

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 17301 of 2013 (K)

PETITIONER(S) :

**M.KRISHNANKUTTY,
PILLAVEETIL VADAKKETHIL (SARANYALAYAM), VADAKKEKARA,
ASHTAMUDI P.O., KOLLAM.**

BY ADV. SRI.P.SIVARAJ

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES (A), DEPARTMENT,
STATE SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE MANAGING DIRECTOR,
KERALA STATE BEVERAGES (MANUFACTURING & MARKETING)
CORPORATION LTD., P.B.NO.2263, SASTHAKRIPA OFFICE COMPLEX,
SASTHAMANGALAM, THIRUVANANTHAPURAM-695 010.**

**R1 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
R2 BY ADV. SRI.C.S.AJITH PRAKASH, S.C**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-01-2015, THE COURT ON 20-05-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** TRUE COPY OF THE DISABILITY CERTIFICATE DATED 31.03.1995 OF THE MEDICAL BOARD, DISTRICT HOSPITAL, KOLLAM.
- EXHIBIT-P2:** TRUE COPY OF THE JOINING REPORT OF THE PETITIONER AS PER MEMO DATED 11.05.2011 BY THE MANAGER, KERALA STATE BEVERAGES CORPORATION.
- EXHIBIT-P3:** TRUE COPY OF THE JUDGMENT DATED 04.11.2011 IN W.A.NO.1687 OF 2011 OF THE DIVISION BENCH.
- EXHIBIT-P4:** TRUE COPY OF THE JUDGMENT DATED 23.01.2012 IN R.P.NO.43/2012.
- EXHIBIT-P5:** TRUE COPY OF THE ORDER NO.AA7/23033/2012 DATED 15.10.2012 OF THE 2ND RESPONDENT.
- EXHIBIT-P6:** TRUE COPY OF THE APPLICATION DATED 18.10.2012 FILED BEFORE THE 2ND RESPONDENT.
- EXHIBIT-P7:** TRUE COPY OF THE JUDGMENT DATED 05.11.2012 IN WP(C) NO.25983/2012.
- EXHIBIT-P8:** TRUE COPY OF THE LETTER DATED 19.11.2012 ENCLOSING COPY OF JUDGMENT SUBMITTED BY PETITIONER.
- EXHIBIT-P9:** TRUE COPY OF THE ORDER NO.AE7/3650/D.W./K.S.B.C./2012 DATED 28.12.2012.
- EXHIBIT-P10:** TRUE COPY OF THE REPRESENTATION DATED 07.01.2013 SUBMITTED TO THE HON'BLE EXCISE MINISTER.
- EXHIBIT-P11:** TRUE COPY OF THE PROCEEDINGS NO.4740/A3/2013/TD DATED 21.05.2013 OF THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.17301 of 2013

Dated this the 20th day of May, 2015

JUDGMENT

Aggrieved by Ext.P9 order, by which the petitioner was disengaged from the service of the respondent Corporation which was confirmed by Ext.P11 order passed by the Government, the petitioner has come up before this Court.

2. The petitioner is a physically challenged person having 45% partial disability. He entered service of the second respondent Corporation as a daily wage employee. His name was sponsored by the Employment Exchange, Kollam. He was appointed on 11.5.2011 to the post of Helper in FL-1 shop No.2010 Anchalumoodu in Kollam District on daily wage basis. The petitioner alleges that he was continuing there without any interruption. On completion of 180 days, he was disengaged by the second respondent. The petitioner moved this Court with WPC No.29076/2011. As the same was dismissed, the petitioner moved this Court in intra-court appeal (Writ

Appeal No.1687/2011) which was dismissed by Ext.P3 judgment making it clear that if the recruitment is not made for replacement, the respondent can permit the petitioner to continue with one day's break after completion of six months until selected candidates are appointed. It was further clarified in Ext.P4 review order that the aforesaid relief was granted to the petitioner only because he was a disabled person and the said judgment need not be treated as a precedent for retaining other temporary hands.

3. The petitioner's grievance is that the judgment of this Court was flouted by the respondents and the petitioner was disengaged on flimsy grounds based on accusation having no ring of truth. It is further alleged that though as per Ext.P7 judgment, this Court directed the respondents to consider Ext.P6, the same was not adjudicated on merit and it, ultimately, resulted in Ext.P9. Though the petitioner moved the Government, the Government passed Ext.P11 confirming Ext.P9. It is with this background, the petitioner has come up before this

Court.

4. In the counter affidavit filed by the respondent Corporation and the State, it was stated that the petitioner's service was terminated on the ground of misconduct.

5. Arguments have been heard.

6. Admittedly, the petitioner was working as Helper in one of the FL-1 shops under the respondent Corporation on temporary basis. Initially, he worked there for 180 days and thereafter he continued on similar terms as per the orders of this Court.

7. The learned standing counsel for the respondent Corporation submitted that the petitioner was found guilty of violating rules by issuing bottles without bills and collecting excess amount from the customers.

8. The definite stand taken by the respondent Corporation is that the petitioner who is a daily wage worker was disengaged from service as per the orders of the respondent Corporation dated 15.10.2012. It was also contended that the petitioner was given a chance to prove

his innocence during the personal hearing conducted and he was heard in person by the Managing Director in the presence of DAT, Kollam.

9. The relevant question to be considered is whether it is necessary to follow the procedure for termination of the service of the petitioner as in the case of a regular employee.

10. The Apex court in **(Purushotam Lal Dhingra v Union of India)** AIR 1958 SC 36 has considered the law regarding the protection afforded to public servants under Article 311 of the Constitution of India and summarised the position as follows:

"In the absence of any special contract, the substantive appointment to a permanent post gives the servant so appointed the right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure

cannot be put an end during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases, the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi permanent service."

11. The very fact that the appointment of the petitioner was temporary brings him under a class separate from those in permanent service and such an employee cannot necessarily claim all the advantages which a permanent employee has in the matter of security of service.

12. The definite stand taken by the respondent Corporation is that the order disengaging the petitioner was on account of illegal, unscrupulous and fraudulent activities in discharging his functions and duties. The petitioner being a daily wage employee, it was not necessary to follow the procedure for termination of service as in the case of a regular employee. It can be seen from Ext.P5 order that it was issued considering the

entire facts and circumstances. The reasons for disengaging the petitioner is also stated in Ext.P5. An opportunity of being heard was also given to the petitioner. Therefore, this Court is of the definite view that the petitioner cannot claim any special protection and therefore, he is not entitled to get the relief as prayed for.

In the result, this writ petition fails and accordingly, it is dismissed.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE