

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 29927 of 2015 (M)

PETITIONER(S):

BHAMA K. AGED 62 YEARS
W/O. KATOOR NARAYAN PILLAI
KATOOR, KRA 126, KULASEKHARAM
THIRUVANANTHAPURAM 695 013

BY ADV. SRL.AYYAPPAN SANKAR

RESPONDENT(S):

1. BHARATIYA VIDYA BHAVAN, THIRUVANANTHAPURAM KENDRA
BHAVAN'S TOWERS, KATTU ROAD, POOJAPURA
THIRUVANANTHAPURAM 695 012
REPRESENTED BY ITS CHAIRMAN
2. CHIRMAN,BHARATIYA VIDYA BHAVAN,
THIRUVANANTHAPURAM KENDRA
BHAVAN'S TOWERS, KATTU ROAD, POOJAPURA
THIRUVANANTHAPURAM 695 012
3. SECRETARY,BHARATIYA VIDYA BHAVAN,
THIRUVANANTHAPURAM KENDRA
BHAVAN'S TOWERS, KATTU ROAD, POOJAPURA
THIRUVANANTHAPURAM 695 012
4. MANAGER, BHARATIYA VIDYA BHAVAN SENIOR SECONDARY
SCHOOL, KODUNGANOR, THIRUVANANTHAPURAM 695 013
5. CENTRAL BOARD OF SECONDARY EDUCATION
HEAD OFFICE NO.2, SHIKSHA KENDRA,
COMMUNITY CENTRE, PREET VIHAR, NEW DELHI 110 092

R BY SRI.DEVAN RAMACHANDRAN, SC, CBSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 29927/2015

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COY OF OFFICE ORDER NO. BVB/TVM/OR/T11/37 DT 4.7.2015 ISSUED Y
THE 2ND RESPONDENT
,

EXT.P2: TRUE COPY OF THE ORDER NO. BVB/TVM/LR/T/11/59 DT 29.9.2015 SERVED
ON THE PETITIONER ON 30.9.2015

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 29927 of 2015

Dated this the 01st day of October, 2015

J U D G M E N T

The petitioner is concerned with Ext.P2 order issued by the 1st respondent allegedly terminating her services as Receptionist-cum-Liaison Officer. The petitioner was appointed as a Receptionist-cum-Liaison Officer as per Ext.P1. The petitioner seeks to ventilate the grievance under Article 226, despite the respondents being not “State” as defined under Article 226 on the premise that it is permitted by the words employed in Article 226 “being other authorities”. The petitioner also relies on 1989(2) SCC 691 [Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others v. V.R Rudani and others].

2. The said decision as also a host of other decisions on the very same subject matter in 2015 (4) SCC 670 [K.K.Saksena v. International Commission on Irrigation & Drainage] in Paragraph 43, it was held that even in cases where the person or authority

against whom mandamus is sought comes under the definition “State” under Article 12 of the Constitution of India no writ would lie to enforce public law rights. It was held so:-

“Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.”

As to a body performing a public duty it was held so:

“There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed

out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In *Praga Tools Corpn. v C.A Imanual* [(1969) 1 SCC 585] as already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the employee concerned was seeking reinstatement to an office”.

3. However, this Court need not go into said issues as of now, since, the petitioner was merely appointed on a temporary basis as Receptionist-cum-Liaison Officer after the retirement of the petitioner, from the post of Teacher in Social Science. The present termination at Ext.P2 is on a valid selection being conducted and the first rank holder being appointed as

Receptionist with immediate effect. The temporary appointment at Ext.P1 specifies a period up to 31.05.2016. But, however, in the context of the appointment of a regular personnel, it cannot be said that the termination was improper and Ext.P2 casts no stigma on the petitioner. The same is only a termination simplicitor as has been held in AIR 1964 SC 449 [Jagdish Mitter v. Union of India].

In such circumstance, this Court is not inclined to exercise the extra ordinary discretionary remedy in favour of the petitioner . Writ petition would stand dismissed in limine.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

[true copy]