

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No.10746 of 2014 (P)

PETITIONER:

**DR.JANET.J,W/O.DR.K.R.BIJU,R/A.'DAIWIK',PATHAIKARA P.O,
PERINTHALMANNA,MALAPPURAM DISTRICT-679322.**

**BY SMT.SEEMANTHINI (SENIOR ADVOCATE)
ADVS.SRI.M.R.ANISON
SMT.T.B.REMANI
SMT.K.P.GEETHA MANI
SMT.P.ARINUSA**

RESPONDENTS:

- 1. STATE OF KERALA,
REP BY ITS SECRETARY TO GOVERNMENT,
HELATH AND FAMILY WELFARE(C)DEPARTMENT,
GOVT.SECRETARIAT,THIRUVANANTHAPURAM-695001.**
- 2. THE STATE INSTITUTE OF MEDICAL EDUCATION AND TECHNOLOGY,
REP. BY ITS BOARD OF GOVERNORS AND ITS DIRECTOR,
PALLIMUKKU,PETTAH P.O,THIRUVANANTHAPURAM-695024.**
- 3. SMT.TREESAMMA.S,DEPUTY DIRECTOR,
NOW HOLDING ADDITIONAL CHARGE OF PRINCIPAL,
STATE INSTITUTE OF MEDICAL EDUCATION AND TECHNOLOGY,
COLLEGE OF NURSING,THRIPUNITHURA-682301.**
- 4. PAVITHRAN RAYORATH,PRINCIPAL IN CHARGE,
STATE INSTITUTE OF MEDICAL EDUCATION AND TECHNOLOGY,
MALAMPUZHA,PALAKKAD-678651.**
- 5. SUB INSPECTOR OF POLICE,MALAMPUZHA,
PALAKKAD DISTRICT-678651.**

**R1 & R5 BY SRI.T.PSAJID
R2-R4 BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SRI.K.K.ANIL KUMAR
SRI.BABU THOMAS (PAZHAYATHOTTATHIL)
SMT.N.K.SHEEBA
SMT.TN.LEKSHMI SHANKAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16.1.2015 THE COURT ON 10-04-2015, DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF ORDER DTD 31/3/2001 ISSUED BY THE DISTRICT MEDICAL OFFICER, MALAPPURAM.

EXT.P2:TRUE COPY OF CIRCULAR F NO.1-5/GB-CIR/2011-INC DTD 29/8/2011 ISSUED BY INDIAN NURSING COUNCIL.

EXT.P3:TRUE COPY OF THE CIRCULAR NO.G-3232/12/NC DTD 21/7/2012 ISSUED BY THE STATE GOVT.

EXT.P4:TRUE COPY OF GO (RT)NO.2367/2004/H & FWD DTD 19/8/2004 SANCTIONED LEAVE WITHOUT ALLOWANCE.

EXT.P5:TRUE COPY OF ORDER NO.A6-15241/2005/DMOH DTD 12/1/2007 ISSUED BY DMO,MANJERI.

EXT.P6:TRUE COPY OF PH.D.CERTIFICATE DTD 20/8/2013 ISSUED TO THE PETITIONER BY TAMIL NADU DR M G R MEDICAL UNIVERSITY.

EXT.P7:TRUE COPY OF THE LETTER NO.E/920/2013/SI-MET DTD 24/10/2013 ISSUED UNDER RIGHT TO INFORMATION ACT.

EXT.P8:TRUE COPY OF THE APPOINTMENT ORDER NO E/1004/2011/SI-MET DTD 15/6/2011 ALONG WITH CONTRACT OF APPOINTMENT.

EXT.P9:TRUE COPY OF LETTER NO.E 1004/2011/SI-MET DTD 6/8/2012 ISSUED BY THE 2ND RESPONDENT.

EXT.P10:TRUE COPY OF DETAILED EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD 13/8/2012.

EXT.P11:TRUE COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD 7/11/2013.

EXT.P12:TRUE COPY OF THE LETTER NO.E 1004/2010/SI-MET 16/11/2013.

EXT.P13:TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD 20/11/2013.

EXT.P14:TRUE COPY OF 2ND LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD 20/11/2013.

EXT.P15:TRUE COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT DTD 26/11/2013.

EXT.P16:TRUE COPY OF THE RECEIPT DTD 13/12/2013 ISSUED BY THE 5TH RESPONDENT LETTER DTD 26/11/2013 ISSUED BY THE 5TH RESPONDENT, BY THE PETITIONER BEFORE THE 5TH RESPONDENT.

W.P(C) NO.10746/2014

EXT.P17:TRUE COPY OF THE ORDER DTD 2/1/2014 IN CRMC PETITION NO.3692/2013 IN CRIME NO.923/2013 OF MALAMPUZHA POLICE STATION.

EXT.P18:TRUE COPY OF THE REPRESENTATION DTD 4/1/2014 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.

EXT.P19:TRUE COPY OF THE REPRESENTATION DTD 20/1/2014 SUBMITTED BY THE PETITIONER BEFORE THE HON.HEALTH MINISTER OF KERALA.

EXT.P20:TRUE COPY OF THE PROCEEDINGS NO.E 1004/2011.SI-MET DTD 6/11/2013 ISSUED BY THE 5TH RESPONDENT.

EXT.P21:TRUE COPY OF THE CERTIFIED COPY OF FERERENCE ORDER PASSED BY THE JFCM COURT NO.III, PALGHAT DTD 13/3/2014.

EXT.P22:TRUE COPY OF THE RELEVANT PAGES OF NOTIFICATION PASSED BY INDIAN NURSING COUNCIL 26/2/2007.

EXT.P23:A TRUE COPY OF THE PROFORMA SUBMITTED BY PROF.USHA MARATH DATED 21.2.2011.

EXT.P24:A TRUE COPY OF THE PROFORMA SUBMITTED BY PROF.LIZZIE RAVEENDRAN DATED 21.2.2011.

EXT.P25:A TRUE COPY OF THE PROFORMA SUBMITTED BY SMT.USHA R.NAIR DATED 20.2.2011.

EXT.P26:A TRUE COPY OF THE PROFORMA SUBMITTED BY SMT.NIRMAL JOSE A DATED 21.2.2011.

EXT.P27:A TRUE COPY OF THE PROFORMA SUBMITTED BY PROF.J.F.SUJATHA DATED NIL.

EXT.P28:TRUE COPY OF THE MEMORANDUM ISSUED BY THE PRINCIPAL OF DR.M.V.SHETTY INSTITUTE OF HEALTH SCIENCE,MANGALORE DATED 8.7.1998 TO THE PETITIONER.

EXT.P29:A TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT FORWARDING COMPLAINT OF P.K.MANIKANDAN DATED 16.10.2012.

EXT.P30:A TRUE COPY OF THE COMPLAINT SUBMITTED BY P.K.MANIKANTAN DATED 14.8.2012 FORWARDED TO THE PETITIONER ALONG WITH EXT.P29 LETTER.

EXT.P31:A TRUE COPY OF THE REPORT DATED 18.10.2012 SUBMITTED BY THE EMPLOYEES OF SIMET TO P.K.MANIKANDAN'S COMPLAINT (EXT.P30).

EXT.P32:A TRUE COPY OF THE COVERING LETTER OF 18.10.2012 ISSUED BY THE PETITIONER FORWARDING EXT.P31 REPORT TO THE 2ND RESPONDENT.

EXT.P33:A TRUE COPY OF THE LETTER DATED 13.9.2012 BY MR.P.K.MANIKANDAN ASKING FOR THE QUALIFICATION OF PETITIONER UNDER RIGHT TO INFORMATION ACT.

pto

W.P(C) NO.10746/2014

EXT.P34:A TRUE COPY OF THE REPLY DATED 12.10.2012 GIVEN BY THE PETITIONER TO EXT.P33 LETTER.

EXT.P35:A TRUE COPY OF THE FORMAT OF SERVICE BOND (LETTER OF UNDERTAKING) TO BE EXECUTED BY NURSING STUDENTS AT THE TIME OF ADMISSION TO B.SC NURSING COURSE.

EXT.P36:A TRUE COPY OF THE COMPLAINT SUBMITTED BY K.MANIKANDAN DATED NIL COPY OF WHICH WAS MARKED TO THE PETITIONER AS PRINCIPAL OF SIMET,MALAMPUZHA.

EXT.P37:A TRUE COPY OF REVALUATION APPLICATION SUBMITTED BY THE PETITIONER FOR RECOUNTING PETITIONER'S M.SC THEORY PAPER.

EXT.P38:A TRUE COPY OF THE M.SC DEGREE CERTIFICATE OF PETITIONER'S CLASSMATE SMT.JOSEPHINE JACQUILINE MARY N.I.

EXT.P39:A TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 24.6.2008 SHOWING PETITIONER'S SERVICE DETAILS IN COLLEGE OF NURSING MOULANA HOSPITAL,MALAPPURAM.

EXT.P40:A TRUE COPY OF THE HEARING NOTICE SENT BY THE DIRECTOR OF SIMET TO P.K.MANIKANDAN DATED 19.1.2013.

EXT.P41:A TRUE COPY OF THE LETTER SENT BY THE DIRECTOR OF SIMET ADDRESSED TO V.MANIKANDAN DATED 19.1.2013.

EXT.P42:A CHART SHOWING THE SALARY DRAWN BY THE 2ND RESPONDENT AS SIMET DIRECTOR FROM 2009 TO 2013.

RESPONDENT'S EXHIBITS

EXT.R2(a):TRUE PHOTOSTAT COPY OF THE CONTRACT AGREEMENT DATED 15.6.2011 BETWEEN THE PETITIONER AND THE 2ND RESPONDENT.

EXT.R2(b):TRUE PHOTOSTAT COPY OF THE RESUME SUBMITTED BY THE PETITIONER.

EXT.R2(c):TRUE PHOTOSTAT COPY OF THE TRANSCRIPT OF THE B.SC (NURSING) DEGREE ISSUED BY INSTITUTE OF HEALTH SCIENCES DATED 22.5.1999.

EXT.R2(d):THE ORDER DATED 5.10.2012 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT.R2(e):TRUE PHOTOSTAT COPY OF THE EXPERIENCE CERTIFICATE PRODUCED BY THE PETITIONER ALLEGED TO HAVE BEEN ISSUED BY DR.M.V.SHETTY INSTITUTE OF HEALTH SCIENCE MANGALORE DATED 11.6.2003.

EXT.R2(f):TRUE COPY OF THE PROCEEDING OF THE DIRECTOR SIMET, THIRUVANANTHAPURAM DATED 6.11.2011.

W.P(C) NO.10746/2014

**EXT.R2(g):TRUE PHOTOSTAT COPY OF THE REPLIED DATED 7.12.2013 ISSUED
TO THE PETITIONER.**

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J

WPC No.10746 of 2014

Dated this the 10th day of April, 2015

JUDGMENT

Ext.P20 order dated 6.11.2013, by which the service of the petitioner who has been working as Principal in the State Institute of Medical Education Technology, Pallimukku, Thiruvananthapuram from 14.6.2011 was terminated, is under challenge in this writ petition.

2. The impugned order of termination was ordered on the ground of non-extension of the petitioner's contract period after 14.6.2013 based on an anonymous letter sent by a person alleging that the petitioner was not possessing the qualification for holding the post of Principal and also that she has got appointment to the post of Principal based on a fraudulent certificate. According to the petitioner, the allegations raised against the petitioner are bogus and are based on complaints filed by persons having vested interests.

3. In the counter affidavit filed by respondents 2 to 4, they justified Ext.P20 termination order on the following reasons:

i) The petitioner cheated the SIMET selection committee held on 21.2.2011 for selection and appointment to the post of Principal by producing fraudulent teaching experience certificate of 5 years from 8.7.1998 to 11.6.2003 from the Principal, M.V.Shetty Institute of Health Science, Mangalore at the time when she has been working as staff Nurse in the Taluk Headquarters Hospital, Nilambur from 10.7.1998 to 13.7.2003.

ii) The petitioner's contract appointment period in the post of Principal was not extended after 14.6.2013 based on the complaints received by the second respondent wherein it is alleged that the petitioner was not possessing the qualification for holding the post of Principal and it is based on a fraudulent certificate, she got appointment to the post of Principal.

4. In the counter affidavit filed by the first respondent

State also, the same contentions were taken.

5. The petitioner has filed a detailed reply affidavit controverting the averments in the counter affidavit.

6. I have heard Smt.Seemandini V.P., the learned senior counsel for the petitioner, Sri.Sunil Nair Palakkat and the learned counsel for respondents 2 to 4 and Sri.T.P.Sajid, the learned Government Pleader in the matter.

7. Pursuant to an advertisement in a local daily, the petitioner applied for the post of Principal under SIMET. She was selected and appointed as per order dated 14.6.2011. According to the petitioner, her selection was by a panel of highly qualified persons and she was appointed on contract basis to that post for a period of one year on a consolidated pay. The fact that she was selected by a highly qualified selection committee and she got second rank in the select list can be seen from Ext.P7 letter dated 24.10.2013 issued by the Director, SIMET. According to the petitioner, under her guidance, the college stood first in the district and first place in co-

curricular activities in the university and secured third place in the whole state of Kerala in the recent examination conducted by the University. One of the circumstances relied on by the respondents to expel the petitioner is the issuance of 5 years experience certificate to the petitioner from 8.7.1998 to 11.6.2003 from M.V.Shetty College authorities.

8. The learned counsel for respondents 2 to 4 relied on Ext.R2(b) and R2(c) to establish that the petitioner was not having 11 years teaching experience as alleged by her.

9. The learned senior counsel for the petitioner, per contra, would submit that a combined reading of Exts.R2 (b) and R2(e) certificates issued by M.V.Shetty Institute of Health Science would make it clear that it is based on that certificate that the petitioner's period of service as Assistant Lecturer in that institution has been shown as 8.7.1998 to 11.6.2003. In ground-B of the writ petition, the petitioner has clearly explained the circumstances under which M.V.Shetty College authorities have issued

the experience certificate of Assistant Lecturers showing the entire period of 5 years from 8.7.1998 to 11.6.2003.

10. The explanation reads as follows:

“At the time of joining the B.Sc Nursing course in 1996, petitioner executed a “SERVICE BOND” with Dr.M.V.Shetty College of Nursing, Mangalore. But taking note of the fact that the petitioner got a Government job immediately before completing the B.Sc Nursing course, M.V.Shetty college authorities were kind enough to permit the petitioner to complete the one year “SERVICE BOND” period at the convenience of the petitioner, without any break in her Government service, which, as a matter of fact, spread over an intermittent period of 5 years, that too, without any monetary benefits whatsoever. They were also kind enough to temporarily release her original certificates at the time of interview for appointment to the post of staff Nurse in Government Hospital, Nilambur in July 1998. Since as a matter of fact, petitioner's one year “SERVICE BOND” period could be completed intermittently within a span of 5 years, M.V.Shetty College authorities issued an experience certificate of Assistant lecturer showing the entire period of 5 years (8.7.1998 to 11.6.2003).”

11. A combined reading of Ext.R2(b) and Ext.R2(e) and the explanation given in Ground B would make it clear that the petitioner had not suppressed any fact and did not submit any untrue statement before the interview board.

12. It was submitted by the learned counsel for respondents 2 to 4 that among other eligible candidates

for the post, the petitioner was given an edge on account of her teaching experience. The name and qualification of 9 persons who have appeared for selection to the post of Principal are clearly stated in Ext.P7. Last page of Ext.P7 shows that among 12 persons who applied for the post, only 9 persons appeared for the interview and three applicants were absent. Among those 9 persons who participated in the selection process, Sl.No.2 - Prof.Usha Marath, Sl.No.3 - Prof.Lizzie Raveendran, Sl.No.4 - Smt.Usha R.Nair, Sl.No.8 - Smt.Nirmal Jose A and Sl.No.10 - Prof. J.F.Sujatha, though having more than 11, 17, 10, 13 years 6 months and 10 years of Post P.G.Teaching experience respectively in the College of Nursing were ranked below the petitioner in the selection list prepared by the selection committee as could be seen from Ext.P7(9). As stated in the writ petition, the petitioner's Post P.G. experience is only for 6 years and her Pre-PG experience is for 5 years. The above factual aspects can be seen from the proforma given by the above named 5 persons at the time of interview, the copy

of which were received by the petitioners under the Right to Information Act. They were produced and marked as Exts.P23 and P27. It can be seen from these documents that the argument that the petitioner was given an edge on account of her teaching experience is incorrect.

13. The learned counsel for respondents 2 to 4 also relied on Ext.R2(c) which is the transcript of petitioner's B.Sc Nursing Certificate to establish that she has completed B.Sc Nursing course only on 17.11.1998. It would show that the programme of B.Sc Nursing study is of two years duration. The fact that the B.SC Nursing course undertaken by the petitioner was from 9.7.1996 to 8.7.1998 could be seen from Ext.P28 which is a memorandum issued by the Principal of the College from where she has taken the degree. Ext.P28 dated 8.7.1998 shows that the actual duration of the B.Sc Nursing course undergone by the petitioner was from 9.7.1996 to 8.7.1998.

14. Yet another allegation against the petitioner is that the Government has received complaints regarding

the character of the petitioner and accordingly, an enquiry was ordered against her. Ext.R2(d) dated 5.10.2012 is pressed into service to establish the same. Ext.R2(d) refers to a petition dated 14.8.2012 submitted by one Manikandan. The learned senior counsel points out that by a communication dated 16.10.2012, the second respondent forwarded two letters to the petitioner (one letter issued by the State Government addressed to the Director dated 5.10.2012 and also a complaint submitted by Manikandan before the Government). In that letter, the second respondent sought petitioner's detailed explanation regarding the complaint submitted by Manikandan before the Government. Ext.P29 is the copy of the letter issued by the second respondent and Ext.P30 is the copy of the complaint submitted by Manikandan. The petitioner points out that after receiving the same, she convened a meeting of the college staff on 18.10.2012 and a report was submitted by the employees of the SIMET College of Nursing, Malampuzha on 18.10.2012 itself. Ext.P31 is the copy of the report.

Ext.P31 was duly forwarded by the petitioner to the Director along with Ext.P32 covering letter. The petitioner points out that at the instigation of some persons with vested interest, the above named Manikandan was bent upon continuously harassing and maligning the reputation of the petitioner and when he found that Ext.P30 complaint filed by him was proved to be baseless, he requested the petitioner to furnish all details about her qualification and appointment. She sent a reply to him answering all the questions raised by him and directed Manikandan to appear in the college office during office hours within ten days, if he wants to verify the certificates. However, he did not appear for verification. The petitioner has produced Exts.P33 and P34 which are the letter given by Manikandan and the reply given by the petitioner.

15. It was specifically averred in the counter affidavit filed by respondents 2 to 4 that the enquiry revealed that the petitioner has either drawn double salary from the Government as Staff Nurse and from M.V.Shetty Institute

of Health Science, Mangalore as Assistant Lecturer or the experience certificate obtained from the aforesaid institute is a fabricated document. In ground-B of the writ petition, the petitioner has stated about the service bond to be executed by B.Sc Nursing students like the petitioner at the time of admission to B.Sc Nursing course in M.V.Shetty Institute of Health Science, Mangalore. According to the petitioner, such service bonds are to be executed in stamp paper duly signed and attested by a Notary public. Clause 7 of such service bond/letter of undertaking reads as follows:

“I do hereby undertake to work on non-stipendary basis during my internship after the completion of my course”.

16. A true copy of the format of that service bond is produced as Ext.P35. Ext.P35 shows that the allegation raised against the petitioner about the drawing of double salary as Assistant Lecturer is incorrect. The learned senior counsel for the petitioner would submit that as mandated in Ext.P35 service bond, the petitioner did not draw any salary from M.V.Shetty Institute of Health

Science, Mangalore.

17. Though it is contended in the counter affidavit filed by respondents 2 to 4 that the termination order was served on the petitioner, the petitioner specifically denies the same. In paragraph-12 of the writ petition, the specific case pleaded by the petitioner is that the termination order dated 6.11.2013 was only shown to the petitioner and it was never served or given to the petitioner. Therefore, the question of the petitioner acknowledging receipt of the same never arises; so submitted the senior counsel. Evidently, the three complaints received against the petitioners are Exhibits P9, P30 and P36. All complaints were filed by the aforesaid Manikandan. The petitioner points out that Ext.P9 is a bogus one filed by a non-existent organization and in Ext.P36 complaint alleged to have been submitted by Manikandan, there is no allegation against the petitioner.

18. Another argument advanced by the learned counsel for respondents 2 to 4 is that though the

petitioner claims that she worked as Senior Lecturer and Assistant Professor of Nursing in a private college by name Moulana College of Nursing, Malappuram from June 2005 to 24.6.2009, in Ext.R2(b), the petitioner says that she completed the Master's Degree in August 2005. It was pointed out that she secured the certificate only in September 2005 and she cannot claim teaching experience before taking her Master's Degree.

19. In answer to the said argument, the learned senior counsel would point out that though the duration of M.Sc course was from 12.6.2003 to 12.6.2005, during that year, the entire course was over long before June and M.Sc examination was conducted in February 2005 and the results were published on 12.4.2005. However, there occurred some mistakes in counting the marks awarded to the petitioner in one paper. Therefore, she applied for rechecking and recounting the marks in that paper and the result was published only in August 2005. In fact during that year, M.Sc Nursing second year examination was conducted in February 2005 and the petitioner had

applied for recounting her marks. These facts can be seen from the recounting application submitted by the petitioner and the Msc Nursing Degree Certificate issued to the petitioner's classmate, viz. Smt. Josephine which are marked as Exts.P37 and P38. The petitioner points out that immediately after completing M.Sc course, while waiting for the results, the authorities of the college of Nursing, Moulana Hospital, Malappuram permitted the petitioner to join duty in that college and as a matter of fact, she joined duty in that hospital as Lecturer on 1.6.2005 itself and she continued in that post till 31.5.2008. Thereafter from 1.6.2008 to 24.6.2009, she has been working as Assistant Professor of Nursing in the very same college. A certificate dated 24.6.2009 issued by the said college is produced as Ext.P39. I see no reason to discard the explanation offered by the petitioner.

20. The learned senior counsel for the petitioner would argue that Ext.P8 contract of appointment imposes a duty on the respondents to give 15 clear working days written notice before terminating the service of any staff.

It was pointed out that no such notice was issued to the petitioner and her service was terminated on 7.11.2013 in a most arbitrary and unharmonious manner, by just asking her to surrender the post of Principal to the 4th respondent on 7.11.2013 itself. This, according to the learned senior counsel, is a clear violation of the terms of the contract of appointment itself.

21. The petitioner points out that the entire staff appointed in SIMET (both teaching and non-teaching) on contract basis like the petitioner were permitted to continue in the service by extending their contract of appointment. As a matter of fact, this extension of contract appointment was made as a routine as and when the time fixed in the contract expires.

22. Though the petitioner points out that she has to be reckoned as a permanent employee as she was selected on the basis of a due selection process, it was clearly stated in the news paper advertisement that the vacancy to the post of Principal is on contract basis. The general rule is that courts will not ordinarily force an

employer to retain the service of an employee, who he no longer wishes to employ. However, this rule is subject to three well recognised exceptions.

23. 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.

24. 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.

25. 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.

26. As the petitioner's appointment was for a particular period and as the same was over, this Court in exercise of powers conferred under Article 226 of the Constitution cannot direct the respondents to reappoint the petitioner, though the petitioner could substantiate the allegations levelled against her were not true.

In the result, this writ petition fails and accordingly, it is dismissed.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE