

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 11368 of 2013 (U)

PETITIONER(S):

**SABITHA C.T. AGED 42 YEARS
W/O.SUNIL N.V, NIKATHIL HOUSE, NJARAKKAL P.O
ERNAKULAM.**

**BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF YOUTH AFFAIRS, SECRETARIAT
THIRUVANATHAPURAM 695 001.**
- 2. THE KERALA STATE YOUTH WELFARE BOARD
REPRESENTED BY VICE CHAIRMAN, TC 9/479
JAWAHAR NAGAR J1, KAUDIAR P.O
THIRUVANANTHAPURAM 695 003.**
- 3. THE DEPUTY DIRECTOR
KERALA STATE YOUTH WELFARE BOARD, SECRETARIAT
THIRUVANANTHAPURAM 695 003.**
- 4. THE MEMBER SECRETARY
KERALA STATE YOUTH WELFARE BOARD, JC 9/479
JAWAHAR NAGAR, J1, KOWDIAR P.O
THIRUVANANTHAPURAM 695 003.**

R1-R4 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 11368 of 2013 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE CASTE CERTIFICATE DATED 23.4.2013.**
- EXHIBIT P2. TRUE COPY OF THE CERTIFICATE OF DEGREE OF BACHELOR OF ARTS DATED 25.3.1998.**
- EXHIBIT P3. TRUE COPY OF THE CERTIFICATE OF MASTER OF SOCIAL WORKS DATED 12.6.03.**
- EXHIBIT P4. TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 16.02.2006.**
- EXHIBIT P5. TRUE COPY OF THE CERTIFICATE DATED NIL.**
- EXHIBIT P6. TRUE COPY OF THE LETTER DATED 18.2.11.**
- EXHIBIT P7. TRUE COPY OF THE LETTER DATED 20.4.11.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

K.VINOD CHANDRAN, J.

**W.P.(C).Nos.11368 of 2013
& 16962 of 2014**

Dated this the 20th day of November, 2015

JUDGMENT

Both these writ petitions are filed by the identical person, but represented by different counsel. Both of them argued vehemently for the position that the petitioner should be continued in employment of the respondent Board.

2. The petitioner admittedly was employed in the respondent Board, on contract basis for one year, starting from 01.01.2010. Though the contract was not renewed, she was continued even after the one year period as daily wage employee. On the completion of the first year of contract, the petitioner was issued with Exts.P6 and P7 (W.P.(C).No.11368/2013), asking her to renew the contract. But the petitioner's contention is that such renewal was not effected for reasons not known to the petitioner, but however she was continued as a daily

wage employee. Subsequently, the petitioner is said to have been terminated by Ext.P4 Order (W.P.(C). No.16962/2014), which is challenged in the second writ petition.

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

4. The petitioner's claim, now to be considered, is on the ground of the challenge against Ext.P4 in W.P.(C).No.16962/2014. Admittedly, the petitioner was continued as a daily wage employee and according to the learned counsel for the respondent, Ext.P3 indicates that the petitioner was granted consolidated pay of Rs.27,000/-, only consolidating the daily wages. The petitioner at present is aggrieved with Ext.P4 order, which according to the respondent is a termination of the contract. It is submitted that Ext.P4 was issued on the basis of the decision taken by the Board, which is indicated at Ext.R4(f). The contract of the petitioner is produced as Ext.R4(a), which indicates a specific clause for such termination.

5. The respondent relies on Clause 5(A), which entitles the Board to discontinue the service at the end of one year from 02.01.2010, by either party without notice. However, it is an admitted fact that the petitioner was continued after the expiry of the contract period also. The agreement at Clause 5B also indicates that the Board could at any time, on two calendar month's notice in writing, terminate the services of the employee, if the performance of the employee is not found to be up to the mark. The present order impugned at Ext.P4 has to be examined, with the above provisions.

6. The Board having continued the petitioner after 2011 for more than three years, it cannot be said that the Board could at any time terminate the services of the petitioner without any notice. A person who had been engaged on contract and continued without any break in service, is entitled to some protection and it would only be proper that the Board, even if desires to terminate the service of the petitioner, for reason of the petitioner's performance being not up to the mark, should give two

month's notice to even effect a 'termination simplicitor'. It is also trite that if there is any allegation, the employee would have to be proceeded in a properly constituted disciplinary enquiry and only on finding the employee guilty of the misconduct alleged, could there be a termination or any other punishment.

7. A reading of Ext.P4 also indicates only that the petitioner was directed to temporarily kept away from duty. That cannot be said to be a termination order. In any event as of now, the petitioner is continuing on the basis of the interim order in W.P.(C).No.16962/2014, the Board could be entitled to take a decision in accordance with what has been directed above.

8. Hence both the writ petitions are disposed of, preserving the liberty of the Board, but however to take appropriate action against the petitioner as directed herein above, making it clear that the petitioner will be continued till either of the said actions are taken.

The learned counsel for the petitioner also produce a judgment of this Court dated 06.11.2015 in

W.P.(C).No.14444/2014 in which the termination of the second person referred to in the Board's decision at Ext.R4(f), the was set aside. There the termination was on the allegations levelled which were not enquired into and that stands on a totally different footing. Here no termination as such has been effected.

The writ petition stands disposed of. No costs.

Sd/-
K.VINOD CHANDRAN
JUDGE

VS