

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 7058 of 2013 (F)

PETITIONER(S):

1. LIJO VARGHESE AGED 30 YEARS
PARACKAL HOUSE, KALLUPALAM, ANGAMALI P.O
WORKING AS COUNSELOR, ICTC, COMMUNITY HEALTH CENTRE
KOTHAMANGALAM.
2. VIJESH BABY
MANNAMPLACKKA, MUNNOORKOHC, KUDIYANMALA
KANNUR WORKING AS COUNSELOR, ICTC
ACADEMY OF MEDICAL SCIENCES, PARIYARAM, KANNOOR.
3. SHINY GEORGE
THEKKEVEETIL, MENANGADI, WAYANAD
WORKING AS COUNSELOR, ICTC, DISTRICT HOSPITAL
MANANTHAWADY P.O.
4. SAJI AUGUSTIN V.
VELLIAMKANDATHIL, AYLAMOOLA, EDAVAKA P.O
WORKING AS COUNSELOR, ICTC, DISTRICT HOSPITAL
MANANTHAWADY P.O.
5. SANTIHA K.
K.S. NIVAS, POYLOOR P.O, THUVAKAUNNU KANNUR
WORKING AS COUNSELOR, ICTC, GENERAL HOSPITAL
THALASSERY P.O.

BY ADV. SRLRAJU K.MATHEWS

RESPONDENT(S):

1. THE PROJECT DIRECTOR, KSACS
KERALA STATE AIDSC CONTROL SOCIETY
THIRUVANANTHAPURAM - 695 001.
2. PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF HEALTH AND FAMILY WELFARE (F & W)
THIRUVANANTHAPURAM - 695 001.

3. NATIONAL AIDS CONTROL ORGANISATION
MINISTRY OF HEALTH AND FAMILY WELFARE
6TH AND 9TH FLOORS, CHANDERLOK BUILDINGS, 36
JANPATH, NEW DELHI - 110 001.

R3 BY ADV. SRI.P.B.SURESH KUMAR (SR.)
R3 BY ADV. SRI.LEO GEORGE, SC, KERALA STATE AIDS CONTROL SOCIETY
R2 BY ADV. GOVERNMENT PLEADER SMT. M.J RAJASREE
R BY SRI.M.AJAY,SC,KERALA STATE AIDS CONTROL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-12-2015,
ALONG WITH WP(C) NOS.9568/2014 AND 5838/2013 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE LETTER NO. SACS 3/2581/05 DATED 06/08/2005 OF THE 1ST RESPONDENT.

EXHIBIT-P2-TRUE COPY OF THE ORDER NO. C2-924/2005 DATED 06/01/2006

EXHIBIT-P3-TRUE COPY OF THE CERTIFICATE DATED 27/12/2007 ISSUED BY THE SUPERINTENDENT GOVERNMENT HOSPITAL, OTTAPALAM.

EXHIBIT-P4-TRUE COPY OF THE ORDER NO. 321/05 DATED 26/11/2005

EXHIBIT-P5-TRUE COPY OF THE ORDER NO. C-6391/04/DHM DATED 03/05/2006 OF THE SUPERINTENDENT, DISTRICT HOSPITAL, MANANTHAWADY.

EXHIBIT-P6-TRUE COPY OF THE CERTIFICATE DATED 02/02/2013 ISSUED BY THE MEDICAL OFFICER.

EXHIBIT-P7-TRUE COPY OF THE G.O(RT) NO. 2279/2012/H & FWO DATED 07/07/2012.

EXHIBIT-P8-TRUE COPY OF THE LETTER NO. 3388/2010/ICTC-2/KSACS DATED 28/01/2011

EXHIBIT-P9-TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER.

EXHIBIT P10: TRUE COPY OF THE LETTER DT 4.08.14

EXHIBIT P11: TRUE COPY OF THE LETTER DT 25.3.15

EXHIBIT P12: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT

EXHIBIT P13: TRUE COPY OF THE LETTER DATED 15.05.15

EXHIBIT P14: TRUE COPY OF THE JUDGMENT DT 19.10.2010 IN WPC NO. 15641/2010

EXHIBIT P15: TRUE COPY OF THE LETTER NO. 4907/2012/ADMN.III /KSACS DATED 3.8.2012

RESPONDENT(S)' EXHIBITS: NIL

EXHIBIT R1(a): TRUE COPY OF THE ORDER ISSUED BY THE PROJECT DIRECTOR KSACS DT 11.12.2003

EXHIBIT R1(b): TRUE COPY OF THE REQUEST MADE BY THE SECOND PETITIONER DATED 12.07.2013

EXHIBIT R1(c): TRUE COPY OF THE ORDER ISSUED BY KSACS ENGAGING THE 3RD PETITIONER DT 25.10.2010

TRUE COPY

P.A TO JUDGE

K. VINOD CHANDRAN, J

W.P(C) Nos. 7058 of 2013, 5838 of 2013 &
9568 of 2014

Dated this the 09th day of December, 2015

J U D G M E N T

The petitioners are Medical Councilors and Lab Technicians appointed to a project carried on by the Kerala State Aids Control Society, which functions under the 1st respondent. The Society being registered under the Societies Registration Act, 1860 is said to be funded by the 3rd respondent which is under the Union Government. The funding however, is made through the State Government and effectively the affairs of the Society are regulated by the State Government within the State.

2. Various projects undertaken by the 1st respondent not being continuous affairs, the Councilors or Technicians are employed on a contract basis for one year period liable to be extended till the project is over. However, on a project being completed and the implementation of a fresh project, fresh

recruitments are being made. The process by which such recruitments were made, is the subject matter of the above three writ petitions. The documents are being referred to from W.P(c) 7058/2013.

3. The petitioners therein are persons who have been appointed in various periods from 2005 onwards. Ext.P1 is the notification inviting Lab Technicians and Councilors to be appointed to the 25 Voluntary Counseling and Testing Centers established by the 1st respondent, attached to the various District Hospitals and some of the Taluk Hospitals of the State. The qualification for such appointment was also specified in Ext.P1. The petitioners in W.P(C) No.7058/2013 after termination in the year 2009 was again asked to appear for the selection process in which the petitioners 1,2,4 and 5 were appointed, but, the 3rd petitioner was not given such appointment. The 3rd petitioner challenged the denial of appointment, which was considered by

this Court and in Ext.P14 judgment issued directions to appoint the 3rd petitioner. The other petitioners herein were also appointed in a subsequent selection in the year 2011. However, after the appointments were made on a contract basis, Ext.P7 dated 07.07.2012 was issued by the Government cancelling the recruitment made for reason of the defects noticed in Ext.P7.

4. The learned Counsel for the petitioner would contend that the same has been replied to by the Project Director as per Ext.P15 refuting all such contentions. The petitioners admittedly were continued on the basis of the interim order of this Court for the last two years.

5. Admittedly, all the petitioners were appointed on contract basis for a period of one year, which period was entitled to be extended only if the project spills over for more than a year and on an evaluation made of the individual employees. In such circumstance, there cannot be any uninterrupted continuance and

now two years having passed, definitely, the 1st respondent would have to come out with a fresh selection at least when the present project expires.

6. The learned counsel for the 1st respondent now submits that, now there is a more transparent selection process contemplated by the Government through Government agencies. In such circumstance necessarily the first respondent would proceed for such selection and the petitioners would also be entitled to be considered if they satisfy the eligibility conditions for such recruitment. The continued employment of the petitioner cannot be ordered and till a fresh selection process is initiated and fresh hands are selected and appointed, the petitioners shall be continued provided, the project does not expire before that.

7. There is one other contention raised by the petitioners that, they have been discriminated, insofar as not having been paid the remuneration paid to other persons, doing

identical work in the other centers. The said fact has been literally admitted by the 1st respondent in its counter affidavit. The counter affidavit specifically notices that the Councilors were paid Rs.13,000/- as per the present package and the petitioners in W.P (C) No. 7058/2013 were given a lesser payment, since, the selection of the petitioners were cancelled by Ext.P7. The learned Standing Counsel also submits that a discrimination was made, only since there were persons properly selected and recruited directly by the 1st respondent and others who were recruited by the heads of institutions. The persons who were recruited by the heads of Institutions were given a lesser emolument; is the contention. The source or mode of recruitment cannot be the basis of such discrimination, as has been held by the Hon'ble Supreme Court in State of Kerala V. B. Renjith Kumar and others [2008 (12) SCC 219].

8. Admittedly, all the persons recruited as Councilors

and Lab Technicians were carrying on identical work in the “Voluntary Counseling and Testing Centers” which are now termed as the “Integrated Counseling and Test Centers”. In such circumstance, the petitioners who have been discriminated, ought to be paid the entire remuneration as per the revised remuneration package and there shall be a direction that the arrears shall be computed in accordance with the said package and amounts paid within four months from the date of receipt of a certified copy of this judgment.

9. It is to be noticed that all the petitioners in W.P(C) No.9568/2014 were ordered to be paid the emoluments as per the revised package, as per order dated 02.06.2014, in W.P(C) 9568/2014. The learned Single Judge in the interim order also directed the arrears to be paid, which however, was interfered with in W.A No.1632/2014 by judgment dated 18.11.2014. The interference by the Division Bench, was only on account of the

fact the writ petition is pending, and also to the extent only of payment of arrears. That does not deter this Court from passing an order for payment of the entire arrears as of now, when the writ petition is disposed of. In such circumstance, writ petitions are disposed of with the above directions. The arrears shall be computed and paid to all the petitioners in all the three writ petitions, if any payable, as per the revised remuneration package, within a period of four months as directed above. The 2nd respondent shall see to it that necessary funds are generated from the 3rd respondent; who shall consider the request expeditiously so as to enable the 1st respondent to comply with the orders herein.

Writ petitions are disposed of as above. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge