

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 30379 of 2007 (N)

PETITIONER :

RAIHNA A., W/O. G.ABDUL SALAM,
U.D.CLERK, SREE VIDYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE
NEMOM, THIRUVANANTHAPURAM.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.RAJAN VELLOTH
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
3. SREE VIDYADHIRAJA VIDYA SAMAJAM,
CHETTIKULANGARA, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY.
4. THE PRINCIPAL AND CONTROLLING OFFICER,
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE, IRANIMUTTOM
THIRUVANANTHAPURAM-9.
5. THE PRINCIPAL,
SREE VIDYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE, NEMOM
THIRUVANANTHAPURAM.

R BY SR.GOVERNMENT PLEADER SRI.E.M.ABDULKHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPOINTMENT ORDER DATED 2.4.97 ISSUED TO THE PETITIONER

EXT.P2 : COPY OF THE PROMOTION ORDER DATED 1.4.02 ISSUED TO THE PETITIONER

EXT.P3 : COPY OF THE GOVERNMENT ORDER G.O.(MS)NO.184/2003/H & FWD DATED
03.09.03

EXT.P4 : COPY OF THE SAID GOVERNMENT ORDER G.O(MS) NO.203/2006/H&FWD DATED
22.9.2006

EXT.P5(a) : COPY OF THE APPLICATIONS FOR MEDIAL LEAVE WERE SUBMITTED ON
13.11.06 ALONG WITH MEIDAL CERTIFICATE

EXT.P5(b) : COPY OF THE APPLICATIONS FOR MEDICAL LEAVE WERE SUBMITTED ON
27.11.06 ALONG WITH MEDICAL CERTIFICATE

EXT.P5(c) : COPY OF THE APPLICATIONS FOR MEDICAL LEAVE WERE SUBMITTD ON
29.11.06 ALONG WITH MEDICAL CERTIFICATE

EXT.P6 : COPY OF THE REPRESENTATION DATED 13.8.2007

EXT.P7 : COPY OF THE LETTER DATED 2.8.2007 ISSUED BY THE STATE PUBLIC
INFORMATION OFFICER OF THE HEALTH DEPARTMENT, GOVERNMENT OF KERALA

EXT.P8 : COPY OF THE REPRESENTATION DATED 26.5.2007

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.30379 of 2007

Dated this the 19th day of January, 2015

J U D G M E N T

The petitioner has filed this writ petition seeking the following reliefs :

- i) Declare that the action of the 5th respondent in transferring the petitioner, who is a regular employee in the 5th respondent college, under the direct payment scheme, to a private hospital under the management of the 3rd respondent is illegal.
- ii) Issue a writ of mandamus or any other appropriate writ, direction or order, directing the respondents to ensure that the petitioner is forthwith transferred back to Sree Vidyadhiraja Homeo Medical College.
- iii) Issue a writ of mandamus or any other appropriate writ, direction or order, directing the respondents to release the salary for the period from October to December 2006, and
- iv) Issue such other reliefs as this Honourable Court may deem fit and proper in the circumstances of this case.

2. The petitioner while working as an Upper Division Clerk in the 5th respondent College was transferred to a private hospital under the 3rd respondent on 16.05.2007. According to the petitioner, she was not liable to be so transferred, considering the fact that, she was drawing Government salary from the 5th respondent College. The hospital under the 3rd respondent was not an establishment in respect of whose employees the Government had any liability to pay salary. The petitioner had therefore taken leave. However, her salary for the said

period was withheld. Therefore, she had submitted Ext.P6 representation also.

3. This writ petition was admitted on 15.10.2007. But no interim order was granted.

4. A counter affidavit has been filed on behalf of respondents 1 and 2. The stand of the Government is that, the appointment of the petitioner was irregular and that, she did not possess the qualification necessary for such appointment. As per the staff pattern, there was also no post of UD Clerk in the College. The case of the Government is that, it was to get the benefit of the Direct Payment System introduced by the Government that, she was transferred to the 3rd respondent hospital. Therefore, she is eligible to service benefits only from the date of introduction of the Direct Payment System in the hospital. Paragraph 5 of the counter affidavit reads as follows :

“5. Regarding the averments in Paragraph 8 it is submitted that salary for those days attended by the petitioner for the month of October, November and December had been disbursed to the petitioner as in Bill Nos. 1) 64/EPB/06-7 2) 65/EPB/06-07 and 66/EPB/06-07 respectively dated 02.02.07. Direction has been given to the Principal, Sree Vidyadhiraja Homoeo College (5th respondent) by the 4th respondent to obtain the eligible leave application other than casual leave in form No.13 from the petitioner and to disburse salary to her accordingly. Exhibit P6 representation of the petitioner has been forwarded to the 4th

respondent on 30.08.07 for necessary action. No action is pending with Government in connection with the above representation.”

5. In view of the above statements made in the counter affidavit, I do not find it necessary to issue any further directions in the matter. The petitioner has been granted the benefits to which she was entitled to.

In view of the above, this writ petition is dismissed recording the statements made in the counter affidavit filed on behalf of respondents 1 and 2, extracted hereinabove.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV