

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 29176 of 2011 (V)

PETITIONERS:

1. **MANOJ T.V**
THAZHATHEKUDIYIL HOUSE, SNDP ROAD, MUVATTUPUZHA.
2. **E.K.SUBASH,**
EDAPARAMBIL HOUSE, KOOTHATTUKULAM.
3. **GIRIJA.K.A.,**
KAROTTUKUNNEL HOUSE, MARADI SOUTH.P.O., MARADI.
4. **E.M.ALICE,**
THEKKECHERIYIL, MAVOLIMATTAM, MAMALLUR.
5. **SATHI.K.C.,**
PAYIPRA WEST, THRIKULATHUR, MUVATTUPUZHA.

Addl. 6. SUGATHAN V.G, AGED 45 YEARS
S/O.V.A.GOVINDHAN, RESIDING AT VELAMPARAMBIL HOUSE
PERUMBELLOOR PO., MUVATTUPUZHA - 673 004.

ADDL.6TH PETITIONER IS IMPEADED AS PER ORDER DATED 17.06.2015 IN
IA 7464/15.

BY ADVS.SRI.ABDUL JALEEL.A
SMT.M.A.SULFIA
SRI.NIDHI BALACHANDRAN
SRI.SABU GEORGE

RESPONDENTS:

1. **MUVATTUPUZHA MUNICIPALITY**
REPRESENTED BY ITS SECRETARY, MUVATTUPUZHA. 686 661
2. **THE SECRETARY,**
MUVATTUPUZHA MUNICIPALITY, MUVATTUPUZHA. 686 661
3. **THE DIRECTOR OF MUNICIPALITIES,**
LOCAL SELF GOVERNMENT DEPARTMENT
THIRUVANANTHAPURAM.

4. THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM. 695001
5. A.K.ELDOSE, S/O.KURIAKOSE,
AKKATHADATHIL HOUSE, KARIAMATTAM, AYAVANNA.P.O.
MUVATTUPUZHA. 686 676
6. K.S.ANILKUMAR,
KOCHERIKUDIYIL, ENANELLOOR.P.O., KALAMPOORE
ANCHELPETTY. 686 673
7. JOBY THOMAS,
KALYARUMALAYIL HOUSE, KAVAKADU.P.O., KAVAKKADU. 686 668
8. JINEESH VARGHESE,
KALYARUMALAYIL HOUSE, KAVAKADU.P.O., KAVAKKADU. 686 668
9. SANTHA THANKAPPAN,
KOMBANAL, MUDAVOOR.P.O., VAZHAPPILLY. 686 669
10. JAZEELA.E.,
EARETHAL, MUDAVOOR.P.O., VAZHAPPILLY. 686 669
11. REETHA VISWAMBARAN,
KONJIRAVELI, PUTHANPURAYIL, MUDAVOOR.P.O.
VAZHAPPILLY. 686 669
12. K.N.SIVAN,
KONNACKAL, NORTH MARADI.P.O., MARADI. 686 673
13. RAMLA SHAMSUDHEEN,
KATTAMPAKKIL, ENANELLOOR.P.O., KALAMPOORU. 686 673
14. M.K.VARGHESE,
ANICHUVATTIL HOUSE, MUDAVOOR.P.O., VAZHAPPILLY. 686 669

R6-11 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

R6-11 BY ADV. SRI.PRASANTH M.P

R5 BY ADV. SRI.T.KURIAKOSE PETER

R3 & 4 BY ADV. GOVERNMENT PLEADER

BY SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- P1 : TRUE COPY OF THE LIST OF SUBSTITUTED CONTINGENT EMPLOYEES MEETING HELD ON 13.4.2010
- P2 : TRUE COPY OF THE MINUTES OF THE MUNICIPAL COUNCIL MEETING HELD ON 13.4.2010
- P3 : TRUE COPY OF THE JUDGMENT DATED 12.10.2010 IN W.P.(C) NO.31188 OF 2010 OF THIS HON'BLE COURT
- P4 : TRUE COPY OF THE NOTICE NO.G211086/2010 13.09.2011 OF THE RESPONDENT'S COUNCIL
- P5 : TRUE COPY OF THE LETTER DATED SUBMITTED BY THE MEMBER OF THE WELFARE STANDING COMMITTEE OF THE RESPONDENT MUNICIPALITY
- P6 : TRUE COPY OF THE LETTER DATED 3.8.2011 SENT BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT
- P7 : TRUE COPY OF G.O.(MS) 14/82/LBR DATED 22.4.1982
- P8 : TRUE COPY OF THE ORDER DATED 25.08.2012 IS OP 295/2012 BEFORE OMBUDSMAN FOR LOCAL SELF GOVERNMENT
- P9 : TRUE COPY OF THE COUNCIL NOTICE G2 11086/10 DATED 24.09.2012
- P10 : TRUE COPY OF THE OBJECTION DATED 29.09.2012
- P10(A) : TRUE COPY OF THE OBJECTION BY 1ST AND 2ND PETITIONERS
- P11 : TRUE COPY OF THE ORDER DATED 1.10.2012 IN P.H-19063/11
- P12 : TRUE COPY OF ORDER DATED 20.12.2012 IN P.H-19063/11
- P13 : TRUE COPY OF THE REPRESENTATION DATED 12.6.2013 FILED BEFORE THE MINISTRY TO LOCAL SELF GOVERNMENT
- P14 : TRUE COPY OF GOVERNMENT ORDER (RT)NO.2550/2013/LSGD DATED 18.10.13
- P15 : TRUE COPY OF ORDER DATED 12.08.2014 IN REFERENCE NO.3/13
- P16 : TRUE COPY OF DOCUMENT Q2/33808/2012 DATED 29.06.2012

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 29176 of 2011 (V)

Dated this the 23rd day of September, 2015

J U D G M E N T

The petitioners 1 and 2 and the additional 6th petitioner are the only persons prosecuting the matter as of now. The dispute relates to the question of regularisation as contingent employees in the 1st respondent Municipality.

2. The petitioners are admittedly persons who were sponsored by the Employment Exchange and appointed as Sanitary Workers for scavenging works in the Municipality area. The respondents 5 to 14 were Daily Wage Workers appointed by the Municipality for reason of there being no contingent employees and there being no substitute workers to be appointed in the place of contingent employees.

3. The learned Standing Counsel for the Municipality explains the situation thus:

The contingent employees are appointed to the contingent establishment of the Municipality and on vacancies arising in such establishment, the substitute workers are first considered for employment, who are persons who have been sponsored by the Employment Exchange. However, there arises situations where there would be no substitute workers, and the work arrangement would have to be done each day and if there are no substitute workers, considering the expediency of the situation, Daily Wage Workers are appointed.

4. The Government in the year 2001 brought out an order dated 29.03.2001 wherein the practice of Local Self Government Institutions, engaging Daily Wage Workers without any sponsorship from the Employment Exchange, was deprecated. It was also indicated therein that a seniority list of substitute workers should be maintained; and as and when vacancies arise in the contingent establishment, the persons included in the seniority list

should be appointed taking into consideration their seniority in the list. The Daily Wage Workers could be so appointed in the contingent establishment only if there are no persons in the list prepared of the substitute workers.

5. The dispute raised herein is the regular appointment of respondents 5 to 14. The appointment allegedly made of respondents 6 to 14 now stands set aside by Ext.P14 order of the Government. Hence, they are also said to be retained as Daily Wage Workers and not absorbed to the contingent establishment as of now. In such circumstance, nothing remains to be considered with respect to them.

6. However, the 5th respondent admittedly is a Daily Wage Worker who is appointed as the Crematorium Operator. The circumstance under which the 5th respondent was appointed was an instance where there were no substitute workers ready to take up the specific employment. The need arose in the Municipality when an

electric crematorium was sought to be established. Since none of the employees sponsored by the Employment Exchange were willing to take up the duty, the 5th respondent, from among the Daily Wage Workers, having expressed his willingness, the Municipality engaged him specifically for the work and was also given training by the Company which established the electric crematorium.

7. In such circumstance, the 5th respondent's appointment is in a post in which skill is required, for which specifically he was also imparted training. Further, the learned Standing Counsel for the Municipality hands over an order across the Bar, being G.O.(R) 1387/2012/LSGD dated 18.05.2012, by which, in compliance of Ext.P3 judgment, the Municipality had directed the particular person to be included as a Daily Wage Worker in the list of substitute workers, occupying the last place, as of now. The said order has not been challenged herein. In such circumstance, there could be no interference caused to the

continuance of R5, which continuance is said to be as a Daily Wage Worker itself, but entitled to be transferred to the contingent establishment in accordance with the seniority.

8. As to the question of regularisation, the learned Standing Counsel for the Municipality submits that there is a list of substitute workers now maintained in the Municipality and the appointment to vacancies arising in the contingent establishment, would be made only in accordance with such seniority list.

Recording the aforesaid submission, the Writ Petition would stand dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE