

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 24701 of 2009 (G)

PETITIONER(S):

**P.K.NARAYANAN, S/O.SANKARAN,
AGED 60 YEARS, PUTHIYADATH THAZHAKUNIYIL HOUSE
MEPPAYIL, VATAKARA TALUK, KOZHIKODE DISTRICT
KERALA STATE.**

**BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY**

RESPONDENT(S):

- 1. THE SECRETARY,
VATAKARA MUNICIPALITY, VATAKARA.**
- 2. VATAKARA MUNICIPAL COUNCIL WITH
ADDRESS FOR SERVICE-THE CHAIRMAN
VATAKARA MUNICIPAL COUNCIL, VATAKARA.**
- 3. NAGARA KARYA DIRECTOR,
LOCAL SELF GOVERNMENT (E.U) DEPARTMENT
THIRUVANANTHAPURAM.**
- 4. STATE OF KERALA-WITH ADDRESS FOR
SERVICE-SECRETARY, LOCAL SELF GOVERNMENT
THIRUVANANTHAPURAM.**

BY SR.GOVERNMENT PLEADER SRI.K.K.SAITHALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C).No. 24701/2009

APPENDIX

PETITIONER(S)' EXHIBITS

P1. COPY OF THE RESULT PROCEEDINGS OF THE COMMISSIONER, VATAKARA MUNICIPALITY CITING APPOINTMENT AND JOINING OF THE WRIT PETITIONER.

P2. COPY OF THE PROCEEDINGS OF R4 DTD.22.3.1991.

P3. COPY OF THE PROCEEDINGS OF THE MUNICIPAL COMMISSIONER, VATAKARA DTD. 17.9.91.

P4. COPY OF THE PROCEEDINGS OF THE HEALTH SUPERVISOR, VATAKARA MUNICIPALITY DTD.16.9.2003.

P5. COPY OF THE LETTER BY R1 TO R4 THROUGH R3 DTD.17.4.2007.

P6. COPY OF THE MINUTES OF THE PROCEEDINGS BY R2.

P7. COPY OF THE PROCEEDINGS BY R3 DTD.15.9.2008.

P8. COPY OF THE PENSION PAYMENT ORDER OF THE WRIT PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL.

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P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).No. 24701 of 2009

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Dated this the 27th day of March, 2015

J U D G M E N T

The writ petitioner was appointed as Lorry Cleaner on temporary basis by the 2nd respondent Vadakara Municipality with effect from 8.3.1982 as per Ext.P-1 proceedings. The said post was included in the contingent employment and the petitioner was appointed as Lorry Cleaner by Ext.P-3 proceedings dated 17.9.1991 issued by the 1st respondent (Secretary of the Vadakara Municipality). By Ext.P-5 letter dated 17.4.2007, the respondent Vadakara Municipality recommended to the 3rd respondent Director of Urban Affairs (Nagara Karya Director), Government of Kerala, to reckon the petitioner's service from 8.3.1982 to 10.4.1991 and this was followed by Ext.P-6 resolution of the respondent Vadakara Municipality in that regard. The petitioner retired from service on 30.3.2008. The 3rd respondent Director of Urban Affairs has, by the impugned Ext.P-7 order dated 17.9.2008, rejected the request contained in Exts.P-5 and P-6. It is in the light of the above facts and circumstances that the petitioner has filed the instant Writ Petition with the following prayers:

- “i) issue a writ of certiorari or other suitable writ or order quashing the original of exhibit P7 to confer benefits of temporary service for the period 8.3.1982 to 10.4.1991 to the writ petitioner.
- ii) to direct the 3rd respondent by a writ of mandamus or other suitable writ or order to cause necessary changes in exhibit P8 by including the service for the period 8.3.1982 to 10.4.1991.
- iii) to declare by a suitable writ or order that the writ petitioner is entitled to have his temporary service for the period 8.3.1982 to 10.4.1991 to reckon for the purpose of pension benefits under pension payment order exhibit P8;
- iv) to make such other writ or order, which the Hon'ble High Court of Kerala deems fit in the circumstances of the case.”

2. According to the petitioner, he is entitled to have the temporary service also reckoned for the period from 8.3.1982 to 10.4.1991 for reckoning his pensionary benefits in view of the mandatory provisions contained in Rule 14A of the Kerala Service Rules Part III, which has been statutorily adopted by Rule 4 of the Kerala Municipality (Employees Death-Cum-Retirement Benefits) Rules 1996. It is further stated that Ext.P-8 pension payment order has been issued without reckoning the above temporary service of the writ petitioner referred to in Exts.P-5 and P-6.

3. The main ground urged by the writ petitioner is that in view of the mandatory provisions contained in Rule 14A of Part III KSR, the request made in Exts.P-5 and P-6 is liable to be allowed by the 3rd respondent and the temporary service from 8.3.1982 to

10.4.1991 is liable to be reckoned for pensionary benefits in terms of Rule 14A. It is further stated that by Rule 4 of the Kerala Municipality (Employees Death-Cum-Retirement Benefits) Rules 1996, the provisions of the Kerala Service Rules Part III are applicable to the municipal employees like the petitioner.

4. Heard Sri.R.Parthasarathy, the learned counsel for the writ petitioner and learned Senior Government Pleader appearing for the official respondents 3 and 4.

5. Rule 14A of Part III KSR reads as follows:

“Rule 14A. Contingent employees absorbed in regular establishment will be allowed to count 50 per cent of the contingency service for purpose of pension:

Provided that this rule will apply to cases of retirements from 2nd September 1957 only (irrespective of the date of absorption of such employees into regular establishment)

In cases of retirements on or after 1st April 1968 the entire full-time contingency service will count for pension.

Explanation.- Periods of officiating/temporary service in regular establishment and/or periods of Works Establishment service interposed between periods of contingency service will be treated as Contingency Service.”

6. It is seen that the impugned Ext.P-7 order has been passed by the 3rd respondent Director of Urban Affairs without adverting to the said statutory provisions contained in Rule 14A of KSR Part III. In the circumstances, the impugned decision taken in Ext.P-7 is quashed and the matter is remitted to the 3rd respondent-

Director of Urban Affairs. The 3rd respondent-Director of Urban Affairs is directed to take into consideration the request contained in Exts.P-5 and P-6 afresh and consider the applicability of Rule 14A in the facts and circumstances of this case and pass appropriate orders within a period of six weeks from the date of production of a certified copy of this judgment. The 3rd respondent shall keep in mind the fact that the petitioner was a Lorry Cleaner in the respondent Vadakara Municipality, who retired from service as early as on 30.4.2008. The 3rd respondent shall bestow his anxious consideration to the case of the petitioner taking into consideration the above statutory provision and with all sympathies due to a retired low paid Municipal contingent employee like the petitioner. The orders passed by the 3rd respondent shall be communicated by registered speed post to the 1st respondent Secretary of the Vadakara Municipality and to the writ petitioner.

Based on the decision so taken by the 3rd respondent, it is further ordered that request of the petitioner for necessary revision of Ext.P-8 pension payment order may also be considered by the 3rd respondent and orders, if necessary, in that regard may also be issued by the 3rd respondent and/or the 1st or 2nd respondent, as the

case may be, within a further period of 6 weeks. This shall also be duly communicated to the petitioner and the consequential revised terminal benefits, if any, shall also be sanctioned and disbursed to the petitioner, within a further period of 6 weeks.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

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ALEXANDER THOMAS, JUDGE

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P.S. to Judge