

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 23417 of 2006 (K)

PETITIONER(S):

K.P.ANIL KUMAR
MANAGER, KERALA STATE DEVELOPMENT CORPN. FOR
CHRISTIAN CONVERTS FROM SCHEDULED CASTES AND THE
RECOMMENDED COMMUNITIES LTD.(KSDC FOR CC & RC LTD)
NAGAMBADAM, KOTTAYAM, R/AT.SHANTHI BHAVAN
THU

BY ADVS.SRI. S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON

RESPONDENTS:

1. STATE OF KERALA
SECRETARY, SC AND ST DEVELOPMENT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE KERALA STATE DEVELOPMENT CORPN. FOR
CHRISTIAN CONVERTS FROM SCHEDULED CASTES AND THE
RECOMMENDED COMMUNITIES LTD.(KSDC FOR CC & RC LTD)
NAGAMBADAM, KOTTAYAM, REP. BY ITS CHAIRMAN.
3. THE MANAGING DIRECTOR, KERALA STATE
DEVELOPMENT CORPN. FOR CHRISTIAN CONVERTS FROM
SCHEDULED CASTES AND THE RECOMMENDED COMMUNITIES
LTD., (K.S.D.C. FOR C.C. & R.C. LTD.), NAGAMBADAM
KOTTAYAM.
4. SHRI. ASHOK KUMAR SINGH, I.A.S.,
FORMER MANAGING DIRECTOR, KERALA STATE DEVELOPMENT
CORPN. FOR CHRISTIAN CONVERTS FROM SCHEDULED
CASTES AND THE RECOMMENDED COMMUNITIES LTD.
(K.S.D.C. FOR C.C. & R.C. LTD.), NAGAMBADAM, KTYM
NOW WORKING AS DISTRICT COLLECTOR, PATHANAMTHITTA

R,R2,3 BY ADV. SRI.M.P.MADHAVANKUTTY,SC,KSDC FOR CC&RC
R1-3 BY ADV. SMT.A.P.LALY @ LALY VINCENT SPECIAL GOVT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.23417 OF 2006

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: DATED 6.6.1996 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP NO.4059/1996

EXT.P2: DATED 4.6.2004 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO. 4900/2004 G

EXT.P3: DATED 19.6.2006 TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE MANAGING DIRECTOR OF 2ND RESPONDENT

EXT.P4: DATED 12.7.2004 TRUE COPY OF THE ORDER NO.E1/1867/2002/DCCC ISSUED BY 2ND RESPONDENT CORPORATION

EXT.P5: DATED 15.7.2004 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.19082/2004 V

EXT.P6: DATED 16.7.2004 TRUE COPY OF THE MINUTES OF THE BOARD MEETING OF RESPONDENT NO.2 CORPORATION

EXT.P7: DTATED 23.8.2004 TRUE COPY OF THE SHOW CAUSE NOTICE BEARING NO. E1/1524/04/DCCC ISSUED BY THE 4TH RESPONDENT

EXT.P8: DATED 3.9.2004 TRUE COY OF THE REPRESENTATION MADE BY THE PETITIONER BEFORE THE CHAIRMAN OF THE 2ND RESPONDENT

EXT.P9: DATED 4.9.2004 TRUE COPY OF THE CHAIRMAN'S NOTE TO THE 3RD RESPONDENT

EXT.P10: DATED NIL TRUE COPY OF THE MEMORANDUM OF ASSOCIATION OF THE 2ND RESPONDENT

EXT.P11: DATED 15.3.2004 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.927/2004 I

EXT.P12: DATED 25.6.2004 TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN WPC NO. 18758/2004

EXT.P13: DATED 8.9.2004 TRUE COPY OF THE PROCEEDINGS OF THE MANAGING DIRECTOR OF THE 2ND RESPONDENT CORPORATION

EXT.P14: DATED 20.08.2004 TRUE COPY OF THE LETTER SENT BY RESPONDENT NO.3 TO RESONDENT NO.1

EXT.P15: DATED 29.6.2006 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.26272/2004

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EXT.P16: DATED 12.6.1980 TRUE COPY OF THE G.O. MS NO.59/80/DD ISSUED BY THE RESPONDENT NO.1

EXT.P17: DATED 25.2.2006 TRUE COPY OF THE MINUTES OF THE 128TH MEETING OF THE BOARD OF DIRECTORS OF THE 2ND RESPONDENT CORPORATION

EXT.P18: DATED 7.9.2004 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT

EXT.P19: DATED 25.7.2007 TRUE COPY OF THE PROCEEDINGS NO. 6721/D1/2007/VG FROM THE 1ST RESPONDENT

EXT.P20: DATED 8.5.2006 TRUE COPY OF THE LEGAL OPINION SS NO.1/04/AG/VC8/01 BY THE ADVOCATE GENERAL

EXT.P21: DATED 15.11.2005 TRUE COPY OF THE ORDER IN CMP 1193/2005 & 1202/2005 IN CC 32 OF 2004 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE THRISSUR

EXT.P22: DATED 3.11.2000 TRUE COPY OF THE MINUTES OF THE MEETING OF THE CORPORATION

EXT.P23: DATED 30.3.2007 TRUE COPY OF THE COUNTER AFFIDAVIT OF RESPONDENT NO.2 IN WPC NO.31236/2006

EXT.P24: DATED 6.3.2008 TRUE COPY OF THE MBA CERTIFICATE ISSUED TO THE PETITIONER BY MADURAI KAMARAJ UNIVERSITY

EXT.P25: DATED 24.8.2007 TRUE COPY OF THE ORDER NO. KSDC/E2/1547/07 ISSUED BY THE CORPORATION.

EXT.P26: DATED 9.6.2012 TRUE COPY OF THE NEWS ARTICLE APPEARED IN THE KOTTAYAM EDITION OF MANGALAM DAILY

EXT.R3(e): TRUE COPY OF THE

RESPONDENTS EXHIBITS:

EXT.R3(a): TRUE COPY OF THE DECISION OF THE BOARD OF DIRECTORS DT 26.12.1995

EXT.R3(b): TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER ON 29.12.1995

EXT.R3©: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20.02.1996

EXT.R3(d) TRUE COPY OF THE TELEGRAM SEND TO THE PETITIONER

EXT.R3(e): TRUE COPY OF THE SHOW CAUSE NOTICE DATED 5.7.96

EXT.R3(f): TRUE COPY OF THE REPLY NOTICE

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EXT.R3(g): TRUE COPY OF THE CERTIFICATE PRODUCED BY THE PETITIONER DT 12.10.1995

EXT.R3(h): TRUE COPY OF THE PROCEEDINGS No. c11519/95 DT 29.7.96

EXT.R3(i): TRUE COPY OF THE LETTER DT 1.11.2002

EXT.R3(j): TRUE COPY OF THE ORDER DT 8.7.98

EXT.R3(k): TRUE COPY OF THE MINUTES OF THE BOARD OF DIRECTORS DATED 15.9.2000

EXT.R3(l): TRUE COPY OF THE JUDGMENT IN O.P NO.28826/1999

EXT.R3(m): TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY THE CORPORATION ON 11.6.2002

EXT.R3(n): TRUE COPY OF THE JUDGMENT IN CC NO. 635/2002

EXT.R3(o): TRUE COPY OF THE LETTER DT 19.2.2003 SENT TO THE PETITIONER

EXT.R3(p): TRUE COPY OF THE REPORT OF THE VIGILANCE DEPARTMENT DT.15.7.2003

EXT.R3(q): TRUE COPY OF THE REPORT OF THE EARLIER MANAGING DIRECTOR DT 14.8.2001

EXT.R3(r): TRUE COPY OF THE LETTER DT 20.2.2008 ISSUED BY THE DY. SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, KOTTAYAM

EXT.R3(s): TRUE COPY OF THE LETTER DT 13.8.2004

EXT.R3(t): TRUE COPY OF THE SHOW CAUSE NOTICE DT 23.08.2004

EXT.R3(u): TRUE COPY OF THE LETTER DT 6.9.2007 ISSUED TO THE THEN
MANAGING DIRECTOR BY THE GOVERNMENT

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EXT.R3(v): TRUE COPY OF THE REPLY SEND TO EXT.R3(u) BY THE THEN
MANAGING DIRECTOR

EXT.R3(w): TRUE COPY OF THE ADVERTISEMENT DT 18.10.1995 PUBLISHED IN
MATHRUBHUMI DAILY

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No.23417 of 2006

Dated this the 03rd^h day of September, 2015

J U D G M E N T

The petitioner challenges Ext.P13 order of termination issued by the Managing Director. The controversy arose with the termination of the petitioner on 27.07.1996 as per Ext.R3(h), which was made on the ground that the petitioner had not produced the certificate of his qualification. The petitioner, in fact was appointed as per Ext.R3(a), purely on a contract basis for one year. An agreement was entered into between the petitioner and the respondent Corporation produced at Ext.R3(b). The petitioner's appointment commenced from 1995 and was as the Secretary and Finance Manager of the Corporation and was to continue for one year, i.e, till 27.12.1996.

2. The petitioner was once, earlier to Ext.R3(h), terminated by the Managing Director which was challenged in O.P No. 4059/1996 produced at Ext.P1. The judgment dated 06.06.1996

found that the petitioner would have the protection available to any other employee during the period of contract and any termination to be effected within that period would have to be in accordance with the law applicable. It was subsequent to Ext.P1 judgment that Ext.R3(h) was passed on 27.07.1996.

3. The petitioner is said to have initiated various litigations in the intervening period; the last of which was W.P(C) 19082/2004, the judgment of which is produced at Ext.P5. Before the writ petition was heard, the Managing Director of the respondent Corporation had by Ext.P4 dated 12.07.2004, reinstated the petitioner in the Corporation. The writ petition hence was disposed of recording such reinstatement. The reinstatement of the petitioner was ratified as per Ext.P6 order of the Board. Subsequently, again the Managing Director issued Ext.P7 show cause notice dated 23.08.2004; which was stayed by the Chairman of the 2nd respondent as per Ext.P9. Despite such stay order passed,

the Managing Director has continued with the proceedings against the petitioner and terminated him by Ext.P13 dated 08.09.2004.

4. The petitioner challenges Ext.P13 and also relies on Ext.P25 an order passed by the Board, which sanctioned prosecution against the petitioner, but however, asserts that the removal of the petitioner can be effected only by the Board. However, it is also submitted that Ext.P25 only sanctions a prosecution against the petitioner and does not deal with the removal as such.

5. In any event, it is to be noticed that the petitioner's appointment was only for a period of one year and the specific term in the agreement Ext.R3(b) reads as under :-

“3. The service of the party of the first part may be terminated as follows:-

(1)At the end of the first year by either party without notice. If the petitioner is continued

beyond one year, definitely two months notice had to be issued in accordance with clause (2)”

6. In such circumstance, the petitioner's right is to continue only for a period of one year. The petitioner was continued from 27.12.1995 to 27.07.1996; when he was terminated. His claim at best could have been only for continuation till 27.12.1996. Be that as it may, the petitioner was reinstated as per Ext.P4 on 04.06.2000. Even on reinstatement the petitioner had a claim only to be continued for the balance period of that one year, for which he was initially appointed.

7. The termination effected at Ext.P13 is without any enquiry and merely proceeded by a show cause notice. The termination if not one, which is a discharge simplicitor, it cannot be sustained for reason of no enquiry having been conducted (AIR 1964 SC 441 [Jagdish Mitter v. The Union of India], 1980(3) SCC 459[Managing Director, Utter Pradesh Warehousing Corporation

and Another v Vijay Narayan Vajpayee].

8. The show cause notice and Ext.P13 termination order lists out a number of reasons, amounting to misconduct; as against which no enquiry has been held. The above precedents declare that a discharge simplicitor would not require an enquiry.n There could be two modes of termination; one a dismissal in a punitive manner and the other a discharge simplicitor under the terms of the contract. It was held that, an enquiry into the aspect of whether the service of the temporary servant could be continued or not and a discharge on account of a finding against such continuance would not necessarily be a punitive discharge, since it is under the terms of the contract and does not at all cast any aspersion on the service or conduct of the employee. However, if the termination is one casting an aspersion on the service of the employee and on the basis of an alleged misconduct, then that would necessitate a formal departmental enquiry.

9. The decision to terminate, was actuated by reason of the lapses in the service and conduct of the petitioner, which are highlighted and which was the basis of the invocation of such power. This definitely casts a stigma on the employee and the same has been done without affording an opportunity by way of a properly conducted disciplinary enquiry”.

10. The Board of the Corporation also asserts the authority on itself as to the power for removal of the employees. In the totality of the circumstance, Ext.P13 cannot be sustained for reason of the Managing Director having no authority as also for reason of the termination not being in accordance with law; as directed in Ext.P1 judgment. However, even on Ext. P13 being set aside, there can be no order of reinstatement of the petitioner since the petitioner's appointment is purely on contract basis, and was to be continued only for one year. In such circumstance, on the reinstatement of the petitioner as per Ext.P4, the petitioner could

be continued only for the balance period of his original one year appointment. There shall hence be no reinstatement at this distance of time. The petitioner hence shall be treated as continuing for that one year period and any salary payable to the petitioner for the balance period shall be disbursed within a period of two months from the date of receipt of a certified copy of this judgment.

Writ petition is partly allowed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge