

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).NO. 34339 OF 2010 (N)

PETITIONER(S) :

1. GANESAN.V, S/O.VEEERAN,
MANTHAKKAD, CHITTOOR PO, PALAKKAD DIST.
2. PONNUSWAMI A, S/O.ARUMUGHAN C,
MUNICIPAL QUARTERS, CHITTOOR PO, PALAKKAD DIST.
3. RAVINCHANDRAN .S, S/O.SHANMUGHAN
PARITHIKKAVU, THATHAMANGALAM PO,, PALAKKAD DIST.
4. MANI .S, S/O.SUBRAMANIAM, ARAYAMPALLAM,
CHITTOOR P.O., PALAKKAD.
5. RAMESH A, S/O.APPASWAMI, CHENTHAMARA
NAGAR, MUNICIPAL QUARTERS, THATHAMANGALAM PO, PALAKKAD.
6. RAMESH .K, S/O.KITTAN
CHENTHAMARA NAGAR,THATHAMANGALAM PO PALAKKAD.
7. VALLIAMMA.A, D/O.APPASWAMI,
NELLIKKODE, THATHAMANGALAM PO, PALAKKAD DIST.
8. VALLIYAMMA .K,W/O.KUPPASWAMI
CHENTHAMARA NAGAR,THATHAMANGALAM PO,PALAKKAD DIST.
9. MANIKANDAN.S,
S/O.SHANMUGHAM, MANTHAKKAD, MUNICIPAL QUARTERS,,
CHITTOOR PO, PALAKKAD DIST.
10. BAIJU S, S/O.SOMAN,
NELLIKKODE, THATHAMANGALAM PO, PALAKKAD DIST.
11. MURUKESAN A, S/O.ANKAPPAN,
MANTHAKKAD, CHITTOOR PO, PALAKKAD.
12. PRAKASAN .M, S/O.MURUKESAN,
THUDUKKODE, THATHAMANGALAM PO, PALAKKAD.
13. BALAN A, S/O.ANKAPPAN,
MANTHAKKAD, MUNICIPAL QUARTERS, CHITTOOR PO, PALAKKAD
DIST.
14. PADMANABHAN, S/O.ARUNACHALAM
THEKKEGRAMAM PO, CHITTOOR , PALAKKAD DIST.
15. JAYAKUMAR M.S, S/O.MANI,
MANTHAKKAD, CHITTOOR.P.O,PALAKKAD.

WP(C).NO. 34339 OF 2010 (N)

16. SANTHAKUMARAN, PERUMKODE,
THATHAMANGALAM PO, PALAKKAD DIST.

17. CHITHRA RAJAN, W/O. RAJAN,
THOOMBICHIRA, THATHAMANGALAM PO, PALAKKAD DIST.

BY ADVS.SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA

RESPONDENT(S) :

CHITTOOR - THATHAMANGALAM MUNICIPALITY
MUNICIPAL OFFICE, CHITTUR, PALAKKAD DIST, REPRESENTED BY
ITS SECRETARY.

BY ADV. SRI.A.SREERAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .NO. 34339 OF 2010

PETITIONERS EXHIBITS:

EXHIBIT P1: COPY OF THE JUDGMENT LETTER DATED 25.8.2001.

EXHIBIT P2: COPY OF THE JUDGMENT WA.NO.1098/2007.

EXHIBIT P4: COPY OF THE PROCEEDING OF THE PALAKKAD MUNICIPALITY DATED 29.01.2009.

EXHIBIT P5: COPY OF THE REPRESENTATION FILED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT DATED 19.01.2010.

EXHIBIT P6: COPY OF THE NOTICE DATED 19.03.2010, OF THE MEETING OF THE MUNICIPAL COUNCIL OF THE CHITTUR MUNICIPALITY AND THE RELEVANT AGENDA.

EXHIBIT P7: COPY OF THE LETTER DATED 18.09.2010 OF THE MUNICIPALITY.

EXHIBIT P8: COPY OF THE REPRESENTATION FILED BY THE PETITIONERS DATED 9/12/2011.

EXHIBIT P8(A): COPY OF THE RECEIPT ISSUED BY THE RESPONDENT DATED 9/12/2011.

RESPONDENTS EXHIBITS:

EXT.R1: COPY OF THE ADDITIONAL AGENDA 7.G1.4995/2008

EXT.R1(A) SERIES: COPY OF THE LIST SHOWING THE NAMES OF THE PETITIONERS, THE PERIOD OF WORK AND THE TOTAL NUMBER OF DAYS OF WORK.

/TRUE COPY/

P.A. TO JUDGE

SKV

C.K.ABDUL REHIM, J.

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W.P.(C). No. 34339 OF 2010

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Dated this the 2nd day of March, 2015

JUDGMENT

The petitioners, 17 in number, claim that they were daily waged employees worked in the respondent Municipality from 1984 to 2004. They are claiming regularisation in the service of the respondent Municipality, based on Ext.P1 Government Order declaring that daily waged employees working in the contingent wing of the Municipalities till 31.12.2000 are eligible for regularisation. It is pointed out that, based on Ext.P1 order, a large number of daily waged employees working in different Municipalities were regularised, pursuant to the directions issued by this court in Ext.P2 judgment, which was confirmed in Ext.P3 judgment of a Division Bench in a writ appeal. Ext.P4 order is produced to show that, pursuant to Exts.P2 and P3 judgments the Palakkad Municipality had regularised

65 workers who were working on daily wage basis prior to 31.12.2000. According to the petitioners, they have approached the respondent Municipality requesting similar treatment, by submitting Ext.P5 representation, which was considered by the Municipality placing the matter before the council, as evidenced from Ext.P6. But since nothing was done on the basis of Exts.P5 and P6, the petitioners have approached this court in W.P. (C) 22307/2010 seeking direction to the Municipality to regularise the petitioners in view of Ext.P1 Government Order. As per the judgment dated 16.7.2010 this court directed the respondent Municipality to consider the representation and to pass appropriate orders. But the Municipality had rejected the claim and issued Ext.P7 proceedings stating that the petitioners have not proved the exact period during which they have worked on daily wage basis. According to the respondent most of the petitioners have worked only for few days on daily wage basis and had no continuous service as daily waged

employees. Further it is observed that none of the petitioners were appointed on daily wages basis, based on any selection from the list of candidates sponsored by the Employment Exchange. It is mentioned in Ext.P7 that, considering the financial stringencies experienced by the Municipality, regularisation of the petitioners cannot be considered. It is also mentioned that there is no sufficient work available for regularising the petitioners in the contingent services. Therefore the claim was rejected. This writ petition is filed challenging Ext.P7.

2. Contention of the petitioners is mainly on the aspect that, similarly situated other persons were regularized by the Municipality. It is contended that the petitioners are entitled for regularisation based on the decision taken by the Government in Ext.P1. It is pointed out that the respondent Municipality is still engaging daily wage workers for cleaning jobs and that the statement contained in Ext.P7 to the effect that

there is no sufficient jobs available, is not true and correct. It is further contended that the Municipality cannot refuse regularisation of the petitioners on the basis of financial stringency, because the Government have issued appropriate directions in Ext.P1 order for regularisation of daily waged contingent employees who had worked till 31.12.2000.

3. In the counter affidavit filed by the respondent it is mentioned that, the petitioners were not employed on a daily or regular basis and that they were engaged only occasionally whenever there arose need, based on local festivals and other situations in the Municipality, for doing sanitation works on daily wages. Since the petitioners were not engaged regularly to carry out any work of sanitation in the Municipality, they are not entitled for the benefits under Ext.P1 Government Order, is the contention. It is stated that, scavenging work was abolished in the Municipality since the last 20 years and there is no necessity for engagement of more

workers. The allegation that the petitioners were working from 1984 till 2004 is denied. It is also noticed that the Municipal Council had taken a decision to limit the post of sanitation workers at a strength of 17, out of which 9 posts are kept as supernumerary. The respondents have produced Ext.R1(a) list showing the details of daily wage engagements made with respect to the petitioners and others and it would indicate that none of the petitioners have worked on a regular basis for any continuous period.

4. While considering the rival contentions, this court is of the considered opinion that the petitioners have not established their claim with respect to any entitlement based on Ext.P1 Government Order. They have not produced any documents before the respondent to show that the petitioners have worked regularly on daily wage basis, in the contingency service of the Municipality for any period within the time stipulated in Ext.P1 order. Learned counsel for the

petitioners had drawn attention of this court to Ext.P6 which is the copy of notice issued for convening the meeting of the Council of the Municipality on 29-03-2010. One of the agenda noted in the said notice is with respect to approval of the seniority list of 32 workers engaged as cleaning labourers during the previous period. It is pointed out that names of all the petitioners were included in the said list of 32 workers. Therefore it is contended that the stand now taken by the Municipality that the petitioners were not engaged on a regular basis, is not true and correct. But this court is not in a position to accept the above contention, because Ext.P6 is only a notice issued convening meeting of the Council of the Municipality. Further the agenda item mentioned therein is only for approval of seniority of daily waged employees. It does not in any manner indicate that those persons included in the list are eligible to be regularised based on the conditions stipulated in the relevant Government Order. Therefore

the reasoning mentioned in Ext.P7 for rejecting their claim cannot be held in any manner illegal or unsustainable. Even in Ext.P1 Government Order, what was permitted is only regularisation of daily waged employees who were working as on 31.12.2000. The said order was issued as early as in the year 2000. It is not appropriate or reasonable for this court to order regularisation of the petitioners at this point of time, after the lapse of about 15 years. Moreover the petitioners were not successful in proving their claim with any conclusive materials to establish their entitlement for regularization.

5. Under the above mentioned circumstances the writ petition deserves no merit and the same is hereby dismissed.

Sd/-
C.K.ABDUL REHIM, JUDGE

SKV