

Vinitha vs State of Kerala

Vinitha vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1338705

Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/5526/2022

Appellant : Vinitha

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA,
1944 WP(C) NO. 5526 OF 2022 PETITIONERS:

1 VINITHA AGED 25 YEARS D/O. VELLINGIRI, CHALAYOOR HOUSE,
CHAVADIYOOR P. O., ATTAPPADY, PALAKKAD - 678 581.
(AUXILIARY NURSE MIDWIFE - ANM) 2 SIVAKAMI AGED 26 YEARS
W/O. EASWARAN, KAVANDIKKAL OORU, KAVANDIKKAL P. O.,
ATTAPPADY, PALAKKAD - 678 581. (ANM) 3 PONNI AGED 32 YEARS
D/O. RANGAN, PETTIKKAL HOUSE, SHOLAYOOR P. O.,
ATTAPPADY, PALAKKAD - 678 581. (ANM) 4 SAKUNTHALA AGED 32

YEARS D/O. MURUKAN, KARATHOOR HOUSE, CHAVADIYOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (ANM) 5 JYOTHY AGED 23 YEARS D/O. KARA, MELE CHOOTARA HOUSE, PUDUR P. O., ATTAPPADY, PALAKKAD - 678 581. (ANM) 6 SHYAMILY AGED 28 YEARS W/O. JEO VARGHESE, KATTADIKKAL HOUSE, SHOLAYOOR P. O., VAYALUR, ATTAPPADY, PALAKKAD - 678 581. (ANM) 7 MINIMOL N. M. AGED 42 YEARS W/O. SANTHOSH, CHELAKKAVIL HOUSE, MUNDANPARA, KARARA P. O., ATTAPPADY, PALAKKAD - 678 581. (ANM) 8 BINDHU AGED 35 YEARS W/O. NANCHAN, VARAGAMPADY HOUSE, SHOLAYOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (ANM) 9 RAJITHA AGED 35 YEARS

W/O. MURUKESAN, THANICHOTTIL HOUSE, PAKKULAM, THAVALAM P. O., ATTAPPADY, PALAKKAD - 678 581. (ANM) 10 SANJAY AGED 23 YEARS S/O. RANGAN, THAZHEMANCHIKKANDY HOUSE, PALOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (BYSTANDER) 11 SIVAKUMAR AGED 29 YEARS S/O. PERUMAL, SWARNAPIRIVU HOUSE, SHOLAYOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (BYSTANDER) 12 LEKSHMY AGED 37 YEARS W/O. SUMESHKUMAR, VATTALAKKI LAKSHAMVEEDU, MATTATHODU P. O., ATTAPPADY, PALAKKAD - 678 581. (BYSTANDER) 13 MURUKESH AGED 27 YEARS S/O. VIJAYAN, MOOLAKKOMBU HOUSE, PUDOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (BYSTANDER) 14 SURESH AGED 27 YEARS S/O. MURUKAN, VANGAKKADAVU, CHITTOOR P. O., PALAKKAD - 678 581. (BYSTANDER) 15 RAJESH KUMAR AGED 33 YEARS S/O. KALI, PATTIMALAM, KOTTATHARA P. O., ATTAPPADY - 678 581. (BYSTANDER) 16 PRADEEP AGED 21 YEARS S/O. KRISHNAN, UMMATHAMPADY HOUSE, PUDOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (BYSTANDER) 17 RAMESH AGED 25 YEARS S/O. MARUTHAN, VENGAKKADAVU HOUSE, CHITTOOR P. O., ATTAPPADY, PALAKKAD - 678 581. (BYSTANDER) 18 ANITHA M. AGED 21 YEARS D/O. NANCHAN, ARALIKONAM HOUSE, PALOOR P.

O., ATTAPPADY, PALAKKAD - 678 581.

19 RANJITHA K. AGED 22 YEARS W/O. VEERAN, MELACHAVADIYUR HOSUE, CHAVADIYLOOR P. O., ATTAPPADY, PALAKKAD - 678 581. 20 SARASWATHY S. AGED 30 YEARS D/O. KAKKI, VELLAMARI HOUSE, KOTTATHARA P. O., ATTAPPADY, PALAKKAD - 678 581. 21 PAVITHRA K. AGED 22 YEARS D/O. KALI, ADIKKANDIYLOOR HOUSE, THAVALAM P. O., ATTAPPADY, PALAKKAD - 678 581. 22 RASHEEDA AGED 29 YEARS D/O. MAMMUKKOYA, MAHASRANKINAKAM HOUSE, VAIDHAR COLONY, NARASIMUKK, AGALI P. O., ATTAPPADY, PALAKKAD - 678 581. 23 BABU AGED 40 YEARS S/O. DWORA, ANU NIVAS, VARAGAMPPADY HOUSE, SHOLAYOOR P. O., ATTAPPADY, PALAKKAD - 678 581. 24 LATHA AGED 28 YEARS D/O. VELLINGIRI, NALLASEENKA HOUSE, KADAMPARA, SHOLAYOOR P. O., ATTAPPADY, PALAKKAD - 678 581. 25 SAJIMOL AGED 35 YEARS W/O. SAJIM KOTHALATHIL HOUSE, KALKKANDY P. O., ATTAPPADY, PALAKKAD - 678 581. (LAB ASSISTANT) BY ADVS. K.S.MADHUSOODANAN M.M.VINOD KUMAR P.K.RAKESH KUMAR K.S.MIZVER M.J.KIRANKUMAR

RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695 001. 2 SUPERINTENDENT GOVERNMENT TRIBAL SPECIALTY HOSPITAL, KOTTATHARA, PALAKKAD, (MEMBER SECRETARY, HOSPITAL MANAGEMENT COMMITTEE (H.M.C.), KOTTATHARA TRIBAL SPECIALTY HOSPITAL, KOTTATHARA P. O., PALAKKAD - 678581.) 3 ATTAPPADY BLOCK PANCHAYATH PRESIDENT AGALI, ATTAPPADY, (CHAIRPERSON, HOSPITAL MANAGEMENT COMMITTEE (H.M.C.), KOTTATHARA TRIBAL SPECIALTY HOSPITAL, KOTTATHARA P. O., PALAKKAD - 678581.)

SRI.ROBIN RAJ M.K.SPL.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 28th day of February, 2023 The petitioners are mostly belonging to Scheduled Tribes in Attappadi. They were appointed by the Hospital Management Committee in the posts of Auxiliary Nurse Midwife (ANM), Lab Assistant, Bystander, etc., on daily wage basis. Their appointment was in the year 2016.

2. The petitioners submit that their recruitment was

based on an interview conducted by the Hospital Management Committee. The petitioners were being continuously engaged against the posts held, though on a daily wage basis.

3. On 18.01.2021, the respondents published Ext.P4

notification for fresh recruitment to the very same posts. Though the petitioners were working, they responded to Ext.P4 notification also. Based on the interview conducted pursuant to Ext.P4, Ext.P5 rank list was published. The name of the petitioners were included in Ext.P5 rank list also. To the surprise and predicament of the petitioners, the respondents abolished the posts held by the petitioners on 08.02.2021, as per Ext.P6 decision. The services of the petitioners were later terminated based on Ext.P6, with effect from 15.02.2022. Now, the respondents have published Ext.P8 notification for recruitment to different posts.

4. The petitioners contend that they belong to

Scheduled Tribe. They were recruited for working in the Hospital, which is situated in Attappadi which is a Tribal area. Almost all of the petitioners belong to Scheduled Tribe. It is for extending employment assistance to Scheduled Tribe also that the petitioners were engaged.

5. The petitioners were discharging their duties in the

post of ANM, Bystander, Lab Assistant, etc., to the satisfaction of the respondents. In the recruitment process pursuant to Ext.P4, the petitioners were successful. All of a sudden, the respondents have decided to abolish the posts held by the petitioners as per Ext.P6.

6. Ext.P6 decision is illegal. It is intended to deny

employment to the petitioners. The reason advanced for abolishing the posts held by the petitioners is that of financial difficulty. It is to be noted that immediately after terminating the services of the petitioners on 15.02.2022, the respondents have published Ext.P8 notification for recruitment to a large number of other posts at higher salary. That itself would show that the abolition of posts pursuant to Ext.P6 was unwarranted.

7. The petitioners urged that the posts held by the

petitioners like ANM, Bystander, Lab Assistant, etc., were extremely necessary and of great assistance to the tribal population coming to the Hospital for treatment. The abolition of those posts is not in the interest of Scheduled Tribes. At any rate, termination of the petitioners on the ground of financial difficulty and immediate recruitment of fresh hands at higher wages in large numbers would establish that the termination of the petitioners is illegal and unreasonable. Ext.P6 is therefore liable to be set aside, urged the petitioners.

8. The 2nd respondent resisted the writ petition filing a

Statement. The 2nd respondent contended that Hospital Management Committee has to look after a large number of activities within the Hospital Premises. The income of the Hospital Management Committee is very limited. The Hospital Management Committee cannot go out of the limited methods for raising funds. In the year in which Ext.P6 decision was taken, the monthly income of the Hospital Management Committee was only `5 lakhs. Under the salary head itself, the Hospital Management Committee had to pay `10 lakhs. Therefore, the Hospital Management Committee took a decision to reduce the staff strength. It was based on the decision of the Hospital Management Committee that the posts held by the

petitioners were abolished.

9. The respondents submitted that subsequently, the

Hospital Management Committee decided to recruit personnel into the category of Accountant, Data Entry Operator, Driver, Dialysis Attender, Dobi, etc., as can be seen from Ext.P8. It was in the larger interest of the administration of the Hospital Management Committee that the decision to make fresh recruitments was made. By the time, the financial capacity of the Hospital Management Committee was better. The Hospital Management Committee was running canteen and coffee shop, which had made a loss of `79 lakhs. Now, the Canteen has been rented out with tender procedure and the Hospital Management Committee is getting `2.23 lakhs per month. All the accrued arrears payable to the terminated staffs are paid, pointed out the Special Government Pleader.

10. I have heard the learned counsel for the petitioners and the learned Special Government Pleader representing the respondents.

11. It is true that the petitioners were appointed as

ANM, Bystander, Lab Assistant, etc., on daily wages in the year 2016. When a fresh notification was published as per Ext.P4, the petitioners responded to the said notification and they were placed in the rank list also. From the statement filed by the respondents, it is seen that the Hospital Management Committee faced acute financial difficulties. Their income was `5 lakhs per month and their monthly salary expenditure was `10 lakhs. It is in that scenario that the Hospital Management Committee decided to abolish the posts held by the petitioners as per Ext.P6. It is consequent to that decision that the services of the petitioners, who were daily wage workers, were dispensed with.

12. When the financial capacity of the Hospital

Management Committee improved, the Management Committee decided to make fresh recruitment to the posts as notified in Ext.P8. It is to be noted that the recruitment pursuant to Ext.P8 is for different posts and not for the posts

held by the petitioners. It is exclusively within the realm of

policy for the Hospital Management Committee to decide which are the posts to be newly created, depending upon the ground situation and the requirement of the Hospital. It being a policy matter, this Court cannot assume that Ext.P8 decision was taken only to get rid of the petitioners.

13. The petitioners are admittedly daily wage workers.

They have no right to claim permanency. The decision to abolish the posts held by the petitioners was due to financial issues. The decision as per Ext.P8 to make recruitment to other posts is a policy matter, which this Court cannot interfere under Article 226 of the Constitution of India. In the circumstances, I find no illegality in Ext.P6 notification. The writ petition fails and it is dismissed accordingly. sd/- N.NAGARESH JUDGE hmh APPENDIX OF WP(C) 5526/2022 PETITIONER EXHIBITS Exhibit P1 PHOTOCOPY OF THE CHART SHOWING THE SERVICE PARTICULARS OF PETITIONERS. Exhibit P2 PHOTOCOPY OF THE EXPERIENCE CERTIFICATE OF 25TH PETITIONER FOR THE PERIOD 26.11.2016 TO 25.01.2021 ISSUED BY 2ND RESPONDENT. Exhibit P3 PHOTOCOPY OF THE EXPERIENCE CERTIFICATE OF 18TH PETITIONER FOR THE PERIOD 15.07.2017 TO 31.01.2022 ISSUED BY 2ND RESPONDENT. Exhibit P4 PHOTOCOPY OF THE NOTIFICATION OF WALK IN INTERVIEW ON 27.01.2021 AND 28.01.2021 FOR VARIOUS CATEGORIES INCLUDING THAT OF PETITIONERS.

Exhibit P5 PHOTOCOPY OF THE APPOINTMENT ORDER

DATED 01.02.2021 BEARING NO.08/2021 ISSUED BY 2ND RESPONDENT INCLUDING TO PETITIONERS. Exhibit P5(a) PHOTOCOPY OF THE ORDER BEARING NO.08/2021 DATED 13.10.2021 ISSUED BY 2ND RESPONDENT CONTINUING THE SERVICE OF 9TH AND OTHER PETITIONERS.

Exhibit P5(b) PHOTOCOPY OF THE ORDER BEARING NO.08/2021 DATED 06.03.2021 ISSUED BY 2ND RESPONDENT APPOINTING THE 11TH PETITIONERS. Exhibit P6 PHOTOCOPY OF THE ORDER BEARING NO.63

SUPDT. G.T.S.H.KOTTATHARA DATED 08.02.2021 (SIC). Exhibit P7 PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY PETITIONER AND OTHER TO THE 2ND RESPONDENT DATED 14.02.2022. Exhibit P7(a) PHOTOCOPY OF THE RECEIPT DATED 14.02.2022. Exhibit P8 PHOTOCOPY OF THE NOTIFICATION BEARING NO.64/2022 DATED 02.02.2022 TOWARDS APPOINTMENT OF 23 CATEGORIES OF POSTS. Exhibit P9 PHOTOCOPY OF THE REPORT IN MATHRUBHUMI DAILY DATED 15.02.2022. Exhibit P10 PHOTOCOPY OF THE DETAILS OF STAFF IN GOVERNMENT TRIBAL SPECIALTY HOSPITAL, KOTTATHARA, ISSUED BY PUBLIC INFORMATION OFFICER. Exhibit P11 PHOTOCOPY OF THE DETAILS OF NEWLY

SELECTED CANDIDATES WITH QUALIFICATION GIVEN BY PUBLIC INFORMATION OFFICER, GOVT. TRIBAL SPECIALTY HOSPITAL, KOTTATHARA. Exhibit P12 PHOTOCOPY OF THE NOTICE DATED 27.5.2017. Exhibit P13 PHOTOCOPY OF THE REPORT OF INSPECTION OF THE CHAIRMAN OF THE TALUK LEGAL SERVICE COMMITTEE MANNARKKAD. Exhibit P14 PHOTOCOPY OF THE JUDGMENT DATED 5.11.2020 IN WPC NO.31574/2014 OF HON'BLE HIGH COURT.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com