

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 13293 of 2014 (J)

PETITIONER(S):

**P.SASIDHARAN NAIR,
ADMINISTRATIVE OFFICER
KERALA STATE COUNCIL FOR CHILD WELFARE, THYCAUD
THIRUVANANTHAPURAM, RESIDING AT LALITHA VILASOM
T.C.49/100, MUDAVANMUGAL, POOJAPPURA
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.A.K.RAJESH**

RESPONDENTS:-:

- 1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF SOCIAL JUSTICE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM/OFFICER IN-CHARGE
KERALA STATE COUNCIL FOR CHILD WELFARE, THYCAUD
THIRUVANANTHAPURAM, PIN - 695 014.**
- 3. KERALA STATE COUNCIL FOR CHILD WELFARE,
THYCAUD, THIRUVANANTHAPURAM, PIN - 695 014
REPRESENTED BY ITS ADMINISTRATOR-IN-CHARGE.**
- 4. R.PRATHAPACHANDRAN,
DISTRICT SOCIAL JUSTICE OFFICER, THIRUVANANTHAPURAM
NOW FUNCTIONING AS THE ADMINISTRATIVE OFFICER-IN-CHARGE
KERALA STATE COUNCIL FOR CHILD WELFARE, THYCAUD
THIRUVANANTHAPURAM, PIN - 695 014.**

**R1-R2 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
BY SPECIAL GOVERNMENT PLEADER SRI.T.T.MUHAMMED
R3 & 4 BY ADVS. SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. THE TRUE RELEVANT EXTRACT OF BYELAWS OF THE 3RD RESPONDENT.**
- EXHIBIT P2. TRUE COPY OF THE ORDER IN W.P.(C)NO.2783/2012 DATED 27.03.2012.**
- EXHIBIT P3. TRUE COPY OF THE ORDER NO.517/2014/KSCWS DATED 10.01.2014.**
- EXHIBIT P4. TRUE COPY OF THE ORDER NO.562/2014/KSCWS DATED 07.02.2014.**
- EXHIBIT P5. TRUE COPY OF THE ORDER NO.7688/C2.2013/SJD DATED 25.04.2014.**
- EXHIBIT P6. TRUE COPY OF THE PROCEEDINGS NO.A6/34037/2014(1) DATED 22.05.2014.**
- EXHIBIT P7. TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE MEETING HELD ON 9/10/2001**
- EXHIBIT P8. TRUE COPY OF THE ORDER O.G.O.(RT)NO.4927/2002/FIN.DATED 17/9/2002.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R1(A): A TRUE COPY OF THE G.O(MS)NO.4/12/SWD DATED 28/1/12**
- EXHIBIT R1(B): TREU COPY OF THE ORDER DT.2/3/12 IN WPC.2783/12**
- EXHIBIT R3(A): COPY OF THE RELEVANT EXTRACT OF THE PAY SCALE IN THE SOCIAL WELFARE DEPARTMENT OF STATE GOVERNMENT**
- EXHIBIT R3(B): COPY OF THE DEPUTATION FROM SECRETARIAT SHOWING THE LIST OF PERSON APPOINTED THEIR PERIOD & THEIR DESIGNATION IN THE GOVERNMENT.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.13293 OF 2014

Dated this the 10th day of March, 2015

JUDGMENT

The Kerala State Council for Child Welfare is a Society registered under the Travancore -Cochin Literary, Scientific and Charitable Societies Registration Act. This Society is engaged in taking care and protection of the children. The main objective of the Society is to formulate schemes for the interest and welfare of the children. The function of the Society therefore is a public function and the Society appears to have been created by the Government. The Chief Minister is the President of the Society and the senior Vice President is the Minister in charge of the for Social Justice. The Executive Committee is consisting of other 11 persons elected by the General Body. There was some dispute regarding the disqualification of certain members of the Executive Committee. As per the direction of this Court in an interim

order dated 27/3/2012 in W.P.(C)No.2783/2012, the District Collector has been put in charge of the day-to-day affairs of the establishment until the General Body takes a final decision in the matter. It is admitted position that the General Body is yet to take a decision in the matter. Therefore, the District Collector is in charge of the day-to-day affairs of the establishment.

2. The petitioner was appointed initially as Programme Officer in the year 1998. The District Collector, by Ext.P3 dated 10/1/2014, appointed the petitioner on temporary basis in the post of Administrative Officer and made a request before the Government to grant approval for such appointment of the petitioner on temporary basis. Since no decision was taken on Ext.P3, by Ext.P4 proceedings dated 7/2/2014, the District Collector appointed the petitioner as the Administrative Officer permanently subject to the ratification by the Executive Committee. The Government by Ext.P5 responded to Ext.P3 stating that the appointment of the petitioner temporarily in the post of Administrative Officer is highly irregular and directed the District Collector to take immediate action to cancel the order of appointment.

Consequently, the District Collector by Ext.P6 proceedings dated 22/5/2014 cancelled the temporary appointment given to the petitioner .

3. Heard the learned counsel for the petitioner, learned senior counsel for the 3rd respondent and the learned Government Pleader for the official respondents.

4. The learned counsel for the petitioner submits that the Government has no authority for interfering the appointment made by the District Collector, since the day-to-day affairs of the Society is put in the hands of the District Collector. Any appointment made by the District collector is legally valid otherwise interfered by the Executive Committee. The learned counsel refers to Sub Clause (10) of Clause 25 of the Bye Laws of the Society, which stipulates that creating of post and making appointing against those posts are all matters exclusively in the domain of the Executive Committee.

5. Per contra, the learned senior counsel appearing for the Society pointing out the direction of this Court in W.P.(C) No..2783/2012, submits that the District Collector was put in charge only day- to-day affairs of the Society. He also refers to the earlier minutes of the Executive Committee and submits

that appointment in the vacancy has to be made by deputation from the Government service. It is submitted that the only method of appointment is appointment by deputation. It is further pointed out that initial appointment of the petitioner was on temporary basis, and thereafter without any justification the petitioner's appointment has been regularized permanently.

6. The learned Government Pleader points out the fact that the Society is controlled by the State and no post can be created without sanction from the State.

7. There is no dispute to the fact that the District Collector was in charge of the day-to-day affairs of the Society by virtue of the direction of this Court in W.P.(C) No. 2783/2012. The petitioner was initially appointed on temporary basis. The District Collector sought approval from the Government. Thereafter, he appointed the petitioner permanently. The Government cancelled the appointment given to the petitioner temporarily stating that the appointment has to be made on deputation basis. Going by the Society's Bye Laws, the Executive Committee has certain power in creating post and making appointment to that post.

It is to be noted that this Society itself is created by the Government. The authority to control is not taken away by the Bye Laws. I am not entering upon to the controversy relating to the authority of creating post and right of making appointment. However, the Government should not have cancelled the temporary appointment made by then District Collector without any reason.

8. Considering the nature of the power being conferred upon the District Collector, I am of the view that the temporary arrangement made by him, as per Ext.P3, need not be interfered. The petitioner can hold the office of the Administrative Officer till the vacancy otherwise filled up in accordance with law. However, for making the permanent appointment to the post of Administrative Officer, the District Collector has no such power referable under the directions of this Court in W.P.(C) No.2783/2012. Therefore, the District Collector cannot make permanent appointment in such circumstances.

9. In view of the above, the impugned orders are set aside to the extent of canceling the temporary appointment of the petitioner in the post of Administrative Officer. It is made

clear that post of Administrative Officer can otherwise be filled up in accordance with law.

The writ petition is disposed of as above.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/True copy/ P.S. To Judge.

