

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

W.P.(C).No.26007 of 2014 (A)

PETITIONER(S):-

1. KSHEERA VYAVASATAMAZDOOR SANGH (BMS),
ALAPPUZHA, REPRESENTED BY ITS GENERAL SECRETARY,
P. YESHODHARAN
2. AKHILANANDAN D,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT KALLOPARALIL, PUNNAPRA PO,
ALAPPUZHA - 4.
3. PRADEEP T P.,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT THUNDATHIL (AYYANPARAMBU)
PUNNAPRA PO, ALAPPUZHA - 4.
4. SHAJI S
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT MOOPPANVELIYIL,
PUNNAPRA NORTH, PARAVOOR PO, ALAPPUZHA.
5. SASI T,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT VADAKEVALAPPIL,
PARAVOOR PO, ALAPPUZHA.
6. RAJESH R
PLANT ATTENDER III GRADE, UNIT PRODUCTION
KOLLAM DAIRY, RESIDING AT VELUTHEDATHEPARAMBIL,
VANDANAM PO, ALAPPUZHA - 5.
7. MANIKANDAN NAIR
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT KATTILPARAMBU
VANDANAM PO, ALAPPUZHA - 5.

8. RAJENDRAN,
PLANT ATTENDER III GRADE, UNIT PRODUCTION
KOLLAM DAIRY, RESIDING AT ERUPATHIL CHIRAYIL, PUNNAPRA
ALAPPUZHA 4
9. SUDHEVAN C
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT CHIRAYIL VELI
PUNNAPRA NORTH, PARAVOOR PO, ALAPPUZHA.
10. LALU S,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT KARAPARAMB
PUNNAPRA (S), PARAVOOR PO, ALAPPUZHA,
11. SHIBU S,
PLANT ATTENDER III GRADE, UNIT PRODUCTION
KOLLAM DAIRY, RESIDING AT PUTHEVELIYIL, PUNNAPRA NORTH,
PARAVOOR PO, ALAPPUZHA.
12. JAYAMON P,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT PUTHENTHAYIL, PUNNAPRA PO,
ALAPPUZHA.
13. SINANUDHEN,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT MOORIKULAM
AVALOOKUNNU PO, ALAPPUZHA.
14. ABHILASH P,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT NADUVILAMURI,
VANDANAM PO, ALAPPUZHA -5.
15. SASEENDRAN B,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT THUNDUPARAMBIL, PUNNAPRA PO,
ALAPPUZHA.
16. ANILKUMAR P,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT AMBADI, PUNNAPRA PO
ALAPPUZHA.
17. SANKAR U,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
PATHANAMTHITTA DAIRY, RESIDING AT SALINI BHAVAN,
THOTTAPPALLY,ALAPPUZHA.

18. ANILKUMAR A,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT KARAPARAMBIL
PUNNAPPRA NORTH, PARAVOOR PO, ALAPPUZHA.
19. SAJIMON A,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT VELUTHEDATH PARAMBU,
VANDANAM PO, ALAPPUZHA-5.
20. SANTHOSH KUMAR P,
PLANT ATTENDER III GRADE, UNIT PRODUCTION,
KOLLAM DAIRY, RESIDING AT SANTHOSH BHAVANAM
VANDANAM PO, ALAPPUZHA-5.

BY ADVS.SRI.K.RAMAKUMAR (SENIOR ADVOCATE)
SMT.ASHA BABU
SMT.AMMU CHARLES
SRI.G.RENJITH
SRI.S.M.PRASANTH.

RESPONDENT(S):-

- * 1. [THIRUVANANTHAPURAM RURAL CO-OPERATIVE
MILK PRODUCERS UNION (TRCMPU) LTD.] - CORRECTED AS
"TRIVANDRUM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LIMITED"
KSHEERA BHAVAN, PATTOM, THIRUVANANTHAPURAM - 695 004
REPRESENTED BY ITS MANAGING DIRECTOR.

* [THE NAME OF THE FIRST RESPONDENT IN THE CAUSE TITLE CORRECTED
"TRIVANDRUM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LIMITED"
AS PER ORDER ON I.A.NO.15875 OF 2014 DATED 20.01.2015]

2. THIRUVANANTHAPURAM RURAL CO-OPERATIVE
MILK PRODUCERS UNION (TRCMPU) LTD.,
ALAPPUZHA UNIT, ALAPPUZHA - 688 001,
REPRESENTED BY ITS MANAGER

3. DISTRICT LABOUR OFFICER,
ALAPPUZHA - 688 004.

4. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO DEPARTMENT OF AGRICULTURE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001

R1 & R2 BY ADV. SRI.P.N.MOHANAN
R3 & R4 BY SENIOR GOVERNMENT PLEADER SRI.T.J.MIHAEL.

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

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1 : TRUE COPY OF THE AGREEMENT DATED 01.03.2011 ENTERED INTO BETWEEN THE TRADE UNIONS AND THE MANAGEMENT.
- EXHIBIT P2 : TRUE COPY OF THE NOTIFICATION ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 : TRUE COPY OF THE REPRESENTATION DATED 04.09.2013 SUBMITTED BY THE 1ST PETITIONER BEFORE R1.
- EXHIBIT P4 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE R3.
- EXHIBIT P5 : TRUE COPY OF THE ORDER DATED 23.06.2014 ISSUED BY THE KERALA STATE HUMAN RIGHTS COMMISSION.
- EXHIBIT P6 : TRUE COPY OF THE AGREEMENT DATED 07.02.2011 ENTERED INTO BETWEEN THE TRADE UNIONS AND THE MANAGEMENT.
- EXHIBIT P7 : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 3RD PETITIONER.
- EXHIBIT P7(a) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 3RD PETITIONER.
- EXHIBIT P7(b) : TRUE COPY OF PAY SLIP ISSUED BY THE PATHANAMTHITTA DAIRY, TRCMPU LTD. TO THE 5TH PETITIONER.
- EXHIBIT P7(c) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 6TH PETITIONER.
- EXHIBIT P7(d) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 7TH PETITIONER.
- EXHIBIT P7(e) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 9TH PETITIONER.
- EXHIBIT P7(f) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 11TH PETITIONER.
- EXHIBIT P7(g) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 15TH PETITIONER.
- EXHIBIT P7(h) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY, TRCMPU LTD. TO THE 16TH PETITIONER.

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EXHIBIT P7(i) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY,
TRCMPU LTD. TO THE 18TH PETITIONER.

EXHIBIT P7(j) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY,
TRCMPU LTD. TO THE 19TH PETITIONER.

EXHIBIT P7(k) : TRUE COPY OF PAY SLIP ISSUED BY THE KOLLAM DAIRY,
TRCMPU LTD. TO THE 20TH PETITIONER.

RESPONDENT(S)' EXHIBITS

EXT.R1A TRUE COPY OF THE STAFF FIXATION ORDER DATED 2.8.2014.

vku/

(true copy)

K. Vinod Chandran, J

W.P.(C).No.26007 of 2014-A

Dated this the 20th day of January, 2015

JUDGMENT

The petitioners are contract employees, who claim appointment on the basis of Exhibit P1 settlement arrived at between the management and the representative Unions, before the District Labour Officer. The claim of the petitioners arise from the fact that they had been working as Milk Collection Agents. Subsequently when the respondents 1 and 2 had acquired vehicles with chilling units, the petitioners, the Milk Collection Agents, had become redundant and, hence, the petitioners were rendered unemployed. In such circumstance, there was a dispute raised, which was first conciliated by the District Collector, as is evident from Exhibit P6. Pursuant to Exhibit P6, as recorded therein, the management and representative Unions were before the District Labour Officer, wherein Exhibit P1 agreement was entered into. The petitioners emphasise their right under clause-4 of the said agreement, which stipulates that when a permanent vacancy arises under the Dairies, then the petitioners would be considered preferentially for

appointment to such vacancies. The petitioners allege that the respondents 1 and 2 have not complied with the said agreement when issuing notification under Exhibit P2.

2. Exhibit P2 is a notification issued, admittedly, on 09.08.2013, wherein 69 persons are sought to be appointed in the post of Plant Attender Grade III. The petitioners contend that they ought to have been appointed in the available vacancies as per the settlement at Exhibit P1. Admittedly the petitioners are also working as Plant Attender Grade III as of now.

3. The respondents 1 and 2 have filed a counter affidavit, specifically contending that by Exhibit R1A, the staff fixation order of the respondents, has been revised and the Government of Kerala has directed that out of the substantive vacancies *inter alia* of Plant Attenders Grade III, 60% of the vacancies would be filled up on permanent basis and the 40% would be set up for contract employees. It is the specific contention of the respondents that the petitioners are all, at present engaged as Plant Attender Grade III, in the 40% vacancies so set apart in Exhibit R1A. It is also seen from the cause title of the writ petition that the petitioners 2 to 20 style themselves as Plant Attender Grade II of the respondent-employer.

4. It is to be noticed that the notification at Exhibit P2 was issued on 09.08.2013 and the petitioners chose to approach this Court on 07.10.2014. By that time, considerable time had elapsed and the selection process had commenced and continued. It is submitted that as on today the appointment orders have been issued to sixty persons and what remains is only their joining. The delay in approaching this Court would stand against the petitioners.

5. The petitioners would contend that on the strength of Exhibit P1 agreement, petitioners ought to have been permitted to apply for the vacancies as notified in Exhibit P2, on the basis of the preferential claim set up. It is to be noticed that the petitioners are continuing as Plant Attenders Grade III. The respondents contend that it is contractual employment as per Exhibit R1A. The petitioners, however, would assert that their employment even now is as per Exhibit P1 agreement and they ought to have been regularised in the said post when vacancies arose, granting them a preferential treatment.

6. As things stand now, definitely it has to be noticed that there is a revision of vacancies and there are available vacancies, of which 60% is attempted to be filled up on the basis of Exhibit P2

notification. The 40% of the vacancies are continued to be appointed from contractual employees as per Exhibit R1A. Hence, the existence of vacancies as sanctioned is evident from Exhibit R1A. The question then would be as to whether the petitioners, who are continuing in such posts as contractual employees on the strength of Exhibit P1 agreement, would be entitled to regularisation. That would be an issue which could be raised in a dispute raised before the appropriate forum.

The writ petition would stand closed, without prejudice to the right of the petitioners to initiate appropriate proceedings before the appropriate forum.

Sd/-
K.Vinod Chandran,
Judge

vkul/-

(true copy)