

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).NO. 9938 OF 2015 (N)

PETITIONER(S):

**GABRIEL I. AGED 36 YEARS
S/O.IRUDYASWAMI, ELECTRICAL WIING, SELVAPALAYAM
PALAKKAD DISTRICT.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S):

- 1. TRIBAL DEVELOPMENT OFFICER, PALAKKAD
OFFICE OF THE TRIBAL DEVELOPMENT OFFICER
PALAKKAD-678001.**
- 2. DISTRICT EMPLOYMENT EXCHANGE OFFICER
PALAKKAD
OFFICE OF THE DISTRICT EMPLOYMENT EXCHANGE OFFICE
PALAKKAD-678001.**
- 3. WARDEN
PRE-METRIC HOSTEL, MUTHALAMADA, PALAKKAD DISTRICT.**

R1 BY SPECIAL GOVERNMENT PLEADER SMT.SANTHAMMA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).NO. 9938 OF 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER NO.A-5035/13 DATED 28.05.2014 PASSED BY THE 1ST RESPONDENT

EXT.P2: TRUE COPY OF THE ORDER NO.A-5035/13 DATED 31.07.2014 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS:

EXT.R1(A):TRUE COPY OF THE RANK LIST

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.9938 of 2015

.....
Dated this the 27th day of July, 2015

J U D G M E N T

The petitioner who was employed as a Part Time Sweeper with the 3rd respondent, approached this Court aggrieved by an order passed by the 1st respondent terminating his service. In the writ petition, it is the specific case of the petitioner that, in a selection process for recruitment of part time sweeper, the petitioner was ranked first in the rank list that was prepared pursuant to the selection process, and he was given appointment as evidenced by Ext.P1. Thereafter, the petitioner was served with Ext.P2 order, informing that his services were terminated. In the writ petition, the petitioner is aggrieved by Ext.P2 order, Inter alia, on the ground that, the said order was passed without hearing the petitioner, and that there was no legal basis on which the petitioner's services could be terminated.

2. A counter affidavit has been filed by the 1st respondent wherein it is stated that the respondents had requested the District Employment Officer, Palakkad, to submit a list of eligible candidates so as to select one among them to a vacancy to the post of part time sweeper. In the letter reporting the vacancies to the Employment

Exchange, the number of vacancies was erroneously shown as two instead of one. The mistake was, however, not noticed at the time of effecting the appointment, and it is under these circumstances that the petitioner, who was ranked No.2 in the selection process after one Marakatham, was appointed as part time sweeper in Muthalamada Premetric Hostel. It was only later that the respondent realised that the number of vacancies that were notified, and pursuant to which the list of eligible candidates was called for from the Employment Exchange, was only one and that was in respect of the vacancy to the post of part time sweeper in Premetric Hostel at Sunkam. On realising the mistake, the respondent issued a fresh notification and thereafter, immediately informed the Employment Exchange and called for a fresh list of candidates for filling up the 2nd post at Muthalamada Premetric Hostel. As a consequence, the respondent also had to issue Ext.P2 letter informing the petitioner that his appointment was by mistake, and therefore, had to be cancelled.

3. I have heard counsel for the petitioner and the learned Special Government Pleader for respondents.

4. On a consideration of the facts and circumstances of the case

and the submissions made across the bar, I find that inasmuch Ext.P1 appointment order issued to the petitioner was pursuant to a selection process that was conducted after publishing a notification wherein only one post was notified for recruitment, the petitioner having been ranked No.2 in the rank list prepared pursuant to the selection process could not have aspired for an appointment to a 2nd vacancy that was not notified. Under the said circumstances, and taking note of the stand of the respondents in the counter affidavit, I do not find any illegality in the cancellation of Ext.P1 appointment order by the issuance of Ext.P2 order, wherein the respondents were only correcting an administrative mistake in the matter of appointment of the petitioner. Resultantly, the writ petition in its challenge against Ext.P2 order fails and is accordingly dismissed.

Taking note of the submission of counsel for the petitioner, that he was also enrolled in the Employment Exchange and he has lost his chance in the seniority list solely on account of the inadvertent mistake committed by the respondents, I make it clear that, in any subsequent recruitment to a vacancy in the post of part time Sweeper arising under the 2nd respondent, and in the event of the 2nd respondent having to call for a list of candidates from the Employment

Exchange, the petitioner's candidature shall also be considered taking note of the fact that, he was eligible to be included in the list that was sent from the Employment Exchange, pursuant to the notification which led to Ext.P1 appointment order in favour of the petitioner. Save for the above observation reserving the right of the petitioner for consideration for future appointment, the writ petition is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

