

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 6303 of 2009 (G)

PETITIONER(S):

- 1. SEBASTIAN VARGHESE, S/O.SRI.VARGHESE,
AGED 44 YEARS, WORKING AS OPERATOR
THRIKKALATHOOR PUMP HOUSE, PH SECTION, KWA
MUVATTUPUZHA, RESIDING AT ANNAIKANDATHIL HOUSE
MULAKKULAM NORTH P.O., PIRAVOM.**
- 2. BABY JOSEPH, S/O.SRI.M.J.JOSEPH, AGED
45 YEARS, WORKING AS OPERATOR, ARAKKUZHA
TREATMENT PLANT, KWA, MUVATTUPUZHA
RESIDING AT, MADATHUMKUDIYIL HOUSE, ARAKKUZHA P.O.
MUVATTUPUZHA.**
- 3. REJI A.P., S/O.SRI.A.V.POULOSE, AGED
39 YEARS, WORKING AS OPERATOR, AROOR PUMP HOUSE
PH SECTION, KWA, MUVATTUPUZHA
RESIDING AT, AKKARAVAVUMKAL HOUSE, EAST MARADY P.O.
MUVATTUPUZHA.**
- 4. SUDHA K.K., S/O.SRI.KRISHNANKUTTY,
AGED 45 YEARS, WORKING AS WORKER, TREATMENT
PLANT, VALAKAM, KWA
MUVATTUPUZHA, RESIDING AT, KOORAPPILLIL HOUSE
KIZHAKKAMBALAM, P.O.PAYYEKKUNNAM.**
- 5. JOLLY MON C.Y., S/O.C.I.YAKOOB, AGED 37
YEARS, WORKING AS OPERATOR, TREATMENT PLANT
VALAKAM, KWA, MUVATTUPUZHA
RESIDING AT CHUNDAYIL, HOUSE, MEKKADAMPU P.O.
MUVATTUPUZHA.**
- 6. JOSE GEORGE, S/O.SRI.E.I.VARKEY,
AGED 32 YEARS, WORKING AS OPERATOR, MARADY
PUMP HOUSE, KWA, MUVATTUPUZHA
RESIDING AT, EDAMANPOTTAKKAL HOUSE, EAST MARADY P.O.
MUVATTUPUZHA.**
- 7. SIBI XAVIER, S/O.K.P.XAVIER,
AGED 33 YEARS, WORKING AS OPERATOR
MANGALLOOR PUMP HOUSE, KWA, MUVATTUPUZHA
RESIDING, AT KATTUKUDIYIL HOUSE, ADUMPARAMBU P.O.
MUVATTUPUZHA.**

- 8. C.V.JACOB, S/O.C.P.VARKEY, AGED 48 YEARS
WORKING AS OPERATOR, CHENNARTHODU, KWA
MUVATTUPUZHA, RESIDING AT CHENGANAMADATHIL, HOUSE
PAIPRA, PEZHAKKAPPILLY P.O., MUVATTUPUZHA.**
- 9. A.K.JOY, S/O.KURIAKOSE, AGED 50 YEARS,
WORKING AS SHIFT ASSISTANT, P.H.SECTION, KWA
VAZHAKKULAM, RESIDING AT EDATHANIKKATTU, HOUSE
PUTHUPADY P.O., MUVATTUPUZHA.**

**BY ADVS.SRI.TOJAN J. VATHIKULAM
SRI.PREMCHAND R.NAIR**

RESPONDENT(S):

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- 1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
 - 2. PRINCIPAL SECRETARY,
WATER RESOURCES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
 - 3. KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR
THIRUVANANTHAPURAM.**
 - 4. ASSISTANT EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, MUVATTUPUZHA.**
 - 5. ASSISTANT EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, KOOTHATTUKULAM.**
 - 6. ASSISTANT EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, PIRAVOM.**

**R,R3 TO 6 BY ADV. SMT.AMBIKA DEVI, SC, KWA
R, BY ADV. GOVERNMENT PLEADER
RR3-R6 BY ADV.SRI.GEORGE MATHEW, SC, KERALA WATER
AUTHORITY
R BY SRI.J.KRISHNA KUMAR, SC, KWA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE EXPERIENCE CERTIFICATE DATED 18.4.2004 ISSUED BY THE 7TH RESPONDENT TO THE 1ST PETITIONER.

EXT.P2: COPY OF THE JUDGMENT DATED 21.12.2001 IN W.A.NO.105 OF 2001 OF THIS HON'BLE COURT.

EXT.P3: COPY OF THE JOINT REPRESENTATION DATED 18.6.2004 SUBMITTED BY THE PETITIONERS TO THE 3RD RESPONDENT.

EXT.P4: COPY OF THE CIRCULAR NO.KWA/JB/E3-7571/04 DATED 19.6.2004 OF THE 3RD RESPONDENT.

EXT.P5: COPY OF THE JUDGMENT DATED 30.3.2004 IN W.A.NO.2192 OF 2002.

EXT.P6: COPY OF THE JUDGMENT DATED 30.3.2007 IN W.P.(C).NO.28578 OF 2004.

EXT.P7: COPY OF THE G.O.(RT).NO.172/08/WRD DATED 8.2.2008 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6303 OF 2009 (G)

Dated this the 30th day of July, 2015

J U D G M E N T

The petitioners 1 to 3, 5 to 7 and 9 are working as Operators, and petitioners 4 and 8 as Worker and Shift Assistant respectively, on daily wage basis, in various Treatment Plants/Pumping Stations under the respondent Kerala Water Authority. It is the case of the petitioners that they have been working for different periods ranging from 12 to 14 years and they are persons working under Contractors, but under the administrative supervision of respondents 4 to 6. In the writ petition, the petitioners point out that their services are essential to the running of the Water Authority, and for the Water Authority to discharge its functions. Reliance is placed on a communication dated 17.3.1998, whereby, the 1st respondent had required the Heads of Departments of various Public Sector Undertakings, companies and Corporations to furnish category wise details of temporary hands/daily wage appointees in Public Sector Undertakings upto 1.1.1994, who have completed three years of service as on 1.1.1994, subject to various conditions, for the purposes of considering them for

regularisation. It is pointed out that, although there was a challenge against the said Government order, the same was repelled by Ext.P2 judgment dated 21.12.2001. The petitioners, therefore, preferred Ext.P3 representation dated 18.6.2004 for a consideration of their claim for regularisation. Thereafter, when the 3rd respondent took steps to terminate the service of temporary/provisional employees, after taking note of the direction of this Court that regular appointments to the various posts under the Kerala Water Authority should be only through Public Service Commission [PSC] hands and temporary hands only engaged through Employment Exchanges, the petitioners approached this Court through W.P.(C).No.28578/2004. By Ext.P6 judgment dated 30.3.2007, the petitioners were directed to approach the Government for claiming the benefit of the judgment of the Supreme Court in **Secretary, State of Karnataka and Others v. Umadevi and Others - [(2006) 4 SCC 1]**, and, in particular, paragraph 53 thereof. By Ext.P7 order dated 8.2.2008, the Government went into the claims of the petitioners but rejected the same on the ground that the long services of the petitioners was under a contractor who was engaged by the Kerala Water Authority, and in that view of the matter, there was no employer-employee relationship between the petitioners and the Kerala Water Authority,

which was a necessary precondition for claiming regularisation of their services under the Kerala Water Authority. In the writ petition, Ext.P7 is impugned inter alia on the ground that it does not expressly refer to the decision of the Supreme Court in **Umadevi's case [supra]** despite the specific direction from this Court to consider the petitioner's claim in the light of the said judgment.

2. A counter affidavit has been filed on behalf of the 2nd respondent, wherein, it is stated that the petitioners are working under a contractor and not against a sanctioned post in the Kerala Water Authority. The said fact is used for contending that the decision of the Supreme Court in **Umadevi's case [supra]** is not applicable to the petitioners. It is also reiterated that, in the Kerala Water Authority, regular appointments can be made only through the PSC, as has been the position from 1.4.1984, and provisional hands can be recruited only through Employment Exchange, and when so appointed, can only be for a maximum period of 179 days.

3. I have heard the learned counsel for the petitioners, the learned Government Pleader for respondents 1 and 2 as also the learned Standing counsel for respondents 3 to 6.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that inasmuch as the petitioners have been employed under a Contractor, who, in turn was employed by the Kerala Water Authority, the stand of the Government in Ext.P7, to the extent it finds that there was no employer-employee relationship between the petitioners and the Kerala Water Authority for the purposes of claiming regularisation, is legally justified. In that view of the matter, the challenge in the writ petition, against Ext.P7 order, must necessarily fail. I take note of the contention of the petitioners, however, that although their services were through a contractor, it is the fact that they have been working in various Treatment Plants/Pumping Stations of the Kerala Water Authority and there are no persons regularly employed against the sanctioned posts which are available under the Kerala Water Authority. In my view, it may be open for the petitioners to approach the authorities under the Contract Labour (Regulation and Abolition) Act, 1970, for a redressal of their grievance, because their engagement was not by the Kerala Water Authority itself and what they are alleging is essentially that the contract arrangement was a sham. As this is a matter that would have to be established in proceedings under the aforementioned Act,

while dismissing the present writ petition, I leave it open to the petitioners to explore their remedies under the said Act, if they are so advised. I make it clear that the adjudication in any such proceedings shall be untrammelled by the observations in this judgment with regard to the absence of an employer-employee relationship between the petitioners and the Kerala Water Authority.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp