
- EXT.R10(c) : COPY OF PROCEEDINGS DTD.29.7.08 OF THE 1ST PETITIONER.
- EXT.R10(d) : COPY OF PROCEEDINGS DTD.8.1.09 OF THE 1ST PETITIONER.

WP(C).No.4962 of 2011 (U)

- Annexure-R2(a) : COPY OF THE RECRUITMENT AND PROMOTION RULES PREVAILING IN THE COMPANY.
- Annexure-R2(b) : COPY OF THE NOTIFICATION PUBLISHED IN MATHRUBHOOMI DAILY DTD.21.2.04.
- Annexure-R2(c) : COPY OF THE ADVICE GIVEN BY THE DISTRICT EMPLOYMENT EXCHANGE DTD.6.2.99.
- Annexure-R2(d) : COPY OF THE NOTIFICATION PUBLISHED IN MATHRUBHOOMI DAILY DTD.7.6.08.
- Ext.R8(a) : COPY OF THE NOTIFICATION INVITING APPLICATION FOR APPOINTMENT AS TECHNICAL ASSISTANT ON CONTRACT BASIS PUBLISHED IN KERALA KAUMUDI DAILY DTD.27.2.04.
- EXT.R8(b) : COPY OF THE LIST OF CANDIDATES CALLED FOR INTERVIEW WHICH THE RESPONDENTS RECEIVED UNDER RIGHT TO INFORMATION ACT.
- EXT.R8(c) series : COPIES OF APPOINTMENT ORDER DTD.27.12.04, 12.1.07, 21.1.08 & 28.1.11.
- Ext.R8(d) : COPY OF THE APPOINTMENT ORDER DTD.27.12.04 ISSUED TO 9TH RESPONDENT AS TECHNICAL ASSISTANT ON CONTRACT BASIS FOR 2 YEARS.
- EXT.R8(e) series : COPIES OF APPOINTMENT ORDERS DTD.12.1.07, 21.1.08, 27.1.09 & 28.1.11 OF 9TH RESPONDENT.
- EXT.R8(f) : COPY OF LETTER DTD.9.9.10 OF 2ND RESPONDENT SEEKING THE APPROVAL OF 1ST RESPONDENT FOR REGULARISATION.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.4962 of 2011

Dated this the 27th day of July, 2015

JUDGMENT

The petitioners have filed this writ petition seeking a writ of certiorari to quash Resolution No.2532 taken by the Board of Directors of Oil Palm India Limited in its 169th meeting held on 6.8.2010, as evidenced by Ext.P2 minutes, to regularise the appointment of respondents 5 to 22 herein.

2. The 1st petitioner is the Secretary of the Oil Palm Employees Centre, the registered Staff Union of Oil Palm India Limited. The 2nd petitioner is a worker in Oil Palm India Limited. Their grievance in this writ petition is that, the Board of Directors of Oil Palm India Limited in its meeting held on 6.8.2010 resolved to regularise the service of respondents 5 to 22, who are engaged on contract/casual basis till candidates through Public Service Commission are appointed. A reading of Ext.P2 minutes would show that, the Board of Directors of the Company resolved to regularize 18 employees working on contract/casual basis for the reason that, they have been working for long time on contract/casual basis and

considering the time involved for finalising the recruitment rule and recruitment through Public Service Commission. Therefore, it was resolved in Ext.P2 that the employees who are appointed on contract/casual basis may be appointed on permanent basis, with the approval of the Government.

3. By order dated 17.2.2011, this Court has passed an interim order directing the 1st respondent to keep in abeyance all further proceedings pursuant to Resolution No.2532 contained in Ext.P2, pending disposal of this writ petition.

4. During the course of hearing it was pointed out by the learned Standing Counsel for the 2nd respondent Company that, in view of the interim order passed by this Court, the Government is yet to take a decision on the request made by the Company for grant of approval to the decision taken by the Board of Directors of the Company vide Resolution No.2532 contained in Ext.P2 and the file is still pending consideration before the 1st respondent.

5. I heard the arguments of the learned counsel for the petitioners, the learned Government Pleader for the 1st respondent, the learned Standing Counsel for the 2nd respondent Company, the learned

Standing Counsel for the Public Service Commission and also the respective counsel appearing for the party respondents.

6. The petitioners would mainly contend that, some among the employees ordered to be regularised, subject to the approval that may be granted by the Government, were engaged by the 2nd respondent Company immediately before passing of Resolution No.2532 contained in Ext.P2. Some among them were having only few months/years service in the 2nd respondent Company as on the date of passing of the said resolution. Therefore, according to the petitioners, regularisation of such employees on the ground that they have been working in the 2nd respondent Company for long time on contract/casual basis is patently illegal. In order to substantiate the above contention, the petitioners have also furnished the service particulars of some among the employees, which reads thus;

Status of the respondent	Date of appointment	Designation	Nature of Employment
5 th respondent	08/04/99	Driver	Contract
6 th respondent	09/07/99	Driver	Contract
7 th respondent	14/01/06	Driver	Contract
8 th respondent	05/01/05	Technical Assistant	Contract
9 th respondent	06/01/05	Technical Assistant	Contract
10 th respondent	06/08/08	Junior Assistant	Contract

Status of the respondent	Date of appointment	Designation	Nature of Employment
11 th respondent	23/07/07	Junior Assistant	Daily Wage
12 th respondent	01/10/09	Junior Assistant	Daily Wage
13 th respondent	04/05/09	Junior Assistant	Daily Wage
14 th respondent	05/04/10	Junior Assistant	Contract
15 th respondent	05/08/08	PBX Operator	Contract
19 th respondent	05/08/10	Engineering Supervisor	Contract
20 th respondent	27/01/10	Engineering Supervisor	Contract
21 st respondent	01/07/09	Nurse	Contract

7. The 2nd and 3rd respondents have filed a statement denying the allegations made in the writ petition and justifying the action of the Board of Directors of the 2nd respondent Company in passing Resolution No.2532 contained in Ext.P2. Some among the party respondents have also filed counter affidavits contending, inter alia, that the aforesaid resolution taken by the Board of Directors of the 2nd respondent Company is perfectly legal and no interference of this Court is warranted. Some among the party respondents have also challenged the locus standi of the petitioners to question the resolution taken the Board of Directors of the Company.

8. It is discernible from the pleadings on record that, the 5th and 6th respondents who are Ex-servicemen were among the 16 candidates sponsored by the Employment Exchange, out of which 6

candidates attended the interview. After the selection process the 5th and 6th respondents were engaged as Drivers on contract basis, with effect from 8.4.1999 and 9.7.1994 respectively. Similarly, the 8th and 9th respondents were engaged as Technical Assistant on contract, with effect from 5.1.2005 and 6.1.2005 respectively based on a selection process conducted after publishing the notification in newspaper, from among the 138 candidates responded to the said notification, among whom 19 were interviewed on 19.11.2004.

9. The 10th and 15th respondents would contend that, they were engaged as Junior Assistant and PBX Operator respectively, on contract basis, with effect from 6.8.2008 and 5.8.2008 respectively, based on a selection process conducted after publishing the notification in newspaper, in which 22 candidates applied for the post of Junior Assistant and 2 candidates for the post of PBX Operator. The 7th respondent would contend that, he was engaged as Driver on contract basis, based on Ext.R10(d) proceedings dated 8.1.2009. Though the 7th respondent would contend that he was originally engaged as Driver on daily wages from the year 2004 onwards, there is nothing on record to substantiate the said contention. Similarly, the 13th and 14th

respondents would contend that, they were engaged as Junior Assistant on 4.5.2009 and 1.10.2009 respectively, on daily wages. As borne out from the statement filed by the 2nd and 3rd respondents, the 11th and 12th respondents were engaged as Junior Assistant on daily wages from 4.5.2009 and 1.10.2009 respectively, and the 16th respondent was engaged on daily wages on 27.1.2010 and the 17th respondent was engaged on contract basis on 5.8.2010.

10. The fact that some among the employees ordered to be regularised were engaged by the 2nd respondent Company immediately before passing of Resolution No.2532 contained in Ext.P2 and that, some among them were having only few months/years service in the Company as on the date of passing of the said resolution is not in dispute. Similarly, it is also not in dispute that, any regularisation of the employment of respondents 2 to 22 based on Resolution No.2532 contained in Ext.P2 can be made only with the approval of the Government, which is still pending, in view of the interim order passed by this Court dated 17.2.2011 in this writ petition.

11. Since approval for Resolution No.2532 contained in Ext.P2 is still pending consideration before the Government, I do not deem it

necessary or proper to go into the legality or otherwise of the said decision taken by the Board of Directors of the 2nd respondent Company, in this writ petition. It is for the 1st respondent to take appropriate decision on Resolution No.2532 of the Board of directors of the 2nd respondent Company contained in Ext.P2, strictly in accordance with law and keeping in mind the principle laid down in the judgment of a Constitution Bench of the Apex Court in **Secretary, State of Karnataka and others v. Umadevi (3) and others (2006 (4) SCC 1)**.

12. In such circumstances, this writ petition is disposed of directing the 1st respondent to take appropriate decision on Resolution No.2532 of the Board of directors of the 2nd respondent Company contained in Ext.P2, strictly in accordance with law and keeping in mind the principle laid down in the judgment of a Constitution Bench of the Apex Court in **Secretary, State of Karnataka and others v. Umadevi (3) and others (2006 (4) SCC 1)**, with notice to the 2nd respondent Company and after affording it a reasonable opportunity of being heard. It would be open to the writ petitioners and the party respondents to submit written submissions before the 1st respondent,

within a period of 2 weeks from the date of receipt of a certified copy of this judgment. If any such written submissions are received, the 1st respondent shall consider the same as well while taking a decision as directed above. The 1st respondent shall pass a reasoned order, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of this judgment.

13. It is made clear that, this Court has not expressed anything on the merits of the rival contentions made by both sides on the legality or otherwise of Resolution No.2532 of the Board of Directors of the 2nd respondent Company contained in Ext.P2 and it is for the 1st respondent to take an appropriate decision in the matter, strictly in accordance with law and keeping in mind the principle laid down in the judgment of a Constitution Bench of the Apex Court in **Secretary, State of Karnataka and others v. Umadevi (3) and others (2006 (4) SCC 1)**.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

skj