

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 14444 of 2014 (E)

PETITIONER:

**RENJITH MAMBARATH
YOUTH PROGRAMME OFFICER KERALA STATE YOUTH WELFARE BOARD
DISTRICT YOUTH CENTRE KASARAGOD DISTRICT
RESIDING AT MAMBRATH, P.O.MAMBA -670 611, KANNUR DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION (SPORTS & YOUTH AFFAIRS) DEPARTMENT
SECRETARIAT THIRUVANANTHAPURAM-695 001.**
- 2. KERALA STATE YOUTH WELFARE BOARD
THIRUVANANTHAPURAM-695 001
REPRESENTED BY ITS SECRETARY.**

**R2 BY ADV. SRI.GEORGE POONTHOTTAM
R1 BY ADV. GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - A TRUE COPY OF THE RESOLUTION DATED 8-2-2008
- EXT.P2 - A TRUE COPY OF THE ORDER DATED 27-1-2009 APPOINTING THE PETITIONER IN THE POST OF PROJECT OFFICER
- EXT.P3 - TRUE COPY OF THE CONTRACT ENTERED BETWEEN THE PETITIONER HEREIN AND THE 2ND RESPONDENT.
- EXT.P4 - A TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 10-8-2009
- EXT.P5 - A TRUE COPY OF THE RESOLUTION OF THE 2ND RESPONDENT DATED 3-3-2011 REVISING THE SALARY OF THE PETITIONER AS WELL AS REGULARIZING THE PERMANENT POST SANCTIONED AS PER THE EXHIBIT P4 GOVERNMENT ORDER.
- EXT.P6 - A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 25-3-2012 GIVING THE PETITIONER HEREIN ADDITIONAL CHARGE OF DISTRICT PROGRAMME OFFICER KASARAGOD.
- EXT.P7 - A TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 4-8-2012 APPOINTING THE PETITIONER IN THE POST OF DISTRICT YOUTH PROGRAMME OFFICER KASARAGOD.
- EXT.P8 - A TRUE COPY OF THE REPRESENTATION DATED 15-10-2012
- EXT.P9 - A TRUE COPY OF THE JUDGMENT IN WPC.NO.14511 OF 2013 DATED 10-6-2013
- EXT.P10 - A TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 24-7-2013
- EXT.P11 - A TRUE COPY OF THE REPRESENTATION DATED 7-5-2014 BEFORE THE 2ND RESPONDENT.
- EXT.P12- TRUE COPY OF THE ORDER DATED 26.6.2014 AS ORDER NO.E1-2064/13/YWB ISSUED BY THE MEMBER SECRETARY
- EXT.P13- TRUE COPY OF THE ORDER ISSUED BY THE MEMBER SECRETARY OF THE 2ND RESPONDENT TO THE PETITIONER IN W.P.(C) NO.16962 OF 2014
- EXT.P14- TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT DATED 3.7.2014 IN W.P.(C) NO.16962 OF 2014
- EXT.P15- TRUE COPY OF THE PROJECT PREPARED BY THE PETITIONER

- EXT.P16- TRUE COPY OF THE ORDER SANCTIONING RS.2 LAKHS FOR CONDUCTING THE CAMP AS PER THE PROJECT
- EXT.P17- TRUE COPY OF THE PROJECT NAMELY 'SUCHITHWA GRAMAM SUCHITWA NAGARAM, SUBMITTED BY THE PETITIONER
- EXT.P18- TRUE COPY OF THE LETTER DATED 15.5.2012 ISSUED BY THE MEMBER SECRETARY TO THE EXECUTIVE DIRECTOR OF SUCHITWA MISSION
- EXT.P19- TRUE COPY OF THE LETTER DATED 25.5.2012 ISSUED BY THE EXECUTIVE DIRECTOR, SUCHITWA MISSION TO THE MEMBER SECRETARY
- EXT.P20- TRUE COPY OF THE PERFORMANCE REPORT DATED 8.4.2010 SUBMITTED BY THE PETITIONER
- EXT.P21- TRUE COPY OF THE ORDER DATED 20.4.2011 ISSUED BY THE ABOVE SAID MUHAMMED ASHRAF
- EXT.P22- TRUE COPY OF THE REPORT ON THE PERFORMANCE OF THE PETITIONER, SUBMITTED BY THE FORMER MEMBER SECRETARY TO THE GOVERNMENT DATED 18.2.2011

RESPONDENT(S)' EXHIBITS

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- R2(A) : TRUE COPY OF THE AGREEMENT ENTERED IN BETWEEN THE PETITIONER AND THE BOARD ON 27.01.2009
- R1(A) : TRUE COPY OF THE PROCEEDINGS NO.E1-2064/2013/YWB DATED 26.6.2014
- R1(B) : TRUE COPY OF INTERIM ORDER OF THE HON'BLE COURT DATED 09.06.2014
- R1(C) : TRUE COPY OF PROCEEDINGS NO.E1-3187/09/YWB DATED 26.11.2014
- R1(D) : TRUE COPY OF THE G.O.(MS) NO.164/09/EDN DATED 10.08.2009
- R1(E) : TRUE COPY OF THE MEETING HELD ON 03.03.2011
- R1(F) : TRUE COPY OF PROCEEDINGS NO.E1-1020/11/YWB DATED 06.06.2012
- R1(G) : TRUE COPY OF THE 16TH BOARD MEETING HELD ON 05.02.2010
- R1(H) : TRUE COPY OF THE PROCEEDINGS NO.E1-317/09/YWB DATED 04.08.2012

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 14444 of 2014 (E)

Dated this the 6th day of November, 2015

J U D G M E N T

The petitioner, now working as a District Youth Programme Officer of the 2nd respondent, is aggrieved by his demotion from the said post and appointment to the post of Project Officer, an admittedly lower post, on a contract basis.

2. The petitioner was appointed on contract basis through a regular selection, as indicated in Exts.P1 and P2. A contract was also entered into with all the persons so selected in a similar manner, as seen at Ext.P2. Subsequently, a decision is also said to have been taken by the respondent Board on 3.3.2011 to permit the persons appointed so, on contract, to be continued for five years. The petitioner also is included as one among the persons appointed and decided to be continued as per Ext.P5.

3. The petitioner, while continued so, was given additional charge of the District Youth Programme Officer at Kasaragod by Ext.P6. While he was continuing in Kasaragod, by Ext.P7 he was removed from the post of Project Officer and appointed as District Youth Programme Officer and continued at Kasaragod. The petitioner, while so, was also issued with Ext.P12 order dated 26.6.2014 wherein he was kept away from holding the post of Programme Officer at Kasaragod and another person who was at Kozhikode was posted to Kasaragod. The petitioner filed an Interlocutory Application in this petition in which Ext.P12 order was produced and this Court passed an interim order, based on which the petitioner is now continued as District Youth Programme Officer at Malappuram.

4. The contention of the petitioner is that the petitioner was not liable to be demoted and he was, as per the contract, entitled to be continued as Project Officer

itself.

5. The learned counsel appearing for the respondent Board would contend, based on the averments made in the counter affidavit, that the functions of the petitioner as a Project Officer was lacking and he was found to be ineffective and incapable in formulating and implementing projects.

6. It is to be noticed that nowhere, prior to the said averments made in the counter affidavit, such an allegation was raised against the petitioner nor was the petitioner put to notice of any such allegation. The petitioner was merely transferred from Thiruvananthapuram; where he was working as a Project Officer, to Kasaragod giving him additional charge of District Youth Programme Officer and while at Kasaragod he was divested of the designation of Project Officer and posted as the District Youth Programme Officer, an admittedly lower post, having lesser pay also. Again, the petitioner was issued with Ext.P12 wherein he

was kept away from service, which was interdicted by this Court. It is to be noticed that no specific charge has been made against the petitioner at any time prior to the filing of the counter affidavit. The petitioner was never put to notice of any default in the discharge of his duties and functions as a Project Officer. In such circumstance, the averments made in the counter affidavit that he was found to be lacking in his performance, cannot be countenanced.

7. It is contended that the said submission is based on the annual assessment of the performance of each person. However, if such an assessment has been made to the detriment of the person, it was incumbent on the organisation to intimate the person, and either give time to improve his performance or if a punitive action is contemplated, initiate proper proceedings in which the allegations raised against him are to be proved. Nothing of that sort having been done, no reliance can be placed on the alleged yearly assessment made by the Board. It is also to

be emphasised that but for a bland averment regarding an assessment, no such record is produced herein.

8. It is also pertinent that the Member Secretary of the Board is said to have addressed the Government on the annual assessment and requested termination of the service of the petitioner as Project Officer. The specific communication is not produced herein nor is the date specified. However, it is specifically averred that since the reply from the Government was delayed, a decision was taken by the Board at its meeting on 5.2.2010 to place the petitioner in the post of District Youth Programme Officer of Kasaragod District. Even now, no reply is said to have been issued to the said communication. The Government's counter affidavit is silent as to such a communication having been received. In such circumstance, no reliance also can be placed on such averments made in the counter affidavit.

9. The further contention raised by the learned counsel for the Board is that the petitioner is a contract employee and his services could be terminated at any point. Such termination can be effected as a termination simplicitor, if the contract so provides and if such termination is on allegations of mis-conduct, then necessarily there should be compliance of principles of natural justice, a necessarily concomitant of which would be a disciplinary proceeding initiated against the delinquent.

10. True, on the performance being not satisfactory the termination could be effected without casting any stigma on the employee, but, for that there should be specific provision in the contract. Ext.P3 is the contract in which the period of contract, as per clause 3, is from the date of joining duty till the decision of the Board of Directorate of Kerala State Youth Welfare Board. Admittedly, no such decision has been taken by the Board till date. The contention of the petitioner that the contract

was for a period of three years as per Ext.P5 is belied by the fact that the Government had withdrawn the same as per Ext.R1(f), being a decision taken while the model code of conduct was in operation. The Board is not seen to have taken a further decision to engage the contract employees for a period of five years. Hence, one has to fall back upon Ext.P3 to look at the conditions of contract, which, as this Court has found, does not provide for neither the removal of the petitioner nor sanction a reduction in post to that of District Youth Programme Officer.

11. The learned counsel also specifically points to Ext.R1(g) wherein it has been stated that the renewal of contract, insofar as the petitioner is concerned, has been deffered by the Board. It is to be noticed that there is no question of renewal of contract since the contract period, even as per Ext.P3, is from the date of appointment to the date on which the Board decides to terminate the person. Hence, there is no question arising of a renewal of contract.

The Board definitely would have the discretion to decide whether the petitioner's service could be continued. But, however, till such decision is taken the petitioner has to be necessarily continued as Project Officer.

12. There shall be a direction to the respondent Board to appoint the petitioner as Project Officer, at any rate within one month from the date of receipt of the certified copy of this judgment. Any proceeding contemplated or any action, as provided in the contract, could be taken only after such posting of the petitioner as Project Officer; which subsequent action would be left to the discretion of the Board, to be done in accordance with law.

The writ petition would stand allowed, with the above reservation and directions.

Sd/-
K.VINOD CHANDRAN,
JUDGE