

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 11650 of 2009 (A)

PETITIONER:

**K.UNNIKRISHNAN,
KATTAKALATHINMEL HOUSE,
P.O.PERUMANNA,
KOZHIKODE - 673 026.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

- 1. THE PERUMANNA GRAMA PANCHAYATH,
PERUMANNA, KOZHIKODE, REP. BY ITS SECRETARY.**
- 2. THE PRESIDENT,
PERUMANNA GRAMA PANCHAYATH, PERUMANNA.**
- 3. THE DEPUTY DIRECTOR OF PANCHAYATH,
O/O.THE DEPUTY DIRECTOR OF PANCHAYATH, KOZHIKODE.**

**R1 & R2 BY ADV. SRI.P.V.KUNHIKRISHNAN, SC
R3 BY GOVERNMENT PLEADER SRI. P.V. ELIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P-1: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT PANCHAYATH.
- EXT. P-2: TRUE COPY OF THE ORDER NO. A3-2/2008 DT. 27.05.2008 ISSUED BY THE SECOND RESPONDENT.
- EXT. P-2(a): A COPY OF THE UNDERTAKING GIVEN BY THE PETITIONER TO THE PANCHAYATH DATED 01.04.2005.
- EXT. P-3: TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER ON 04.06.2008.
- EXT. P-4: TRUE COPY OF THE JUDGMENT IN W.P.(C).24621/08 OF THIS HON'BLE COURT.
- EXT. P-5: TRUE COPY OF THE ORDER NO. A3-293/09 DATED 04.03.2009.
- EXT. P-6: TRUE COPY OF THE ORDER NO. A3-293/09 DATED 11.03.2009.
- EXT. P-7: TRUE PHOTOCOPY OF THE BANKER'S CHEQUE SHOWING THE DEPOSIT MADE BY THE PETITIONER IN FAVOUR OF THE FIRST RESPONDENT PANCHAYATH.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

C.K. ABDUL REHIM, J.

W.P.(C)No.11650 of 2009

Dated this the 23rd day of January, 2015

JUDGMENT

The petitioner was engaged by the 1st respondent Panchayat on a temporary basis during the year 2004, as 'Manal Writer' at "Vellayikode Kadavu," in connection with duties for issuing pass with respect to sand mining permitted from the said 'Kadavu'. While petitioner was continuing like that, he was suspended by virtue of Ext.P2 proceedings issued by the 2nd respondent, on the allegation that he had failed to remit the amounts collected with respect to the sale of sand, on a regular basis in the Panchayat. The petitioner submitted Ext.P3 explanations against the allegation and requested to re-instate him to duty. When Ext.P3 was not considered, the petitioner had approached this court in a writ petition. In Ext.P4 judgment this court directed the respondents 1 and 2 to take appropriate decision on the basis of Ext.P3, after

affording opportunity of hearing to the petitioner. Consequently, the 2nd respondent had issued Ext.P5 proceedings disengaging the petitioner from duties on a permanent basis. Ext.P6 is a revised proceedings wherein certain mistakes occurred in Ext.P5 was corrected. This writ petition is filed challenging Exts.P5 and P6.

2. Contention of the petitioner is mainly on the factual aspects with respect to the allegations levelled against him. According to the petitioner, the explanations submitted by him with respect to the circumstances under which he was prevented from remitting the amounts on the same day itself, was not considered by the authorities. It is contended that the removal from service was made without there being any materials to show that any serious irregularity was committed by the petitioner and that the removal is made based on very flimsy grounds, which are totally unsustainable.

3. Heard; counsel for the petitioner and standing counsel appearing for respondents 1 and 2. Along with

the counter affidavit of respondents 1 and 2, Ext.R2(a) is produced, which is a consent letter executed by the petitioner in a stamp paper at a time when he was engaged as 'Manal Writer'. It is evident from Ext.R2(a) that the father of the petitioner was engaged as a 'Manal Writer' and that the petitioner was engaged subsequent to the death of his father. In the consent letter the petitioner had specifically undertake that he will not raise any claim for regularisation in the job and that he will deposit the amount received by way of sale of sand before 4 p.m. on every day in the office of the Panchayat. He had further undertaken to abide by the Rules related to sand mining and conceded that if any dereliction or irregularity is found out, action can be initiated against him and that he will not raise any claim against such action or shall not initiate any legal proceedings. In Ext.P6 the 2nd respondent had categorically found that there were complaints about the petitioner when he was discharging duties at 'Chunkappally Kadavu' and therefore

he was transferred and assigned duties at 'Vellayikode Kadvu'. While discharging duties at that station, the petitioner failed in remitting sale proceeds in the Office of the Panchayat on the same day of collection itself, on various dates mentioned therein. Under such circumstances, having found that there occurred gross dereliction of duty on the part of the petitioner, he was permanently disengaged.

4. The petitioner was engaged only on a temporary basis, after obtaining specific undertaking executed by him as mentioned above. By virtue of such an engagement the petitioner is not deriving any right in the service of the respondent Panchayat. Nor he is entitled to any status of a permanent employee. The disengagement of the petitioner from the temporary engagement cannot be challenged based on any Rules and Regulations applicable to the regular service of any permanent employee. It is evident from Ext.P5 and P6 that, pursuant to directions issued by this court, the

authorities have considered the matter in detail and the disengagement was ordered after being satisfied that the petitioner had committed grave irregularity and dereliction in discharge of his duties. Hence this court do not find any reason to interfere with the impugned orders.

5. Learned counsel for the petitioner contended that the petitioner had made deposit of Rs.25,000/- at the time when he was engaged and the said amount is liable to be refunded by the Panchayat. He had produced Ext.P7 which is the copy of a Banker's cheque issued in favour of the Secretary of the 1st respondent Panchayat, contending that the said amount was deposited as security. It will be left open to the petitioner to claim refund of the said amount, if it is remaining in deposit before the 1st respondent Panchayat. Needless to observe that the respondents 1 and 2 will take necessary decision with respect to claim if any made in this regard.

In the result, the writ petition is hereby dismissed,

however, subject to observations contained herein above regarding the claim for refund of security deposit, if any pending.

**Sd/-C.K. ABDUL REHIM
JUDGE**

MJL