

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 25476 of 2014 (H)

PETITIONERS:

1. RAJESH BABU P, S/P.PARAMESWARAN NAIR,
AGED 37 YEARS, DRIVER, STATE INSTITUTION OF
RURAL DEVELOPMENT, ETC (P.O),
KOTTARAKKARA, KOLLAM RESIDING AT
ANJANAM, THRIKKANNAMANGAL,
KOTTARAKKARA- 691 531.
2. RAJEEV R, S/O.RAGHAVAN, AGED 37 YEARS,
WATCHMAN, STATE INSTITUTION OF RURAL
DEVELOPMENT, ETC (PO),KOTTARAKKARA,
KOLLAM RESIDING AT KONNANPARAMBIL,
THULAMPARAMBU, HARIPPAD - 690 514.
3. VENUKUMARAN NAIR, S/O.RAMAN NAIR,
AGED 50 YEARS, COOK, STATE INSTITUTION
OF RURAL DEVELOPMENT, ETC (P.O),
KOTTARAKKARA, KOLLAM RESIDING AT
CHERIYATHUPUTHEN VEEDU, PARAKKARA (PO)
PATHANAMTHITTA.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY SECRETARY,
TO GOVERNMENT, DEPARTMENT OF RURAL
DEVELOPMENT, SECRETARIATE,
THIRUVANANTHAPURAM - 695 001.
2. THE COMMISSIONER, COMMISSIONARATE OF
RURAL DEVELOPMENT, THIRUVANANTHAPURAM.
3. STATE INSTITUTION OF RURAL DEVELOPMENT
REPRESENTED BY ITS DIRECTOR ETC (PO),
KOTTARAKKARA, KOLLAM.
4. THE CHAIRMAN, STATE INSTITUTION OF RURAL
DEVELOPMENT, ETC(PO), KOTTARAKKARA, KOLLAM.

R1-R3 BY SRI. P.P. PADMALAYAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- | | |
|--------|--|
| EXT.P1 | COPY OF THE MINUTES OF THE MEETING OF THE GOVERNING BODY OF THE 3RD RESPONDENT HELD ON 25/3/2013 |
| EXT.P2 | COPY OF THE COMMUNICATION DATED 6/6/2013 SUBMITTED BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT |
| EXT.P3 | COPY OF THE COMMUNICATION DATED 4/10/2013 ISSUED BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT |
| EXT.P4 | COPY OF THE COMMUNICATION DATED 4/10/2013 ISSUED BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT |
| EXT.P5 | COPY OF THE COMMUNICATION DATED 20/3/2014 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT |
| EXT.P6 | COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 10/4/1990 |
| EXT.P7 | COPY OF THE PROPOSAL FOR REGULARIZATION DATED 27/09/99. |

RESPONDENT(S)' EXHIBITS:NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.
= = = = =
W.P.(C).No.25476 of 2014
= = = = =
Dated this the 11th day of August, 2015

JUDGMENT

The petitioners are temporary employees working in the State Institute of Rural Development, Kottarakkara, which is an autonomous body functioning under the 1st respondent State. They were engaged as driver, watch man and cook respectively. The 1st respondent was initially engaged from 01.10.2000 onwards, the second petitioner from 26.12.2001 and the 3rd petitioner as kitchen assistant from 1999 and as cook from 31.05.2008 on contract basis. It is the case of the petitioners that there were vacancies in the post of driver, watchman and cook in the 3rd respondent and that the Governing Body of the 3rd respondent has, by Ext.P1 resolution dated 25.03.2013, decided to regularise the services of the petitioners against the posts held by them. It is submitted that by virtue of the memorandum of association and by-laws of the 3rd respondent which are approved by the Government, the Executive committee and the Governing Body of the institute are vested with the power to

make appointments and for creation and sanctioning of posts as well. It is stated that the Director is the appointing authority under the rules in respect of posts in Class III and Class IV category.

2. When Ext.P1 resolution along with Ext.P2 proposal of the director was forwarded to the Government pointing out that regularisations had been done earlier in 1990 and 1991 in exercise of the powers conferred on the institute by the by-laws and rules framed in accordance with law, the Government proceeded to reject the proposal on the ground that no standing Government Orders are available for regularising the daily wages/contract employees. Pursuant to Ext.P3 order of rejection dated 29.02.2013, it is seen that the Director had again taken up the matter with the Government by letter dated 04.10.2013 pointing out that the memorandum of association and by-laws of the institute had been approved by the Government and that service rules had been framed by the Executive Committee as early as on 28.07.1988 and regularisation of employees had been done twice earlier on the basis of the power conferred by the by-laws and the rules. The Director had therefore sought sanction

for proposal of regularisation of the petitioners. However, by Ext.P5 order dated 20.03.2014, the Government rejected the request made by the Director stating that the matter of regularisation of persons working on daily wage basis cannot be considered as there were no standing Government Orders available for regularising daily wage/contract employees.

3. Heard Sri.C.Unnikrishnan, learned counsel appearing for the petitioners and learned Government Pleader appearing for the respondents. It is submitted by the learned counsel for the petitioners that the 3rd respondent itself is vested with the power to create posts and to make appointments in accordance with the service rules. In case of the necessity of any deviation from the rules also, it is submitted that the Executive Committee and the Governing Body have ample power to decide such matters. The petitioners are persons who have been working in the institute for considerable length of time. The Director being the appointing authority in respect of the posts held by them has clearly recommended the regularisation of their services. It is pointed out by the learned counsel for the petitioner that earlier instances of regularisation have been approved by the 3rd

respondent exercising powers available to it. It is contended that the reference of the proposal to the Government was not necessary in view of the clear provision of the by-laws and the service rules of the 3rd respondent.

4. Learned Government Pleader appearing on behalf of the respondents on the other hand submits that there is no specific provision contained in the by-laws or the service rules providing for the regularisation of daily wage/contract employees. It is also submitted that since no standing orders are available for regularising the petitioners, the proposal for their regularisation cannot be accepted. It is stated in the counter affidavit filed on behalf of the 2nd respondent that the 3rd respondent is an autonomous body registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955. It is also stated that the Governing Body had decided to regularise the petitioners but had referred the decision for the sanction of the Government.

5. The facts of this case are not in dispute, that the petitioners have been working on daily wage basis or on contract basis pursuant to appointments made by the Director is admitted

in the counter affidavit also. It is also admitted in the counter affidavit that there are vacancies in the posts of driver, watchman as well as cook. One post of driver is said to be lying vacant from 13.11.2012. The Director had stated in Ext.P4 that a further vacancy was to arise in 2014. The vacancy of cook is in existence from 01.05.2008 and the 2nd petitioner is being engaged against one vacant post of watchman in the institute from 26.12.2001. It is also not in dispute that the governing body of the institute presided by the Minister for Local Self Government had taken a resolution as early as on 25.03.2013 to regularise the daily waged employees. No objection has been raised by the Government with regard to the eligibility of the petitioners or their qualifications for appointment against the post. It is after considering the desirability of making appointments by regularisation that Ext.P1 resolution has been adopted by the Governing Body. It is also not in dispute that the Director is the appointing authority in respect of the posts now held by the petitioners.

6. In the above circumstances, the rejection of the proposal by the Government on the ground that no standing orders are

available for regularisation of the petitioners is unwarranted and unjustified. As a matter of fact, as the earlier regularisations had been carried out by the 3rd respondent itself. Going by the provisions of the by-laws and the service rules framed by the third respondent, the permission or sanction of the Government for the proposal does not appear to be required. The power of the Government to issue orders refusing sanction for appointment to the posts to which the governing body has decided that the petitioners are eligible to be regularised is also not clear and is not pleaded before this Court.

7. In the above circumstances Ext.P3 and P5 are set aside. The 3rd respondent Director is directed to take further steps in accordance with Ext.P1 resolution for regularisation of the services of the petitioners. Final orders in this regard shall be passed within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Anu Sivaraman, Judge

sj