

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 9829 of 2013 (D)

PETITIONER:

**DR.JYOTHILEKSHMI M.G.,
AGED 39 YEARS, W/O.SREEMON.D.,
RESIDING AT SREEMANDIRAM,
S.V.MARKET (PO), KOZHIKODE MEKKU,
KARUNAGAPPALLY, KOLLAM DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.K.V.ANIL KUMAR
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO THE GOVERNMENT
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. STATE MISSION DIRECTOR (NRHM),
NATIONAL RURAL HEALTHY MISSION,
GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 3. THE DIRECTOR OF HOMOEOPATHY,
DIRECTORATE OF HOMOEOPATHY
(PATTOMTHANUPILLA MEMORIAL HOMOEOPATHY HOSPITAL)
EAST FORT, THIRUVANANTHAPURAM, PIN - 695 023.**
- 4. THE DISTRICT PROGRAMME MANAGER,
NATIONAL RURAL HEALTH MISSION,
KOLLAM DISTRICT, PIN - 691 001.**
- 5. THE HOSPITAL MANAGEMENT COMMITTEE,
GOVERNMENT TALUK HOMOEOPATHY HOSPITAL,
KARUNAGAPPALLY, KOLLAM DISTRICT, PIN - 691 001.**

WP(C).No. 9829 of 2013 (D)

6. THE DISTRICT MEDICAL OFFICER (HOMEOPATHY),
DISTRICT MEDICAL OFFICE, KOLLAM, PIN - 690 001.
7. THE SUPERINTENDENT,
GOVERNMENT TALUK HOMOEOPATHY HOSPITAL,
KARUNAGAPPALLY, KOLLAM DISTRICT, PIN - 690 518.
8. THE MUNICIPAL CHAIRMAN,
KARUNAGAPPALLY MUNICIPALITY,
KARUNAGAPPALLY, KOLLAM DISTRICT, PIN - 690 518.
9. THE KARUNAGAPPALLY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
KARUNAGAPPALLY, KOLLAM DISTRICT, PIN-690 518.
10. MR.SURESH, DISTRICT MEDICAL OFFICER,
DISTRICT MEDICAL OFFICE,
KOLLAM DISTRICT, PIN-690 001.

R1, R3, R5, R6 & R7 BY GOVT. PLEADER SRI.R.RANJITH
R2 & R4 BY SRI.M.AJAY, SC
R9 BY ADV. SRI.M.R.SASITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-06-2014, THE COURT ON 08-01-2015 DELIVERED THE
FOLLOWING:

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1 : TRUE COPY OF THE LETTER ISSUED BY THE STATE MISSION DIRECTOR DATED 20.12.2010 TO THE SUPERINTENDENT GOVT.HOMOEOPATHY HOSPITAL, KARUNAGAPPALLY.
- EXT.P-2 : TRUE COPY OF THE LETTER ISSUED BY THE STATE MISSION DIRECTOR DATED 12.11.2012 TO THE DIRECTOR HOMOEOPATHY EXTENDING THE SERVICE OF MEDICAL OFFICERS.
- EXT.P-3 : TRUE COPY OF THE LETTER DATED 13.11.2012 ISSUED BY THE CHAIRMAN KARUNAGAPPALLY MUNICIPALITY.
- EXT.P-4 : TRUE COPY OF THE MEMO DATED 4.4.2012.
- EXT.P-4(A) : TRUE COPY OF THE MEMO DATED 24.9.2012.
- EXT.P-5 : TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE MEMO DATED 4.4.2012.
- EXT.P-5(A) : TRUE COPY OF THE REPLY DATED 25.09.2012 TO THE MEMO DATED 24.9.2012.
- EXT.P-6 : TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE 6TH RESPONDENT DT.15.1.2013.
- EXT.P-7 : TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT DATED 26.3.2013.
- EXT.P-8 : TRUE COPY OF THE COMMUNICATION ISSUED BY THE DISTRICT MEDICAL OFFICER BEARING NUMBER 906/E1/2013/DMQ DATED 1.4.2013.
- EXT.P-9 : TRUE COPY OF THE COMPLAINT FILED BY THE LOCAL RESIDENTS.
- EXT.P-10 : TRUE COPY OF THE LEAVE APPLICATION DATED 2.4.2013 BEFORE THE SUPERINTENDENT.
- EXT.P-11 : TRUE COPY OF THE COMPLAINT DATED 18.11.2011 BEFORE THE DIRECTOR OF HOMOEOPATHY.
- EXT.P-12 : TRUE COPY OF THE CIRCULAR NO.NRHM/AYUSH/09/2011/PMU DT. 13.9.2011 OF THE 2ND RESPONDENT.
- EXT.P-13 : TRUE COPY OF THE COVERING LETTER DATED 11.4.2013 OF THE COUNSEL.
- EXT.P-14 : TRUE COPY OF INTERIM ORDER DATED 9.4.2013 IN WP(C)NO.9829/2013 OF THIS HONOURABLE COURT.

WP(C).No. 9829 of 2013 (D)

- EXT.P-15 :** TRUE COPY OF THE COMPLAINT DATED 13.4.2013 FILED BY THE PETITIONER.
- EXT.P-16 :** TRUE COPY OF THE ORDER NO.26/2013/GTHHK DATED 2.4.2013 OF THE 7TH RESPONDENT.
- EXT.P-17 :** TRUE COPY OF THE INFORMATION OBTAINED FROM THE INTERNET REGARDING THE DELIVERY POSTAL ARTICLE BEARING NO.RL 050521256IN.

RESPONDENT(S)' EXHIBITS:

- EXT. R2(A) :** A TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT DATED 20.12.10.
- EXT. R2(B) :** A TRUE COPY OF THE ORDER OF THE SIXTH RESPONDENT NO.E1/2310/2010/DMQ DATED 11.8.10.
- EXT. R2(C) :** A TRUE COPY OF THE ORDER OF THE SIXTH RESPONDENT NO.E1/2310/2010/DMQ DATED 8.10.10.
- EXT. R2(D) :** A TRUE COPY OF THE MINUTES OF THE MEETING OF THE FIFTH RESPONDENT DATED 4.6.12.
- EXT. R2(E) :** A TRUE COPY OF THE MINUTES OF THE MEETINGS OF THE FIFTH RESPONDENT DATED 16.11.12 AND 20.11.12.
- EXT. R2(F) :** A TRUE COPY OF THE UNDERTAKING MADE BY THE PETITIONER.
- EXT. R2(G) :** A TRUE COPY OF THE LETTER NO.26/2013/GTHHK DATED 2.4.13 SENT BY THE SEVENTH RESPONDENT THROUGH REGISTERED POST TO THE PETITIONER.
- EXT. R2(H) :** A TRUE COPY OF THE LETTER NO.691000-09000 DATED 18.4.13 SENT BY THE SUPERINTENDENT OF POST OFFICE, KOLLAM TO THE SIXTH RESPONDENT.
- EXT. R2(I) :** A TRUE COPY OF THE APPLICATION FOR LEAVE SENT BY THE PETITIONER TO THE SEVENTH RESPONDENT DATED 2.4.13.
- EXT. R2(J) :** A TRUE COPY OF THE APPLICATION FOR LEAVE SENT BY THE PETITIONER TO THE SEVENTH RESPONDENT DATED 5.4.13.
- EXT. R2(K) :** A TRUE COPY OF THE COVERING LETTER SENT BY THE EIGHTH RESPONDENT G2-10860/12 DATED 12.4.13 TO THE SEVENTH RESPONDENT.
- EXT. R2(L) :** A TRUE COPY OF THE COMMUNICATION ADDRESSED BY THE SEVENTH RESPONDENT TO THE THIRD RESPONDENT WITH COPY TO THE SECOND RESPONDENT DATED 15.4.13.

WP(C).No. 9829 of 2013 (D)

- EXT. R2(M) : A TRUE COPY OF THE LETTER NO.78/2012/GTHHK SENT BY THE SEVENTH RESPONDENT TO THE SECOND RESPONDENT DATED 15.10.12.
- EXT. R3(N) : A TRUE COPY OF THE LETTER NO.NRHM/6693/ADMIN4/2012/SPMSU DATED 23.11.12.
- EXT. R3(O) : A TRUE COPY OF THE COMMUNICATION OF THE SIXTH RESPONDENT NO.3089/292/DMO KOLLAM DATED 15.12.12.
- EXT. R3(P) : A TRUE COPY OF THE G.O.(RT)NO.2950/2010/H&FWD DATED 30.7.10.
- EXT. R3(Q) : A TRUE COPY OF THE G.O.(RT)NO.3471/2010/H&FWD DATED 6.9.10.
- EXT. R2(R) : A TRUE COPY OF THE CIRCULAR NO.50675/M3/2008, DATED 31.3.2009.
- EXT. R7(A) : THE COPY OF THE MINUTES OF THE HMC MEETING DATED 4.6.2011 FROM PAGE NUMBERS 25 TO 32.
- EXT. R8(1) : TRUE COPY OF THE MINUTES OF HOSPITAL MANAGEMENT COMMITTEE DATED 25.6.2013.
- EXT. R8(2) : TRUE COPY OF THE COMMUNICATION ISSUED BY RESPONDENT TO DIRECTOR NHRM

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 9829 of 2013

Dated this the 8th day of January, 2015

J U D G M E N T

The petitioner, who has been working as Ayush Homoeo Medical Officer under the National Rural Health Mission Scheme, is challenging the order of her termination on the ground that the same was issued without getting any approval from the District Health and Family Welfare Society and without even complying with the rules of natural justice.

2. The petitioner has been working as Ayush Medical Officer (Homoeo) since January 2011. Her period of contractual appointment was extended from time to time. The petitioner was issued with two memos, i.e., Ext.P4 dated 04.04.2012 and Ext.P4(a) dated 24.09.20012 alleging that the petitioner has diagnosed a patient and issued prescription in addition to the prescription issued by the Superintendent of the Hospital and that the

..2..

petitioner had participated in a seminar conducted by the local authority on behalf of the hospital without any authorization from the Superintendent of the Hospital. In response to the memos, she submitted Exts.P5 and P5(a) explanations. The petitioner alleges that even without serving any notice or even without complying with the rules of natural justice, the 2nd respondent issued Ext.P6 letter dated 15.01.2013 to the 6th respondent directing him to initiate action to terminate the service of the petitioner. Thereafter, the 2nd respondent issued Ext.P7 letter dated 26.03.2013 informing that as per Ext.P6, direction has already been issued to initiate action to terminate the service of the petitioner and that the same was not implemented so far. In compliance of Exts.P6 and P7, the 6th respondent issued Ext.P8 letter dated 01.04.2013 to the 7th respondent directing him to take urgent steps to terminate the service of the petitioner. It is with this background, the petitioner has come up before this Court.

..3..

3. Respondents 2 and 4 filed a counter affidavit. According to the said respondents, the petitioner was appointed on contract basis and she had not entered into any contract with the 5th respondent or with anyone else guaranteeing her any fixity of tenure. There were widespread discontent and complaints against the petitioner's functioning. Therefore, an enquiry was conducted and the enquiry report revealed that the allegations are true. The termination of the engagement of the petitioner is one simpliciter without assigning any grounds and without casting any stigma on the petitioner. It does not visit the petitioner with any evil consequences. The petitioner has no right to claim continued engagement on contract by the NRHM. In any event, the engagement of Ayush Doctors is dependent wholly upon funds to be provided by the Central Government, which have not been forthcoming since the financial year 2011-2012. The petitioner's engagement being contractual, no disciplinary action has been taken

..4..

before terminating her service. Therefore, they prayed for a dismissal of the writ petition.

4. The 7th respondent filed a counter affidavit contending as follows;

The petitioner's appointment was extended initially up to 16.11.2011. It was again extended till 16.11.2012. In the meantime, Ext.P2 letter was issued by the State Mission Director (2nd respondent) to the Director of Homoeopathy (3rd respondent) informing that the Governing body of the State Health and Family Welfare Society held on 16.10.2012 decided to extend the service of the Homoeo Medical Officers and Therapists, who were willing to work without salary till financial assistance, is received from the Government of India. Therefore, it was requested to extend the service of those Medical Officers and Therapists appointed on contract basis under main streaming of Ayush. But, the Hospital Management Committee (HMC) has not taken any decision to extend the service of the petitioner for one year from 16.11.2012, as claimed by the petitioner. Ext.P3 is a

..5..

concocted document. No HMC Meeting was conducted on 13.11.2012. The copy of the minutes of the HMC meeting dated 04.06.2011 from page numbers 25 to 32 is produced and marked as Ext.R7 (a), which proves that there was no meeting of the HMC on 13.11.2012.

On 05.04.2013, the 9th respondent, Karunagappally Municipality, has received the Minutes Book of HMC Homoeopathy from the 7th respondent and returned the same on the next day during the HMC meeting. Thereafter, the 8th respondent, Municipal Chairman, by his letter No.G2-10860/12 dated 09.05.2013, required the 7th respondent to produce the draft minutes and the Minutes Book of HMC meeting for the last 24 months immediately to the Municipality. On 16.05.2013, the 7th respondent has produced certified copies of all the pages of the Minutes Book, keeping the minutes book in the custody of the 7th respondent, on the reason that the case is pending in this Court.

The petitioner has never been targeted or

..6..

harassed by the 7th respondent. Exts.P4 and P4(a) are explanations sought on genuine complaints.

It is true that the petitioner has submitted Exts.P5 and P5(a) reply. It is true that the 6th respondent (District Medical Officer) enquired into the matter, but, it is denied that he took the signature of the petitioner in a blank paper. The 6th respondent has filed a report to the State Programme Manager, NRHM; and by Ext.P6 letter, the 2nd respondent (State Mission Director) required the 6th respondent (District Medical Officer) to initiate action to terminate the service of the petitioner. Thereafter, Ext.P7 letter was issued by the 2nd respondent to the 3rd respondent with regard to the non-implementation of Ext.P6. Thereafter, Ext.P8 letter was issued by the District Medical Officer, to the 7th respondent to take action for termination of the petitioner and to report the same. On the basis of that, Ext.P16 termination letter dated 02.04.2013 was issued to the petitioner by registered post as she refused to receive the same when the matter was informed to her over phone on

..7..

02.04.2013. The registered letter was kept in deposit in the Post Office as per the specific request of the petitioner as evidenced by Ext.R2(h). Ext.R2 (k) dated 12.04.2013 letter was issued by the 8th respondent, Municipal Chairman, Karunagappally Municipality requiring the 7th respondent to reinstate the petitioner immediately on the basis of the stay order of this Court.

5. Arguments have been heard.

6. According to the petitioner, she has been targeted and has been harassed by the respondents for the reason that after the appointment of the petitioner, the functioning of Taluk Hospital has been improved to considerable extent and that the Medical Officer and the permanent staff are not happy with the proper functioning of the Taluk Hospital. Therefore, according to the petitioner, at the behest of the District Medical Officer, it was alleged that the petitioner has examined a patient and issued prescription in addition to the prescription issued by the Superintendent of the hospital.

It was also alleged that she has participated in a seminar conducted by the Municipality on behalf of the hospital, without any authorization from the Superintendent of hospital. According to the petitioner, the attempt of the respondents is to terminate the service of the petitioner even without adhering to the principles of natural justice.

7. According to the respondents, widespread complaints were received by the committee managed by the hospital against the functioning of the petitioner; and ultimately, the meeting required the 7th respondent, the Superintendent of the hospital, to enquire into the complaints received against the petitioner. Apart from these complaints, the 7th respondent had issued Exts.P4 and P4(a) memos to the petitioner to explain her gross insubordination and usurpation of authority. In Ext.P4, the charge against the petitioner was that after an out patient, who got treated by the 7th respondent, had proceeded to the pharmacy to collect medicines, the petitioner took the OP card from the patient and

proceeded to examine the said patient and prescribed certain medicines. In Ext.P5 reply, the petitioner admitted her conduct, but, her explanation was that she had not noted the date, on which the patient had been treated by the 7th respondent. In Ext.P4(a), the charge was that when the 9th respondent municipality held a meeting to discuss the five year programme for the municipality, the 7th respondent, on invitation, had authorized the RMO of the hospital to attend the meeting and address all aspects regarding the hospital. However, the petitioner had herself attended the meeting without any authorization from the 7th respondent and had proceeded to offer her own suggestions/recommendations for the hospital. In Ext.P5(a) reply, the petitioner admitted attending the meeting at about 4 pm, which, according to her, was outside her duty hours. She further claimed that she had only attended the meeting as a resident of the area and had not addressed anything regarding the hospital.

8. According to the respondents, despite living very close to the hospital, the petitioner comes to work only at about 10 am on most days despite numerous warnings issued to her. It was, therefore, requested that the petitioner be transferred to some other institution and a fresh doctor be appointed in the hospital as per Ext.R-2 (m) letter. On receipt of the said letter, the 2nd respondent forwarded the same to the 6th respondent for enquiry and report. On 15.12.2012, the 6th respondent addressed a communication enclosing a report of his enquiry into the matter. Ext.R-2(o) is the enquiry report, which shows that there were widespread discontent and complaints about the petitioner's functioning. From Ext.R-2(m) communication from the 7th respondent and Ext.P11 produced by the petitioner, it is clear that she has been having problems with all three Superintendents of the hospitals, under whom she worked. It was under these circumstances, the 2nd respondent concluded that continuing with the engagement of the petitioner on

contract, was not conducive to the best interests of the hospital and was not in tune with the objectives of NRHM to support, supplement and augment the public health care facilities in the State. The 2nd respondent, therefore, addressed the 6th respondent vide Ext.P6 letter to initiate action to terminate the services of the petitioner with the approval of the District Family Welfare Society, Kollam.

9. It is an admitted case that the appointment of the petitioner was on contract basis and the same is being extended from time to time. The general rule is that courts will not ordinarily force an employer to retain the service of an employee, whom he no longer wishes to employ. However, this rule is subject to three well-recognized exceptions as under;

- 1.The first exception is the case of a public servant, who is dismissed from service in contravention of Article 311 of the Constitution of India. In appropriate cases, it is open to the court to declare that such a public servant

continues to remain in service, even though by doing so, in effect, the State is forced to continue to employ the servant, whom it does not desire to employ.

2. Secondly, under the industrial law, jurisdiction of the Labour and Industrial Tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognised; and

3. The third instance is where a statutory body acts in breach of a mandatory obligation imposed by the statute and terminates an employee. There also, the court is having the power to declare such action invalid even if by making such declaration the body is compelled to do something, which it does not desire to do so. This position is well settled through the decisions of the apex court in **S.R. Tewari v. The District Board Agra** [AIR 1964 SC 1680], **U.P. State Warehousing Corporation v.**

C.K.Tyagi [AIR 1970 SC 1244], **Indian Airlines Corporation** v. **Sukhdeo Rai** [AIR 1971 SC 1828], **Executive Committee of Vaish Degree College, Shamli and Others** v. **Lakshmi Narain and Others** [AIR 1976 SC 888(1)]. The right of an employee to continue in service cannot be specifically enforced except under the aforesaid three circumstances.

Viewed in that profile, the petitioner cannot specifically enforce her right to continue in service in a petition like this as she does not come under any of the aforesaid categories.

10. Further grievance of the petitioner is that though there was a direction of the 2nd respondent in Exts.P6 and P7 to terminate the engagement of the petitioner with the approval of the District Health and Family Welfare Society, that direction has not been complied with; and therefore, the termination order is

bad on account of that. As rightly pointed out by the learned counsel for the 7th respondent, the said directive was no doubt of any legal requirement, but, was only made so that the District Society functioning under the State society, of which the 2nd respondent is the State Mission Director, would be kept addressed of the developments in the matter of continuation of the contractual appointments. In fact, the District Society had no role in the engagement of the petitioner; and therefore, the contention of the petitioner that her termination is illegal for want of approval by the District Society is baseless and unsustainable.

On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioner is not entitled to succeed. In the result, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

bka/-