

Suchithra Surendran vs State of Kerala

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Court : Kerala

Decided On : Nov-04-2022

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/1061/2020

Appellant : Suchithra Surendran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 4TH DAY OF NOVEMBER 2022 / 13TH KARTHIKA, 1944 WP(C) NO. 1061 OF 2020 PETITIONER: SUCHITHRA SURENDRAN, AGED 26 YEARS D/O. SURENDRAN, CHERIYEDATH HOUSE, KANDANAD P.O, ERNAKULAM, PIN-682 505 BY ADVS. D.G.VIPIN HAROON VASEEM RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, THIRUVANANTHAPURAM-695 034. 2 SI-MET COLLEGE OF NURSING, PALLURUTHY, ERNAKULAM-682 006, REPRESENTED BY ITS PRINCIPAL. 3 THE DIRECTOR, STATE INSTITUTE OF MEDICAL EDUCATION AND TECHNOLOGY, (SI-MET)

PATTOR, VANCHIYOOR P.O, TRIVANDRUM-695 035

4 DHANYA C.S, LD CLERK, SI-MET COLLEGE OF NURSING, PALLURUTHY-682 006 BY ADVS. SRI.K.S.ARUN KUMAR SRI.JUSTINE JACOB SRI.LAL K.JOSEPH SMT RESMI THOMAS-GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner says that she was engaged on daily wages as Lower Division Clerk by the 2nd respondent - SI-MET College of Nursing, through Ext.P4, in the year 2017; and that she had to avail Maternity Leave thereafter. She says that, however, when she returned, she was not accommodated to the available post and that she was told that the 4 th respondent has been appointed against it, after a process of selection, on contract. She asserts that the 4th respondent was appointed to a different post and that still one is remaining, to which she can be accommodated.

2. The afore submissions of the petitioner, made by her

learned counsel - Sri.Vipin D.G., were answered by the learned counsel for the 2nd respondent, saying that the petitioner cannot impel any claim as afore because she has no vested right to seek employment. He explained that, as is evident from Ext.P4, the petitioner was appointed only on Daily Wage basis and therefore, that she was not entitled to any leave - much less Maternity Leave - as has been claimed by her. He submitted that the petitioner left the employment for delivery and consequently, that when she returned, it was up to his client to accommodate her or otherwise, depending upon the availability of posts or requirement. He submitted that, therefore, this Writ Petition, which appears to impel a vested claim, is not maintainable.

3. Smt.Raji P. Mathews - learned counsel appearing for

the 4th respondent, submitted that the petitioner cannot claim any better right than her client, particularly when she had been appointed through a process of selection, after a written test and interview. She submitted that her client is working on contract and that the petitioner cannot seek to oust her, because she does not obtain any right, much less a better one.

4. When I hear the learned counsel for the respondents

as afore, I must say that I find favour with their submissions because, the petitioner cannot seek any right to be appointed in the services of the College, when she herself admits that she was appointed only on Daily Wage basis. Obviously, hence, one cannot gather on what basis she says that she was on Maternity Leave because, normally, no such is available to a person working on Daily Wage basis. It is needless to say that a person in such position is paid only for the days he/she worked and not for those in which absence is marked.

5. That being said, the claim of the petitioner against

the 4th respondent is also untenable for the same reason as afore, even assuming her contention - that the 4th respondents contract has expired - is true. She cannot claim any preference or right to be appointed to a post that may become vacant consequent to the termination/ expiry of contract to the 4 th respondent, but it is a matter which can certainly be decided by the College, as and when such an eventuality arises.

6. Perhaps, being aware of the mind of this Court as

afore, Sri.D.G.Vipin submitted that his client also seeks that the College be directed to engage her as and when any vacancy - not merely that of the 4th respondent - arises in future.

7. As I have already said above, these are issues fully

within the realm of decision of the 2nd respondent - College and not on which this Court can make any affirmative declarations. However, this Court can certainly require the College to consider the petitioners request, as and when vacancy

arises. Resultantly, I allow this Writ Petition to the limited extent of directing the competent Authority of the 2nd respondent - College to consider the claim of the petitioner for being re- engaged on Daily Wages, as and when vacancy or requirement arises; for which purpose, she is also given liberty to make suitable applications at the relevant time. Sd/- RR DEVAN RAMACHANDRAN JUDGE
APPENDIX OF WP(C) 1061/2020 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE G.O(MS) NO. 85/2011/H& FWD DATED 07.02.2011. EXHIBIT P2 TRUE COPY OF THE G.O(MS) NO. EXHIBIT P3 TRUE COPY OF THE G.O(RT) NO. 534/2017/H & FWD DATED 20.05.2014. EXHIBIT P4 TRUE COPY OF THE CALL LETTER DATED 11.8.2017 ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF ORDER NO. E/165/2017 SI- MET DATED 28.2.2019 BY THE 2ND RESPONDENT. EXHIBIT P6 TRUE COPY OF THE ORDER NO. E/165/2017/SI-MET DATED 12.6.2019 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P7 TRUE COPY OF THE REQUEST LETTER DATED 10.10.2019 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT. EXHIBIT P8 TRUE COPY OF THE LETTER NO. E- THE 2ND RESPONDENT TO THE PETITIONER. EXHIBIT P9 TRUE COPY OF ORDER NO.E/3055/2011/SI- MET(2) DATED 11/07/2009 ISSUED BY THE 3RD RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT P10 TRUE COPY OF THE ORDER

NO.E/3055/2011/SI-MET(2) DATED UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT P11 TRUE COPY OF THE ORDER

NO.E/165/2017/SI-MET DATED 14/08/2019 OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT. EXHIBIT P12 TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE 18TH GOVERNING BODY MEETING OF SI-MET CONVENED ON UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENTS EXTS: ANNEXURE R3(A) TRUE COPY OF THE RELEVANT PAGE MINUTES OF THE 18TH GOVERNING BODY MEETING OF SI-MET

HELD ON 27.07.2018. ANNEXURE R3(B) TRUE COPY OF THE ORDER DATED 04.12.2018. ANNEXURE R3(C) TRUE COPY OF THE LETTER DATED 14.12.2018. ANNEXURE R3(D) TRUE COPY OF THE REQUEST OF THE 2ND RESPONDENT DATED 10.06.2019. ANNEXURE R3(E) TRUE COPY OF THE GP(RT)nO.534/2017/H&FWD DATED 03.03.2017. ANNEXURE R4(A) TRUE COPY OF THE MEMO DATED 4.4.2015 ISSUED BY SI-MET ANNEXURE R4(B) TRUE COPY OF THE LATEST RENEWED CONTRACT

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