

Jagan.a Vs. State of Kerala

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Court : Kerala

Decided On : Feb-21-2014

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : Jagan.a

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM FRIDAY, THE 21ST DAY OF FEBRUARY 2014 2ND PHALGUNA, 1935 WP(C).No. 31826 of 2013 (C)

----- PETITIONER: ----- JAGAN.A.,
AGED 41 YEARS, S/O. ARUMUGHAN, (CLR WORKER, CORPORATION OF COCHIN, CIRCLE-18), RESIDING AT SUMAJYOTHI HOUSE, PALLIPARAMBIL, SYRIAN CHURCH ROAD, ERNAKULAM KOCHI-31. BY ADVS.SRI.M.R.HARIRAJ SRI.P.A.KUMARAN SMT.VINEETHA B. SRI.NIRMAL V NAIR SMT.M.A.JINSA MOL SRI.K.RAJAGOPAL RESPONDENTS:

----- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA, DEPARTMENT OF LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM-695 001.

2. THE SECRETARY, CORPORATION OF COCHIN, KOCHI-11.

3. THE HEALTH OFFICER, CORPORATION OF COCHIN, KOCHI-11.

4. SUPERINTENDENT, HEALTH SECTION, CORPORATION OF COCHIN, KOCHI-11.

5. JUNIOR HEALTH INSPECTOR (JHI), CIRCLE NO.18, CORPORATION OF COCHIN, KOCHI-11. R1 BY SENIOR GOVERNMENT PLEADER SRI.M.A.FAYAZ R2 TO R5 BY ADV. SRI.K.P.JUSTINE(KARIPAT)SC,COCHIN CORPN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 2102-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 31826 of 2013 (C) ----- APPENDIX ----- PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 : A TRUE COPY OF G.O(RT.)NO.2569/2009/LSG DATED 0710.2009 ISSUED FOR THE 1ST RESPONDENT. EXHIBIT P2 : A TRUE COPY OF THE RELEVANT PORTION OF THE SENIORITY LIST FURNISHED TO THE PETITIONER BY REPLY DATED 1910.2010 UNDER THE RIGHT TO INFORMATION ACT. EXHIBIT P3 : A TRUE COPY OF THE REPRESENTATION DATED JANUARY, 2011 SUBMITTED BY THE PETITIONER. EXHIBIT P4 : A TRUE COPY OF THE RELEVANT PORTION OF THE REVISED SENIORITY LIST. EXHIBIT P5 : A TRUE COPY OF REPRESENTATION DATED 0605.2013. RESPONDENT(S)' EXHIBITS: ----- NIL //TRUE COPY// P.S.TO JUDGE. Msd. C.K. ABDUL REHIM, J.

----- W.P.(c) No. 31826
OF 2013----- DATED THIS THE 21st DAY OF
FEBRUARY, 2014.

JUDGMENT

The petitioner claims to be a 'Casual Labourer' working in the Corporation of Kochi with effect from 7.3.1999. When the Corporation prepared Ext. P2 combined seniority list of all contingent casual labourers, based on the directions issued in various judgments of this court and based on Ext.P1 Government Order, the petitioner's name was omitted to be included. Therefore the petitioner submitted Ext.P3 representation in January 2011. Considering the claim made, a verification was conducted and the petitioner's name was included as serial No.206 in a fresh seniority list prepared, copy of which is produced as Ext.P4. It is alleged that,

despite inclusion of the name of the petitioner in Ext.P4 the petitioner was not engaged for the works inspite he appeared before the 5th respondent on many occasions. It is alleged that many juniors included in Ext.P4 list were engaged for work overlooking seniority of the petitioner. Aggrieved by such W.P.(c) No.31826/2013 -2- action, the petitioner had submitted Ext.P5 representation before the 2nd respondent. Since the same was not considered, this writ petition is filed seeking direction for engagement of petitioner as casual labourer under he 2nd respondent, in accordance with seniority contained in Ext.P4. Inter alia the petitioner seeks absorption as a regular worker in accordance with the seniority in Ext.P4.

2. In the counter affidavit filed by the 2nd respondent it is admitted that the petitioner was included in Ext.P4 list as Sl. No.206. But it is stated that the petitioner was absent from duty for quite a long time. Therefore the matter relating to keeping his seniority as per the list prepared, is now put up for decision of the concerned Committee constituted for looking into the aspect of seniority of casual labourers, which consists of representatives of the labour unions. It is mentioned in the counter affidavit that, case of the petitioner will be submitted before the Council on receipt of decision of the committee.

3. Contention of the petitioner is that he was denied denied of employment despite inclusion of his name in W.P.(c) No.31826/2013 -3- Ext.P4 list. It is also contended that the respondents cannot unsettle the seniority without notice to him or without affording any opportunity of personal hearing. On the other hand learned Standing contended that the petitioner was absent from duty for a period of about 3 years and he cannot claim seniority on the based on the ranking position in Ext.P4 list.

4. While considering the rival contentions, this court has taken note of the fact that the petitioner was engaged only on casual basis as contingent employee, on daily wages. It is true that a seniority list was prepared for the purpose of engagement of such workers, based on the directions issued by this court and also based on the relevant Government order. But inclusion of the name in such a list itself will not confer any right on the petitioner for being engaged for any work. Specific case of the respondent Corporation is that the petitioner was absent from duty for quite

a long time. Therefore the question as to whether the engagement of workers who are juniors to the petitioner in Ext.P4 list is justified or not, is to be decided W.P.(c) No.31826/2013 -4- afresh by the committee concerned. Question whether the petitioner is entitled to keep the seniority and whether he can claim engagement on the basis of such seniority are matters which need to be decided by the Corporation. Since it is mentioned that the issue has now been placed for decision of the committee, it is only just and proper to direct the respondents to take final decision with respect to keeping of the seniority as per Ext.P4 list and with respect to his engagement, on an early basis.

5. Therefore the writ petition is disposed of directing the 2nd respondent to take an appropriate decision in the matter on the basis of Ext.P5 representation, after affording an opportunity of personal hearing to the petitioner. A decision in this regard shall be taken at the earliest, at any rate within a period of 6 weeks from the date of receipt of a copy of this judgment. Sd/- C.K. ABDUL REHIM, JUDGE.
Pmn/AMG True copy P.A to Judge

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