

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 10998 of 2015 (Y)

PETITIONER:

**L.BINDHU, AGED 44 YEARS
USHUS, TC. 10/2184, KPNRA - 127
KANJIRAMPPARA P.O., THIRUVANANTHAPURAM - 695 030.
(PART TIME SWEEPER
KERALA STATE VETERINARY COUNCIL, PEROORKADA
THIRUVANANTHAPURAM - 695 005).**

**BY ADVS.SRI.B.RAGUNATHAN
SRI.M.SALIM
SRI.R.SRINATH
SRI.P.PRASANTH
SRI.M.M.LALBIND
SRI.V.M.JACOB**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT
AGRICULTURE (ANIMAL HUSBANDRY) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -695 001.**
- 2. DIRECTOR
ANIMAL HUSBANDRY DEPARTMENT
VIKAS BHAVAN P.O.,THIRUVANANTHAPURAM - 695 033.**
- 3. KERALA STATE VETERINARY COUNCIL
REPRESENTED BY REGISTRAR
KERALA STATE VETERINARYCOUNCIL, PEROORKADA
THIRUVANANTHAPURAM -695 005.**

**BY ADV. DR.K.P.SATHEESAN (SR.)
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
BY GOVERNMENT PLEADER SMT. M.J. RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1 : COPY OF G.O(MS) NO.249/97/AD DATED 28.8.1997 OF THE 1ST RESPONDENT
- EXT.P-2 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 10.12.2012
- EXT.P-3 : COPY OF THE REQUEST MADE BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT DATED 28.1.2013
- EXT.P-4 : COPY OF THE APPLICATION FOR CREATION OF THE POST OF PART TIME CONTINGENT SWEEPER DATED 28.9.2013 SUBMITTED BY THE PETITIONER
- EXT.P-5 : COPY OF LETTER NO.J2-34028/08 DATED 13.1.2014 OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT
- EXT.P-6 : COPY OF LETTER NO.20106/HHE2/2009/AD OF THE 1ST RESPONDENT TO 2ND RESPONDENT DATED 23.10.2014
- EXT.P-7 : COPY OF LETTER NO.KSVC 05/2006 OF THE 3RD RESPONDENT TO THE 1ST RESPONDENT DATED 8.1.2015
- EXT.P-8 : COPY OF G.O(P) NO.501/2005/FIN. DATED 25.11.2005 OF THE FINANCE DEPARTMENT OF THE GOVERNMENT
- EXT.P-9 : COPY OF G.O(P) NO.61//2010/FIN. DATED 9.2.2010 ISSUED BY FINANCE DEPARTMENT OF THE GOVERNMENT
- EXT.P-10 : COPY OF G.O(MS) NO.264/12/AD DATED 14.11.2012 OF THE 1ST RESPONDENT
- EXT.P-11 : COPY OF G.O(MS) NO.193/2013/AD DATED 14.6.2013 OF THE 1ST RESPONDENT
- EXT.P-12 : COPY OF THE CERTIFICATE ISSUED BY ASSISTANT ENGINEER PWD BUILDINGS, VELLAYAMBALAM SECTION, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.10998 of 2015-Y

Dated this the 9th day of December, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's service has not been regularised, despite the recommendation made by the Registrar of the 3rd respondent and the 2nd respondent respectively by Exts.P3 and P5. The petitioner also relies on Exts.P7 and P8 Government Orders to contend that the petitioner's appointment as a Part Time Sweeper commencing as early as on 01.08.2003 has to be regularised. The petitioner though appointed on 01.08.2003, was not appointed by a regular selection process. The claim for regularisation, hence stands against the petitioner; in so far as the decision of the Hon'ble Supreme Court in ***Secretary, State of Karnataka v. Uma Devi [(2006) 4 SCC 1]***.

2. The learned counsel for the respondent also relies on a

judgment of this Court in WP(C) No.4104 of 2015 dated 13.11.2015, wherein this Court had found, presumably on an identical situation, that the Government having taken a decision to make deputations, there could be no continuance of the persons, who are appointed as daily wage employees. The learned counsel for the petitioner would contend that the facts in the aforecited judgment is not similar and would contend that the respondent cannot take up a contention that the 3rd respondent is a temporary establishment going by the binding precedent of the judgment in WP(C) No.10774 of 2008 dated 19.03.2009. The petitioner, hence on the basis of the Government Orders, would contend that the petitioner is entitled to regularisation.

3. At the outset, it is to be noticed that neither Exts.P8 & P9 is applicable to the service under the 3rd respondent. The decisions cited by the petitioner also deals with temporary establishment in the Government itself, where appointments were made, which when sought to be regularised, it was found that there could be no distinction made to the appointments in temporary establishment and the regular establishment. Herein,

there is no question of such a distinction being drawn tin considering the appointment to the 3rd respondent. The 3rd respondent is a Council constituted under a statute and functioned with the funds of the Central Government and State Government, both sharing 50% of the expenditure incurred.

4. The facts in the aforesaid case are identical to the facts in WP(C) No.4104 of 2015. Ext.P1 is not a creation of post and the sanction of such post was specifically made, to be filled up on deputation basis and there could be no creation of such post to be regularly filled up in the 3rd respondent; found on the basis of Ext.P1. The contention of the petitioner was squarely dealt with in the said judgment in paragraphs 6 & 7, which are extracted herein:

"6. A reading of Section 42(1) of the Act of 1984 would indicate that the State Veterinary Council has the authority to appoint officers and employees, as it may deem necessary. However, there will be financial implication, which has to be considered by the Government, and in such circumstance there should necessarily be sanction of such posts by the State Government. True, in 2008, the State Veterinary Council has sought for creation of posts and discontinuance of appointment

on deputation; but that cannot be taken as final, since the Government is the ultimate authority to decide on the financial implications.

7. The creation of posts has not materialised till date and the Council is also governed by Exhibit R3(a) order of the Government. In such circumstance, this Court is inclined to find that if appointments are made on daily wage basis, it would only result in a regularisation claim being raised. This would necessarily result in back-door appointments being made, which has been deprecated by the Hon'ble Supreme Court in **Secretary, State of Karnataka v. Uma Devi [(2006) 4 SCC 1]**. Hence, the present attempt of the Council to revert back to the position of appointing deputationists cannot be faulted. It cannot be said that Exhibit P4 would govern the issue for all time, since it was only a suggestion made by the Council at that point of time. The Council, for working of the system and also the fact that no creation of posts has materialised till date, is entitled to revert back to the original position of appointing persons on deputation. It is also submitted that in the post of the 2nd petitioner a deputationist has been appointed. In such circumstance, if a deputationist is appointed to the post of the 1st petitioner, definitely he would have to be removed from service. Till such time a deputationist is appointed, the 1st petitioner shall be allowed to be continued in the post."

In such circumstance, it cannot be said that the petitioner stands on a different footing and the petitioner can claim regularisation on the basis of Exts.P8 & P9. However, it is to be noticed that if at all deputation is made, it has to be made from the regular service of the Government and unless the same is made or there is a creation of post, wherein a regular appointment is to be made, the petitioner cannot be terminated for taking in another temporary or casual hand, especially since, she has been continued from the year 2003 onwards.

With the above observation, the writ petition is disposed of.
No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/09/12/15