

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

W.P.(C).No.16110 of 2008 (P)

PETITIONER(S):-

P.V.SUKUMARY,
(DHOBI, MEDICAL COLLEGE HOSPITAL, KOTTAYAM),
PUTHENPARAMBIL
POOVAMTHURUTHU P.O, KOTTAYAM.

BY ADV. SRI.K.P. RAJEEVAN.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, HEALTH DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.
3. DISTRICT MEDICAL OFFICER, KOTTAYAM.
4. SUPERINTENDENT, MEDICAL COLLEGE HOSPITAL,
KOTTAYAM.

R1 TO R4 BY GOVERNMENT PLEADER SRI.S.JAMAL.

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

W.P.(C).NO.16110 OF 2008

APPENDIX

PETITIONER'S EXHIBITS:-

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- EXT.P1 TRUE COPY OF ORDER NO.A1.6264/07/MCHG DATED 1.12.2007.
- EXT.P2 TRUE COPY OF JUDGMENT IN W.A.NO.96 OF 2000 DT.26.2.2000.
- EXT.P3 TRUE COPY OF JUDGMENT DT.23.7.2004 IN
 W.P.(C).NO.6571 OF 2004.
- EXT.P4 TRUE COPY OF ORDER IN S.L.P.(CIVIL) NO.18334/2003
 DATED 25.4.2008.

RESPONDENT'S EXHIBITS:-

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- EXT.R4(a) TRUE COPY OF G.O.(MS).NO.124/07 DT.01.06.2007.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.16110 of 2008-P

Dated this the 09th day of September, 2015

JUDGMENT

The petitioner, on the basis of the provisional appointment as per Exhibit P1, seeks for continuance in service on a regular basis even after six months. Obviously the petitioner was not granted any interim order and the petitioner was terminated after the period of service as indicated in Exhibit P1. The petitioner relies on Exhibits P2 and P3 judgments.

2. Exhibit P2 judgment was in the case of Hospital Attendants Grade II, where they were appointed by recruitment through Employment Exchange, provisionally, and in the absence of suitable hands for recruitment under items (i) and (ii) of Category 4(a) of Chapter 29 of the Special Rules for the Kerala Subordinate Services. The learned counsel for the petitioner submits that Dhobi also is a post coming under category 4(a). However, what is to be noticed is that the petitioners therein were appointed after a selection process and interview of the

candidates sponsored by the Employment Exchange. The specific finding was that this recruitment was under category 4(a)(iii) and appointment alone was provisional for 179 days.

3. Herein, there is a specific averment that the appointment was made only since there were no other available hands. The Government has filed a counter affidavit, in which it is stated that the petitioner was appointed provisionally for 6 months, only on the sponsorship made by the Employment Exchange to get over the temporary dearth of hands. The Division Bench in Exhibit P2 specifically found that in normal circumstances the contention that provisional hands are governed by their terms of appointment would be perfectly logical. On facts, it was noticed that when the petitioners therein were appointed, the Department did not have any suitable persons for being appointed as Hospital Attendants and had, hence, resorted to the method of direct recruitment as contemplated under sub-clause (iii) of category 4(a). Exhibit P2 found that therein a regular recruitment was effected. Here no such finding can be entered. The Government has also specifically contended that the competent authority to make regular appointment is the Principal of the

Medical Colleges and the Superintendent of Medical Colleges can only make provisional appointments in emergency situations. In such circumstance, there can be no precedent discernible applicable herein, since the judgment in Exhibit P2 was on the facts reflected in the aforesaid case.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]