

Tintu.K., vs State of Kerala,

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Court : Kerala

Decided On : Mar-09-2022

Judge : Honourable Mr. Justice Alexander Thomas, Honourable Mr. Justice Viju Abraham

Appeal No. : WA/82/2022

Appellant : Tintu.K.,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR. JUSTICE VIJU ABRAHAM WEDNESDAY, THE 9TH DAY OF MARCH 2022 / 18TH PHALGUNA, 1943 WA NO. 81 OF 2022 AGAINST THE JUDGMENT DATED 10.01.2022 IN WP(C) NO.7064/2021 OF HIGH COURT OF KERALA APPELLANT/PETITIONERB: RESHMI JAYAKUMAR AGED 39 YEARS, W/O.JAYAKUMAR, MATTATHIL HOUSE, MAMALAKANDAM P.O., ERNAKULAM DISTRICT, PIN - 686 681. BY ADVS. KALEESWARAM RAJ THULASI K. RAJ RESPONDENTS/RESPONDENTS:

1 KUTTAMPUZHA GRAMA PANCHAYAT REPRESENTED BY ITS SECRETARY, KUTTAMPUZHA POST, ERNAKULAM DISTRICT, PIN - 686 681. 2 SECRETARY KUTTAMPUZHA GRAMA PANCHAYAT, KUTTAMPUZHA POST, ERNAKULAM DISTRICT, PIN - 686 681. 3 MISSION DIRECTOR NATIONAL HEALTH MISSION, NRMM BUILDINGS, THIRUVANANTHAPURAM - 695 035. 4 DIRECTOR OF PANCHAYATS THIRUVANANTHAPURAM - 695 033. BY ADVS R1 & R2 BY SRI.AJITH GEORGE R3 BY SRI.M. AJAY

OTHER PRESENT: R4 BY SRI.SAIGI JACOB PALATTY, SR.GOV.T.PLEADER, THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09.03.2022, ALONG WITH WA.82/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.A. Nos.81 & 82 of 2022 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM WEDNESDAY, THE 9TH DAY OF MARCH 2022 / 18TH PHALGUNA, 1943 WA NO. 82 OF 2022 AGAINST THE JUDGMENT DATED 07.12.2021 IN WP(C) NO.12784/2021 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 TINTU.K., AGED 40 YEARS, W/O.A.JOBY, ALINKAL HOUSE, MANANTHAVADY P.O., WAYANAD-670 645. 2 BEENA VICTOR, AGED 40 YEARS, W/O.VICTOR, PATHIVAYAL HOUSE, MANANTHAWADY POST, WAYANAD-670 645. BY ADVS. KALEESWARAM RAJ VARUN C.VIJAY THULASI K. RAJ RESPONDENTS/RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2 MISSION DIRECTOR, NATIONAL HEALTH MISSION, NRHM BUILDING, THIRUVANANTHAPURAM-695 035. *3 DIRECTOR OF PANCHAYATS, PANCHAYATH DIRECTORATE, PUBLIC OFFICE P.O., THIRUVANANTHAPURAM-695 035.

***(3RD RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER**

DATED 09.03.2022) **3 THE DIRECTOR OF URBAN AFFAIRS, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM. **(3RD RESPONDENT IS IMPEADED AS PER ORDER DATED 09.03.2022) 4 MANANTHAVADY MUNICIPALITY, REPRESENTED BY ITS SECRETARY, MANANTHAVADY POST, WAYANAD-670 645. BY ADVS. R1 & R3 BY SRI. SAIGI JACOB PALATTY, SR. G.P. R2 BY SRI.M. AJAY R4 BY SRI.P. SANTHARAM THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09.03.2022, ALONG WITH

WA.81/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
W.A. Nos.81 & 82 of 2022 3

ALEXANDER THOMAS & VIJU ABRAHAM, JJ.
----- W.A. No.81 of 2022
[against the impugned judgment dated 10.01.2022 in W.P.(C) No.7064/2021] & W.A. No.82 of 2022 [against the impugned judgment dated 07.12.2021 in W.P.(C) No.12784/2021]
----- Dated this the 09th
day of March, 2022

JUDGMENT

Alexander Thomas, J.

Since some of the issues are similar, the aforementioned writ appeals are disposed of on the basis of this common judgment. Writ appeal No.82 of 2022 is taken as the lead case. W.A. No.82 of 2022: Heard Sri.Kaleeswaram Raj, learned counsel appearing for the appellants in W.A./the petitioners in the W.P.(C), Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the 1 st respondent-State of Kerala and the 3 rd respondent (Director of Urban Affairs), Sri.P.Santharam, learned Standing Counsel for the Mananthavady Municipality,

appearing for the 3rd respondent and Sri.M.Ajay, learned Standing Counsel for the NRHM, appearing for the 2nd respondent. W.A. Nos.81 & 82 of 2022 4

2. The case made out by the appellants is that they are

contractual employees of the 4th respondent Mananthavady Municipality, engaged as part-time sweeper and attender in the Homeo Dispensary, etc. The appellants would claim that the Government has issued orders from time to time, extending the term of such contractual appointees in various local bodies including Municipalities. However, Sri.P.Santharam, learned Standing Counsel for the 4th respondent- Mananthavady Municipality submits that none of the orders produced in the case papers of this appeal are in relation to contractual employees of local bodies, such as Municipalities, which could apply to the engagement of such contractual appointees in the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), followed in local bodies, which are Panchayats.

3. Sri.Kaleeswaram Raj, learned counsel appearing for the

appellants, would point out that, in the case of contractual employees in local bodies, this Court has rendered judgment dated 27.09.2021 in W.A. Nos.807 & 925 of 2021 (produced as Anx.V, given on pages 53 to 63 of the paper book of the instant W.A. No.82 of 2022), wherein this Court has directed that the claims of those contractual employees in local bodies, which are Panchayats, with reference to the Government Orders, should be examined and considered by the Director of

W.A. Nos.81 & 82 of 2022 5 Panchayats, who was then directed to take a decision thereon, after hearing the parties concerned and that, till then, those contractual employees were directed to be retained in service, etc.

4. Sri.P.Santharam, learned Standing Counsel for the 4th

respondent Municipality, would point out that Ext.P6 (produced on page No.37 of the paper book of W.A. No.82 of 2022) is in relation to contractual employees engaged in local bodies, for the purpose of tackling Covid-19 issues, etc. and that the same may not have any bearing in the present case.

5. Per contra, the learned counsel appearing for the appellants would assert that the said Ext.P6 G.O.(Rt) No.1067/2021/LSGD dated

01.06.2021 would apply in their case, etc. Ext.P6 G.O.(Rt) No.1067/2021/LSGD dated 01.06.2021 reads as follows (see page No.37 of the paper book of the writ appeal):-

" . - 19 , , ."

6. Further, that there are certain other Government Orders, which have been referred by this Court in Anx.V common judgment in W.A. Nos.807 & 925 of 2021, etc.

7. We specifically queried to all the parties concerned, as to W.A. Nos.81 & 82 of 2022 6 whether the Government is contemplating to issue any Government

Orders now, to order that the arrangement of continuance of contractual employees in local bodies will be continued for another year, upto 31.03.2022, etc. The impression given to us by the appellants is that the Government is expected to pass such orders very soon, etc.

8. As we have already held in the common judgment rendered

on 27.09.2021 in W.A. Nos.807 & 925 of 2021, the main matter in issue is covered against the appellants by virtue of the dictum laid down by the Division Bench of this Court in the judgment in Noorjihan A. v. State of Kerala & Ors. [W.A. No.1570 of 2018 & connected matters]. However, in the said common judgment in W.A. Nos.807 & 925 of 2021, this Court remitted the matter to the Director of Panchayats to consider whether the contractual employees engaged in the Panchayat could continue temporarily as contractual appointees on the basis of any

orders issued by the Government, Department, etc. Hence, without getting into the merits of the controversy, in any manner, we propose to take the same course of action.

9. Accordingly, it is ordered that it is for the appellants to

immediately file representations in the matter, along with a copy of this judgment, before the 3rd respondent-Director of Urban Affairs, Government of Kerala, producing therewith copies of all the W.A. Nos.81 & 82 of 2022 7

Government Orders, which, according to them, are applicable in their case, for the purpose of temporary continuance as contractual appointees in local bodies, like the 4 th respondent Municipality, etc. Such representation shall be filed by the appellants within 10 days from the date notified for receiving a copy of this judgment. Copy of such representation shall be forwarded by the appellants, in advance, to the

4th respondent-Mananthavady Municipality. To obviate any further delay, it is ordered that the 4 th respondent-Mananthavady Municipality may give a detailed report, regarding the service particulars of the two appellants herein, to the 3rd respondent-Director of Urban Affairs and also their views in the matter as to whether the appellants are eligible to continue on temporary basis as contractual appointees on the basis of any Government Orders, etc. Copies of such report, that may be given by the 4th respondent Municipality to the 3 rd respondent-Director of Urban Affairs, should be made available by the 4 th respondent

Municipality to the appellants, in advance. Thereafter, the 3 rd respondent-Director of Urban Affairs will afford reasonable opportunity of being heard to the appellants through their authorised representative/counsel, if any, and also after hearing the 4 th respondent Municipality, may take a considered decision as to whether the appellants are entitled to continue on temporary basis as contractual W.A. Nos.81 & 82 of 2022 8

appointees in the 4th respondent-Municipality, on the basis of any Government Orders/decisions of the Government. etc. The abovesaid decision making process should be duly completed by the 3 rd respondent-Director of Urban Affairs and appropriate decision thereon may be taken up in accordance with law without any further delay, at any rate, within an outer time limit of 6 weeks from the date of receipt of the representation to be filed by the appellants along with copies of the

relevant Government Orders, etc. Until then, the 4th respondent Municipality may temporarily retain the services of the appellants as contractual appointees. However, in the meanwhile, if any orders are passed by the Government, interdicting with any such temporary continuance, then the 4th respondent will have liberty to act in accordance with any such directives that may be issued by the Government.

10. However, it is made clear that in case, the appellants do not

file any such representation, within the abovesaid time limit, then the abovesaid interim arrangement made by us directing the temporary continuance of the appellants as contractual employees, pending decision by the respondent-Director of Urban Affairs will stand vacated automatically, without any further orders from this Court.

11. It is made clear that the matter will be exclusively within the W.A. Nos.81 & 82 of 2022 9 province of the 3rd respondent-Director of Urban Affairs to decide on the basis of the Government Orders that govern the field. The 3rd respondent-Director may also consider as to whether the abovesaid G.O.

(Rt) No.1067/2021/LSGD dated 01.06.2021 could apply in the case of

the present appellants who are contractual appointees in the 4th respondent Municipality, etc. W.A. No.81 of 2022: In this case, the appellant claims that he is working in the post of Attender, as a contractual appointee in the 1st respondent-Kuttampuzha

Grama Panchayat. The main Government Order relied on by the appellant is G.O.(Rt) No.1067/2021/LSGD dated 01.06.2021, [produced as Anx.III on page No.48 of the paper book of the instant W.A. No.81 of 2022], the contents of which have already been extracted above. Here also, we hold that the main matter in issue is covered by the judgment of the Division Bench of this Court in the case in Noorjihan A. v. State of Kerala & Ors. [W.A. No.1570 of 2018 & connected matters]. However, since the reliance placed on by the appellant is on the basis of subsequent Government Orders, said to have been issued by the Government, we

propose to take the same course of action as the one we have taken as per the common judgment dated 27.09.2021 in

W.A. Nos.81 & 82 of 2022 10 W.A. Nos.807 & 925 of 2021 [copy of which has been produced as Anx.VI, given on page Nos.55 to 62 of the paper book of the instant W.A. No.81 of 2022].

2. Heard Sri.Kaleeswaram Raj, learned counsel appearing for

the appellant in W.A./the petitioner in the W.P.(C), Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the 4 th respondent, Sri.Ajith George, learned Standing Counsel for the Kuttampuzha Grama Panchayat, appearing for 1 st & 2nd respondents and Sri.M.Ajay, learned Standing Counsel for the NRHM, appearing for the 3rd respondent.

3. In the facts and circumstances of the case, it is ordered that

the appellant may immediately file appropriate representation before the 4th respondent-Director of Panchayats along with the relevant Government Orders, if any, which govern the field, including the abovesaid Anx.III G.O.(Rt) No.1067/2021/LSGD dated 01.06.2021, for considering her claim that the Government has permitted temporary continuance of contractual appointees in local bodies like Panchayats, etc. Such representation shall be filed by the appellant within 10 days from the date notified for receiving a copy of this judgment. Copy of the said representation shall also be forwarded by the appellant in advance,

to the 1st respondent-Kuttampuzha Grama Panchayat. The 1 st W.A. Nos.81 & 82 of 2022 11

respondent-Kuttampuzha Grama Panchayat may give their report to the 4th respondent-Director of Panchayats, regarding the service particulars of the appellant and also regarding their views as to whether the appellant is eligible to continue on temporary basis as contractual employee based on any Government Orders, etc. Here, it appears that the appellant would also place reliance on a circular issued by the Director of Panchayats, referred to in the abovesaid Anx.VI

judgment of this Court. It is for the appellant to produce all such relevant materials like Government Orders, Circulars, etc., if any. Thereafter, the 4th respondent-Director of Panchayats will afford reasonable opportunity of being heard to the appellant either in person or through authorised representative/counsel, if any, and then take a decision as to whether the appellant is eligible to be continued, on temporary basis, as contractual appointee in the respondent Grama Panchayat, based on the Government Orders, etc. Such decision shall be duly rendered by the 4th respondent-Director of Panchayats within 6 weeks from the date of receipt of the representation to be filed by the appellant. Further that, until the 4th respondent-Director of Panchayats takes a decision in the matter and passes orders on the abovesaid claims of the appellant, the appellant may be temporarily permitted to continue as a contractual appointee in the respondent Grama Panchayat.

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4. Further, it is made clear that, in case the appellant does not

file any such representation, within the abovesaid time limit, then the abovesaid direction issued by this Court for temporary continuance of the appellant as contractual employee, pending decision by the respondent-Director of Urban Affairs will stand vacated automatically, without any further orders from this Court.

5. The impugned judgment dated 07.12.2021, rendered by the

learned Single Judge in W.P.(C) No.12784/2021 will stand modified and substituted as above. With these observations and directions, the above writ appeals will stand disposed of. Sd/- ALEXANDER THOMAS, JUDGE Sd/- VIJU ABRAHAM, JUDGE Skk//24032022 W.A. Nos.81 & 82 of 2022 13 APPENDIX OF WA 81/2022 PETITIONER ANNEXURES:- Annexure I TRUE COPY OF THE INTERIM ORDER DATED 18/03/2021 IN WP(C) NO.7064/2021.

Annexure II

TRUE COPY OF THE ORDER PAN/14760/2020-

IN WA 807/2021. Annexure V TRUE COPY OF THE G.O.(RT) NO.1149/2021/LSGD DATED GOVERNMENT. Annexure VI TRUE COPY OF THE COMMON JUDGMENT DATED 27/09/2021 IN W.A.NO.807/2021 AND W.A.NO.925/2021. Annexure VII TRUE COPY OF G.O.(MS) 1496/2021/LSGD DATED W.A. Nos.81 & 82 of 2022 14 APPENDIX OF WA 82/2022 PETITIONER ANNEXURES:- Annexure I TYPED COPY OF THE INTERIM ORDER DATED 28.06.2021 IN WPC NO.12784/2021. Annexure II TRUE COPY OF THE GO (RT) NO.1149/2021/LSGD DATED 15.06.2021 ISSUED BY THE DEPARTMENT OF LOCAL SELF GOVERNMENT. Annexure III TRUE COPY OF THE GO(MS) 1496/2021/LSGD DATED 09.08.2021. Annexure IV TRUE COPY OF THE INTERIM ORDER DATED 30.06.2021 IN WA 807/2021. Annexure V TRUE COPY OF THE COMMON JUDGMENT DATED 27.09.2021 IN WA NO.807/2021 AND WA NO.925/2021.

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