

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 6096 of 2015 (J)

PETITIONER(S) :

- 1. SHIBUKUMAR.S, AGED 37 YEARS,
S/O.SASIDHARAN NAIR, PUTTUMPURATH VEEDU, CHATHANPADU,
POTHANKODU P.O., THIRUVANANTHAPURAM- 695 584.**
- 2. SREEKANTH A, AGED 37 YEARS,
S/O.AYYAPPAN NAIR, POYYOORKONATH VEEDU, AZHAKAM,
KANDALA P.O., THIRUVANANTHAPURAM- 695 512.**

**BY ADVS.SRI.S.PRASANTH (AYYAPPANKAVU)
SMT.VARSHA BHASKAR**

RESPONDENT(S) :

- 1. SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. HOSPITAL DEVELOPMENT SOCIETY THIRUVANANTHAPURAM,
MEDICAL COLLEGE REPRESENTED BY ITS CHAIRMAN AND
DISTRICT COLLECTOR, THIRUVANANTHAPURAM- 695 001.**
- 3. THE SECRETARY AND CONVENER,
HOSPITAL DEVELOPMENT SOCIETY (SUPERINTENDENT),
MEDICAL COLLEGE HOSPITAL , THIRUVANANTHAPURAM- 695 001.**

**R1 & R2 BY SR.GOVERNMENT PLEADER SRI.V.VIJULAL
R3 BY ADVS. SRI.GOPAKUMAR R.THALIYAL
SRI.M.S.VIJAYACHANDRAN BABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** TRUE COPY OF THE CERTIFICATE ISSUED BY THE MEDICAL BOARD, MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM AS NO.677/94 DATED 10.06.1994.
- EXT.P2:** TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE RESPONDENTS TO THE 1ST PETITIONER AS ORDER NO.C3-401/2011/MCH (HDS) DATED 27.04.2011.
- EXT.P3:** TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE RESPONDENTS TO THE 2ND PETITIONER AS ORDER NO.C3-401/2011/MCH(HDS) DATED 27.04.2011.
- EXT.P4:** TRUE COPY OF THE INTERIM ORDER IN WRIT PETITION NO.21035/2011 AND THIS HONOURABLE COURT AS PER INTERIM ORDER DATED 02.08.2011.
- EXT.P5:** TRUE COPY OF THE ORDER NO.C3-127/2015/MCH/HDS DATED 18.02.2012 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P6:** TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS DATED 20.02.2015.
- EXT.P7:** A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C).NO.21035/2011, 22743/2011, DATED 22.11.2011.
- EXT.P7 IN I.A.NO.5091 OF 2015:** TRUE COPY OF THE MINUTES OF THE EXECUTIVE MEETING OF THE HOSPITAL MEDICAL SOCIETY HELD ON 22.02.2011.
- EXT.P8:** TRUE COPY OF NOTIFICATION NO.MCH/TVM/HDS/2011/SPMSU DATED 23.02.2011.
- EXT.P9:** TRUE COPY OF THE LETTER DATED 05.03.2013 SENT BY THE TECHNICAL ASSISTANT OF THE CENTRAL WORKSHOP TO THE 3RD RESPONDENT.
- EXT.P10:** TRUE COPY OF THE LETTER DATED 21.06.2014 SENT BY THE TECHNICAL ASSISTANT OF THE CENTRAL WORKSHOP TO THE 3RD RESPONDENT.
- EXT.P11:** TRUE COPY OF RELIEVING ORDER DATED 19.02.2015 ISSUED BY THE TECHNICAL ASSISTANT, CENTRAL WORKSHOP.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 6096 OF 2015

Dated this the 7th day of April , 2015

JUDGMENT

The petitioners are technicians and appointed as helpers in the Thiruvananthapuram Medical Collegiate Hospital Development Society. Aggrieved by Ext.P5 order deploying the petitioners to the post of 'Pass Counter' after relieving them from the post of 'Helper', petitioners approached this Court. This Court passed an interim order on 25/2/2015 staying the operation of Ext.P5 order deploying the petitioners to the post of a Pass Counter, provided that the petitioners were not relieved on that date from the post of helper.

2. The learned Standing Counsel for the 2nd respondent points out that the petitioners have been relieved from the post of Helper on 19/2/2015. An action has been initiated against the petitioners for non-joining the duty as Pass Counters. It is further pointed out that the petitioners have suppressed the writ petition {W.P.(C) No.21035/2011} filed

by them earlier before this Court.

3. The above writ petition was filed challenging the illegal termination. That writ petition was disposed of holding that the petitioners, being contract employers, have no absolute right to continue in the service. It is noted that their continuation in the service depends upon the decision to be taken in terms of the stipulations in Ext.P1 notification issued inviting application. The petitioners were continuing in the service even after their contractual period is over.

4. The impugned Ext.P5 order deploying the petitioners to the post of pass counter seems to be passed pursuant to Ext.P10 communication issued by the Technical Assistant of the Central Workshop to the 3rd respondent-Secretary and Convener of Hospital Development Society (Superintendent). In Ext.P10 it is stated as follows:

“Under the above circumstances, I request that necessary and early action may please be taken for the following:

1. Terminate the service of candidates with poor performance and categories which are not essential (Helper-welder (2), Electrical (1), Electronics(1).

2. Arrange a welder in lieu of two helpers

(welding) and a fair remuneration may be fixed.

3. Top priority may please be given for the appointment of minimum three Bio Medical Engineers for providing better services and the maintenance of the sophisticated life saving equipments. "

It is the case of the respondents that the post of Helper is no longer required in the establishment and the helpers had been deployed to non technical post only for the reason to accommodate them.

5. I am of the view that the petitioners' right to continue is based on the contractual terms. No doubt, even in contractual matters, the decision of the authority must be fair and transparent. It appears that it is on account of the fact that helpers are not required in the establishment, the petitioners have been deployed as Pass Counters. It is for the petitioners to decide whether they should continue in the post of pass counter or not. If they are willing to continue in the post of Pass Counter, they should join the post of pass counter, at any rate, on or before 10/4/2015. However, if the respondents are intending to fill up the vacancy in the post of 'Helper', the respondents necessarily ought to have given the first preference to the petitioners. If there are other technical

posts available, the petitioners shall also be considered for accommodating in such posts if they are vacant and the petitioners are eligible for the same. In view of the fact that the interim order has been passed by this Court on 25/2/2015, I am of the view that no action shall be taken against the petitioners for non joining the duty in the post of 'Pass Counter'.

6. In the above facts and circumstances, the writ petition can be disposed of with the following directions:

i). The petitioners shall join the duty as Pass Counters on or before 10/4/2015.

ii). If the respondents are intending to fill up the post of Helper, necessarily, the petitioners shall be given the first preference.

Iii). If there are vacancies in any other technical posts and if petitioners are duly qualified, then petitioners shall be considered to such vacancies.

iv). No action shall be taken against the petitioners for non joining the duty as Pass Counters on account of the pendency of the writ petition.

v). The petitioners are also at liberty to approach the

Higher Authority for redressal of their grievances regarding their posting as Pass counters.

The writ petition is disposed of . No costs.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/ PS to Judge.

