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Court : Kerala

Decided On : Dec-12-1989

Reported in : (1990)IILLJ333Ker

Judge : Sreedharan, J.

Acts : Kerala Water and Sewerage Act, 1986 - Sections 18, 18(1) and 20

Appeal No. : O.P. No. 9189/1989

Appellant : Rajendran

Respondent : State of Kerala

Advocate for Def. : K.J. Joseph and; K.R. Kurup, Adv.

Advocate for Pet/Ap. : S. Ramesh Babu, Adv.

Disposition : Petition allowed

Judgement :

Sreedharan, J.

1. When CM.P. No. 29707/89 came up for orders, I heard learned counsel appearing on either side in detail. I am disposing of the Original Petition.

2. First petitioner was appointed as Water Meter Reader in Palghat Municipality on 21st April 1983. Even though that appointment was temporary under Rule 9 (a) (i) of the Kerala State and Subordinate Services Rules, he continued in service from that date. Petitioners 2 and 3 were also appointed under Rule 9(a) (i) of the General Rules as Water Meter Readers as per the order dated 27th July 1981. They were discharging their duties attached to the post without break. When the water supply and sewerage system in Palghat Municipality stood transferred to and vested in the Kerala Water Authority, 3rd respondent, with effect from 1st April 1989, according to the petitioners, by virtue of Section 20 of the Kerala Water and Sewerage Act, 1986, hereinafter referred to as 'the Act', they became temporary employees of the Kerala Water Authority and are entitled to continue as such. Second respondent terminated their services with effect from 31st October 1989. That termination is under challenge in this petition.

3. Sri K.J. Joseph, learned counsel representing 2nd respondent-Municipality, submitted that the Municipality engaged the petitioners as temporary employees under Rule 9(a) (i) of the General Rules for attending to the work as Water Meter Reader. Their work was exclusively connected with the water supply and sewerage system. The water supply and sewerage system stood transferred to and became vested in the Kerala Water Authority with effect from 1st April 1989 and petitioners became employees of that Authority. Thereafter 2nd respondent is not having any control over the petitioners.

4. Sri K.R. Kurup, learned counsel representing the Kerala Water Authority, submitted that it is correct to state that the water supply and sewerage system which belonged to 2nd respondent stood vested in the Kerala Water Authority with effect from 1st April 1989. But its assets and employees were not transferred to the Water Authority. So, employees engaged by the Municipality in connection with the water supply and sewerage system cannot become employees of the Water Authority. In this view, petitioners cannot claim any relief as against the Water Authority. Yet another contention that has been raised by him is that petitioners have not succeeded in showing whether they were exclusively employed in connection with the water supply and sewerage service of Palghat Municipality. As there is dispute regarding the exclusive nature of employment, the

issue will have to be decided by the Government as contemplated by Section 20(3) of the Act. Without Government taking a decision as contemplated by that section, petitioners cannot have any remedy as against the Kerala Water Authority.

5. Section 18 of the Act inter alia provides that water supply and sewerage services which were vested in any local authority shall vest in and stand transferred to the Water Authority on a day appointed by the Government. This provision makes it clear that with effect from the date appointed by the Government the entire water supply and sewerage services which belonged to a local body should vest in and stand transferred to the Water Authority. Ext. P1 order of the Government dated 11th October 1989 makes it clear that the appointed day, for the above vesting and transfer of the water supply and sewerage services which belonged to local bodies to the Water Authority, was fixed as 1st April 1989. Consequent on the fixation of that date, with effect from 1st April 1989, the entire water supply and sewerage services which belonged to the Palghat Municipality became vested in and stood transferred to the Water Authority. By the provisions contained in Section 18(1) of the Act, the water supply and sewerage services which belonged to the local body was transferred to and became vested in the Water Authority. The water supply and sewerage services became subject of an absolute transfer by operation of law. The transfer is of the totality of the rights of the Municipality over the scheme to the Water Authority. When such a vesting and transfer took place, employees of the local bodies who were exclusively employed in connection with the water supply and sewerage services became employees of the Water Authority. Clause (6) of Section 20 of the Act provides that every permanent or temporary employee of the local, body should also become a permanent or temporary employee of the Water Authority on and from the date of vesting. The combined effect of Sections 18 and 20 of the Act is that water supply and sewerage services of the Palghal Municipality became vested in and stood transferred to the Water Authority with effect from 1st April 1989. All permanent and temporary employees of that Municipality who were exclusively employed in connection with water supply and sewerage services became permanent or temporary employees as the case may be of the Water Authority.

6. Petitioners were temporary employees of the Municipality engaged in the water supply and sewerage services. They were in service as on the date of vesting. Hence, they have become temporary employees of the Water Authority. They are entitled to continue in the post as such. Their services are not to be terminated by the 2nd respondent. After 1st April 1989. 2nd respondent had no authority to interfere with the services of the petitioners because they became employees of the Water Authority by operation of law. The action on the part of 2nd respondent in terminating their services was illegal. They continue to be the employees of the Water Authority till their services are terminated by some process known to law.

7. This respondent has now raised a contention that petitioners were not exclusively employed in connection with the water supply or sewerage services of the Palghat Municipality. This dispute, under Section 20(3) of the Act, has to be resolved by the Government. I direct the third respondent to take up the issue with the Government for decision. A decision on this issue must be taken by the Government as expeditiously as possible, if the Water Authority moves the Government in this regard. Until Government takes a decision on this issue, petitioners should be continued in service. Their further continuance in service will depend on the decision of the Government.

8. The Original Petition is disposed of in the above terms.

9. Issue photo copy of the judgment to the parties on usual terms.