

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

W.P.(C).No.4104 of 2015 (K)

PETITIONER(S):-

1. NEPHIN P.B., AGED 29 YEARS,
CONFIDENTIAL ASSISTANT KERALA STATE VETERINARY COUNCIL,
PEROORKADA, THIRUVANANTHAPURAM - 695 005.
2. KUMARI.S.PREETHA,
PEON, KERALA STATE VETERINARY COUNCIL, PEROORKADA,
THIRUVANANTHAPURAM - 695005

BY ADVS.SRI.B.RAGUNATHAN
SRI.M.SALIM
SRI.R.SRINATH
SRI.V.M.JACOB

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
AGRICULTURE (ANIMAL HUSBANDRY) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. DIRECTOR,
ANIMAL HUSBANDRY DEPARTMENT, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM - 695 033
3. KERALA STATE VETERINARY COUNCIL,
REPRESENTED BY REGISTRAR,
KERALA STATE VETERINARY COUNCIL, PEROORKADA,
THIRUVANANTHAPURAM - 695 005.

R1 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE.
R2 & R 3 BY ADVS. DR.K.P.SATHEESAN (SENIOR ADVOCATE)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: TRUE COPY OF ORDER NO.KSVC.142/2007 DATED 04.07.2007 OF THE 3RD RESPONDENT.
- EXT.P2: TRUE COPY OF ORDER NO.KSVC.142/2007 DATED 02.08.2008 OF THE 3RD RESPONDENT.
- EXT.P3: TRUE COPY OF ORDER NO.KSVC.103/2007 DATED 02.08.2008 OF THE 3RD RESPONDENT.
- EXT.P4: TRUE COPY OF ORDER NO.KSVC.110/2007 DATED 19.08.2008 OF THE 3RD RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P5: TRUE COPY OF THE GO(MS)NO.264/12/AD DATED 14.11.2012 OF THE 1ST RESPONDENT.
- EXT.P6: TRUE COPY OF THE LETTER NO. KSVC 149/2011 DATED 12.09.2014 OF THE 3RD RESPONDENT.
- EXT.P7: TRUE COPY OF THE LETTER NO.27781/AHF2/14/AD DATED 24.10.2014 OF THE 1ST RESPONDENT.
- EXT.P8: TRUE COPY OF THE GO(RT)NO.218/15AD DATED 05.2.2015 OF THE 1ST RESPONDENT.
- EXT.P9: TRUE COPY OF THE REQUEST MADE BY SMT.JITHA AJITH TO THE 2ND RESPONDENT DATED 7.7.2015 REQUESTING TRANSFER ALONG WITH THE COVERING LETTER DT.8.7.2015.
- EXT.P10: TRUE COPY OF THE ORDER NO.K1.21828/2015/ESTT. DATED 10.9.2015 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

- EXT.R3(a) TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS) NO.249/97/AD DATED 28.08.1997.
- EXT.R3(b) TRUE COPY OF THE REQUEST MADE BY JITHA AJITH.
- EXT.R3(c) TRUE COPY OF THE REQUEST DATED 5.5.2014 MADE BY JITHA AJITH.

K. Vinod Chandran, J

W.P.(C).No.4104 of 2015-K

Dated this the 13th day of November, 2015

JUDGMENT

The petitioners are aggrieved with the fact that the petitioners' daily wage engagement has been terminated by the 3rd respondent-Council.

2. The 1st petitioner was appointed as a Peon, as per Exhibit P1 proceedings, on 04.07.2007 on daily wage basis. Till 01.08.2008 he is said to have continued so and on 02.08.2008, he was appointed, again on daily wage basis, as a Confidential Assistant as per Exhibit P2. The 2nd petitioner was appointed as a Peon as per Exhibit P3 from 02.08.2008, on daily wage basis. The petitioners filed the above writ petition claiming continuance in the respective posts to which they were appointed and also sought for regularisation.

3. The 2nd petitioner has been terminated even before the interim order was passed and, hence, she is out of employment. The 1st petitioner is continuing by virtue of the interim order.

4. The learned counsel for the petitioners relies on Exhibit P4, where the 3rd respondent had decided not to continue appointments on deputation for reason of dearth of efficient hands. It was in such circumstance that the 3rd respondent sought for creation of posts as per Exhibit P4. To tide over the exigencies, the 3rd respondent had also appointed persons on daily wage basis. The learned counsel relies on Section 42(1) of the Indian Veterinary Council Act, 1984 [for brevity "Act of 1984"] to contend that the State Veterinary Council has the authority to appoint officers and employees, as it may deem necessary.

5. The learned counsel appearing for the 3rd respondent, however, would contend that as per Exhibit R3(a), in the year 1997 itself the Government had prescribed that appointments shall be made only on deputation basis. Now it is also contended that the creation of posts having not materialised as sought for in Exhibit P4, definitely there cannot be any continuance of appointments on daily wage basis and, hence, the Council has reverted back to the original position of appointment by deputation.

6. A reading of Section 42(1) of the Act of 1984 would indicate that the State Veterinary Council has the authority to appoint officers and employees, as it may deem necessary. However, there will be financial implication, which has to be considered by the Government, and in such circumstance there should necessarily be sanction of such posts by the State Government. True, in 2008, the State Veterinary Council has sought for creation of posts and discontinuance of appointment on deputation; but that cannot be taken as final, since the Government is the ultimate authority to decide on the financial implications.

7. The creation of posts has not materialised till date and the Council is also governed by Exhibit R3(a) order of the Government. In such circumstance, this Court is inclined to find that if appointments are made on daily wage basis, it would only result in a regularisation claim being raised. This would necessarily result in back-door appointments being made, which has been deprecated by the Hon'ble Supreme Court in ***Secretary, State of Karnataka v. Uma Devi* [(2006) 4 SCC 1]**. Hence, the present attempt of the Council to revert back to the position of appointing

deputationists cannot be faulted. It cannot be said that Exhibit P4 would govern the issue for all time, since it was only a suggestion made by the Council at that point of time. The Council, for working of the system and also the fact that no creation of posts has materialised till date, is entitled to revert back to the original position of appointing persons on deputation. It is also submitted that in the post of the 2nd petitioner a deputationist has been appointed. In such circumstance, if a deputationist is appointed to the post of the 1st petitioner, definitely he would have to be removed from service. Till such time a deputationist is appointed, the 1st petitioner shall be allowed to be continued in the post.

With the above observation, the writ petition would stand dismissed.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]