

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 10553 of 2009 (L)

PETITIONER:

**V.T.BABY, W/O.GOPI,
CASUAL SWEEPER IN THE OFFICE OF THE DISTRICT
PANCHAYATH, ERNAKULAM,
RESIDING AT PARIPPELIL HOUSE,
THIRUVANKULAM, PIN-682 305.**

**BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.T.D.SALIM
SRI.C.S.YESUDAS
SRI.PAUL C THOMAS**

RESPONDENTS:

- 1. STATE OF KERALA REP. BY THE
SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. SECRETARY, DISTRICT PANCHAYATH,
ERNAKULAM DISTRICT. KAKKANAD, ERNAKULAM.**
- 3. DISTRICT PANCHAYATH COUNCIL,
ERNAKULAM DISTRICT, KAKKANAD, ERNAKULAM.**

R1 BY GOVERNMENT PLEADER:SMT. K.T. LILLY

R2 AND R3 BY ADV. SRI.C.M.SURESH BABU

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 10553 of 2009 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXHIBIT P1 : COPY OF THE RECEIPT DATED 03.05.1996 FOR THE WAGES OF THE
PETITIONER FOR THE MONTH OF APRIL, 1996**

**EXHIBIT P2 : COPY OF THE RECEIPT FOR THE WAGES OF THE MONTH OF
FEBRUARY, 2009**

**EXHIBIT P3 : COPY OF THE GOVERNMENT ORDER G.O.(P) NO. 501/2005/FIN DATED
25.11.2005**

**EXHIBIT P4 : COPY OF THE APPLICATION FOR THE CREATION OF POST OF PART-
TIME CONTINGENT SWEEPER IN THE OFFICE OF THE DISTRICT
PANCHAYATH, ERNKAULAM.**

**EXHIBIT P5 : COPY OF THE LETTER NO. DP2-1137/07 DATED 04.07.2007 ADDRESSED
TO THE SECRETARY TO GOVERNMENT.**

EXHIBIT P6 : COPY OF THE G.O.(Rt)NO. 362/09 LA DEPARTMENT DATED 12.02.2009.

**EXHIBIT P7 : COPY OF THE LETTER NO.59317/EPA2/07 LA DEPARTMENT DATED
25.02.2009.**

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

skr

SHAJI P. CHALY, J.

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W.P.(C).No.10553 of 2009

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Dated this the 4th day of August, 2015

JUDGMENT

Petitioner has filed this writ petition seeking to quash Ext. P7 order passed by the 1st respondent by which she was declined the appointment as a casual worker in the third respondent District Panchayath Council.

2. Brief facts necessary for the disposal of the case are as follows:

3. Petitioner was working as a casual sweeper in the office of the 2nd respondent from 05.10.1995 and she was continuing as such ever since then. Initially she was paid wages at the rate of Rs.15/- per day and thereafter, she was receiving monthly salary at the rate of Rs.2,100/- per month. It was contended by the petitioner that as per Ext. P3 order G.O.(P).No.501/2005/Fin. Dated 25.11.2005, petitioner was entitled to get employment as a casual worker in the 3rd respondent, District Panchayath Council. It was also contended that the Assistant Engineer of the Public Work Department, Building Section, Ernakulam has

forwarded a sweeping area certificate in respect of the District Panchayath Office, Ernakulam to the 2nd respondent, wherein it was certified that the sweeping area in that office was 715.96 sq.mts. It was also contended that the petitioner was regularly engaged for sweeping in the office of the District Panchayath continuously w.e.f 05.10.1995 and she was recruited on the basis of a resolution passed by the 3rd respondent. As per Ext. P5, it was seen that the 3rd respondent had forwarded the name of the petitioner to the 1st respondent to create a post of part time sweeper and appoint the petitioner to the said post. Even though as per Ext. P6 , 1st respondent has created one post of part time sweeper as requested for in Ext. P5, declined appointment to the petitioner as per Ext.P7 order dated 26.02.2009 observing that to the post of part time sweeper so created any person sponsored by the Employment Exchange can be appointed. It is thus aggrieved by Ext.P7 order, petitioner has preferred this writ

petition seeking to quash the same and for other related reliefs.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It was contended by the counsel for the petitioner that ever since her appointment as a daily rated worker on 05.10.1995, she was continuously working with 3rd respondent and she has already completed nearly 60 years of age and the Government should have taken into consideration that aspect of the matter and should have provided employment to her for the post created in the office of the 3rd respondent. The learned counsel also contended that as provided under Ext.P3 order of the Government and which was extended to the Local Self Government Institutions as per order dated 25.11.2005, petitioner was entitled to get benefit of the same and therefore the rejection pursuant to Ext.P7 by the Government cannot be sustained under law. The learned

Government Pleader, on the other hand, contended that as per the provisions of Ext.P3 Government order only the casual employees continuing with the Government department as well as Local Self Government Institutions alone can be regularized and since the petitioner was a daily rated worker, she was not entitled to claim the benefit of Ext.P3 order or any subsequent Government orders.

4. I have gone through the pleadings of the writ petition, the documents produced along with the same and heard the rival contentions made by respective counsel. On a reading of Ext.P3 Government order, it is true that the Government have decided to regularize the casual employees recruited in various departments, but with a rider that the casual employees who were to be recommended should be employment exchange sponsored candidates. On the other hand, learned counsel for the petitioner contended that the petitioner was continuously working from 05.10.1995 onwards, and therefore she

ought to have been considered to the post created by the government as per Ext.P6 order dated 12.02.2009. It may be true that if a strict construction is provided to Ext.P3 Government order, petitioner may not be entitled to seek refuge under the same. I feel that in view of the continuous employment of the petitioner even as a daily rated worker from 1995 onwards, the 1st respondent should have considered the plight of the petitioner, her age and other enabling circumstances so as to extend the benefit of Ext.P3 or any other subsequent notification to the benefit of such daily rated workers also. The learned counsel for the petitioner also contended that the 3rd respondent was entitled to make appointment to contingent posts as provided under Section 180(2) of the Kerala Panchayathi Raj Act and therefore a direction may be issued to the 3rd respondent alternatively to do so in the event of the petitioner unable to secure the casual employment regularization sought for by her.

5. On a perusal of Ext.P7 order, I find that the 1st respondent had not considered the factual situation that the petitioner was continuing in employment as a daily rated worker for the past more than 20 years with the 3rd respondent and other attendant circumstances and therefore same was a non speaking order. Therefore I quash Ext.P7 order passed by the 1st respondent bearing No.59317/EPA2/07/Local Self Government dated 23.02.2009 and issue the following directions:

(1). The third respondent shall draw the list of the petitioner again and forward the same to the 1st respondent explaining the circumstances under which she was working with the 3rd respondent for the past more than 20 years, within a period of 30 days from the date of receipt of a copy of this judgment.

(2). The 1st respondent, on receipt

of the said list, shall consider the list forwarded by the 3rd respondent vis-a-vis requesting to appoint the petitioner to the post of part time contingent employee created under Ext.P6 or otherwise and the entire aspects of the subject matter and pass a speaking order thereon taking into account, Ext.P3 Government order and any other enabling subsequent Government Orders within a period of one month from the date of receipt of the list from the 3rd respondent.

(3). If the 1st respondent refuses employment to the petitioner, 3rd respondent will take into account its powers conferred under Section 180(2) of the Kerala Panchayathi Raj Act and make every endeavor to appoint the petitioner in a contingent post, which shall be done within a period of 30

days if and when Government declines appointment to the petitioner as a casual worker.

6. As per the interim order passed by this court the petitioner was continuing in service and the same shall continue to be in force till a decision as prescribed under the time table stated above is taken either by the Government or the 3rd respondent.

The writ petition is disposed of accordingly.

SHAJI P. CHALY
JUDGE