



2023:KER:56246

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
TUESDAY, THE 19TH DAY OF SEPTEMBER 2023 / 28TH BHADRA, 1945
WP(C) NO. 6171 OF 2023

PETITIONER/S:

ANITHA K VARGHESE,

BY ADVS.
PAUL JACOB (P)
SHERU JOSEPH
MATHEW THOMAS
ANAND KRISHNA

RESPONDENTS :-

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY,
DEPARTMENT OF SOCIAL WELFARE
DEPARTMENT OF SOCIAL WELFARE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001

DISTRICT COLLECTOR
2ND FLOOR, DISTRICT COLLECTORATE,
PATHANAMTHITTA., PIN - 689645
- 3 KADAPRA PANCHAYAT
REPRESENTED BY ITS SECRETARY,
KADAPRA PANCHAYAT, NIRANOM P.O.,
THIRUVALLA., PIN - 689621
- 4 CHILD DEVELOPMENT PROJECT OFFICER
PULIKEEZHU NEAR PULIKEEZHU BLOCK OFFICE
VALANJAVATTOM PO THIRUVALLA., PIN - 689104
- 5 SUJATHA KUMARI
- 6 ANANDESWARI

BY ADV K.N.RADHAKRISHNAN (THIRUVALLA)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON



19.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This petition is filed seeking a declaration that the appointment of the 5th and 6th respondents as permanent Anganwadi workers with the Kadapra Panchayat is illegal and for a further direction to the respondents 1 to 4 to re-engage the petitioner on a contract basis until a selection procedure to the post of Anganwadi workers is put in place.

2. Short facts are as under:

The petitioner states that in the year 2016, the Panchayat decided to appoint permanent Anganwadi workers. However, the process got delayed. When the ranked list was finally published, complaints were raised that ineligible persons had been included. In the said circumstances, the Panchayat took a decision to cancel the rank list. The petitioner asserts that during all these periods, i.e., from 2016 to 2023, the petitioner has been working as a temporary Anganwadi worker. While so, in the year 2023, a Circular was issued by the Directorate of Women and Child Development to finalize the rank list and to publish the same before 28.2.2023. Fearing disciplinary action, the Child Development Project Officer, the 4th respondent, is stated to have selected respondents 5 and 6 randomly. The petitioner refers to Ext.P4 Attendance Register and contends that respondents 5 and 6 joined duty on 13.2.2023. According to the petitioner, the appointment of the 5th and 6th respondents to the post of permanent Anganwadi workers is clearly illegal.



According to the petitioner, there is no clear and established procedure for appointing Anganwadi workers. It is also contended that a learned Single Judge of this Court in Ext.P7 judgment has held that if posts of Anganwadi workers are not filled up in accordance with the Government Rules, the employees who have retired from the posts can be engaged on a contract basis. It is on these assertions that this writ petition is filed seeking the following reliefs:

- (i) Issue a writ of mandamus or other appropriate writ order or in the nature of a declaration quashing the appointment of the 5th and 6th respondents to the post of permanent Anganwadi worker with the 3rd respondent panchayat.
- (ii) Issue a writ of mandamus or other appropriate writ order or in the nature of a declaration directing respondents 1 to 4 to re-engage the petitioner in the 3rd respondent panchayat, on a contract basis till a selection procedure to the post of Anganwadi workers is brought in by due process of law.

3. A counter affidavit has been filed by the 4th respondent, justifying the appointment of respondents 5 and 6 and also contending that the decision taken by the Panchayat Committee is legal and cannot be interfered with.

4. The respondents 5 and 6 have also filed a counter affidavit stating that the respondents 5 and 6 have been appointed by the Child Welfare Officer, Pulikkezhu Block Panchayat, by Ext.R5(a) order. It is further stated that prior to selection, their qualification was ascertained, and they were appointed by fully satisfying the reservation criteria.

5. Sri.Paul Jacob, the learned counsel appearing for the petitioner,



would refer to Section 166 of the Kerala Panchayat Raj Act, 1994, and specifically to sector-wide functions shown in Schedule III. It is submitted that the Village Panchayat would have the exclusive power to administer matters relating to running of Anganwadis and the only requirement is that it has to be subjected to the other provisions of the Act and guidelines. According to the learned counsel, the Panchayat Committee, on receipt of the complaint from various quarters, had decided to cancel the rank list, as it is evident from Ext.P2. The same persons whose names were mentioned in Ext.P2 and whose inclusion in the selection list was cancelled have been re-appointed by the 4th respondent without the concurrence of the Panchayath. The learned counsel would also refer to the law laid down by this Court in **Valanchery Service Co-operative Bank Ltd v. State of Kerala**¹ and it is argued that action taken by the 4th respondent would amount to nullifying the independence of Panchayat Raj institutions as envisaged by the amendments to the Constitution of India, followed by the making of the Kerala Panchayat Raj Act, 1994. The learned counsel would further point out that in Ext.P7 judgment, this Court has held that unless the post of Anganwadi workers are filled up in accordance with Government Rules, guidelines, regulations, and the general orders mentioned with the judgment, the employees who had retired from the post shall be engaged on a contract basis till persons engaged by due process of law are brought in.

¹ [2006 (1) KLT 425]



6. The learned Government Pleader, as well as the learned counsel appearing for the party respondents, contended that the action taken is legal and proper. It is submitted that the 4th respondent is vested with the powers on the strength of the Ext.P3 Government Order to grant appointment to respondents 5 and 6.

7. I have considered the submission advanced. Section 166 (2) of the Kerala Panchayat Raj Act reads as follows :-

“(2) Subject to the other provisions of this Act and the guidelines and assistance financial, technical or otherwise, of the Government, the village panchayat shall have exclusive power to administer the matters enumerated in the Third Schedule and to prepare and implement schemes relating thereto for economic development and social justice]”

8. Category (C) under the Third Schedule of the Kerala Panchayat Raj Act provides for sector-wise functions. Item XIII under category (C) deals with Social Welfare. Item No. 1 under Social Welfare deals with the running of Anganwadis. In other words, on a conjoint reading of Section 166(2) and the relevant clause in the Schedule, it would be evident that the Village Panchayat would have the exclusive power to administer matters relating to the running of Anganwadis and the only requirement is that it has to be subject to the other provisions of the Act and guidelines and financial, technical or other assistance of the Government. In other words, it is for the Village Panchayat to decide matters relating to the running of Anganwadis. In **Valanchery**



Service Co-operative Bank Ltd. (supra), this Court has occasion to observe in paragraphs Nos. 5 to 7 of the judgment.

5. S.166(2) of the Kerala Panchayat Raj Act (hereinafter referred to as "the Act") provides as follows:

"166(2). Subject to the other provisions of this Act and the guidelines and assistance financial, technical or otherwise, of the Government, the Village Panchayat shall have exclusive power to administer the matters enumerated in the Third Schedule and to prepare and implement schemes relating thereto for economic development and social justice."

"Running of Anganwadi" is the subject entered at Sl.No.1 under the Head XIII-Social Welfare under Category C -Sector-wise Functions in Schedule III.

6. So much so, going by S.166(2), a Village Panchayat shall have exclusive power to administer matters relating to running of anganwadies and the only requirement is that it has to be subject to the other provisions of the Act and guidelines and financial, technical or other assistance of the Government. It is for the Village Panchayat to decide matters relating to running of anganwadies.

7. The issuance of Ext. P4 directing the Panchayat to permit the 4th respondent to supply food articles to Anganwadies is necessarily in the nature of taking a decision that cannot be characterised as issuing any guidelines. The quality of the Governmental participation, in view of sub-s.(2) of S.166, cannot extend to issuing directions as has been done in the nature of Ext. P4. If any authority in excess of what is stated above "is assumed to be available with the Government, in my considered view, it will even nullify the independence of the Panchayat Raj institutions as envisaged by the amendments to the Constitution of India, followed by the making of the Kerala Panchayat Raj Act, 1994 by which the situation available before that has been changed. A survey of the provisions in Part IX of the Constitution



of India would show the genesis of a Panchayat and the differentiation between the Panchayats conceived of in Part IX from the Panchayats that were provided for by the statutory provisions before the introduction of Part IX into the Constitution. The Panchayats so constituted are constitutional institutions and their birth and existence are dependent on the mechanism provided for, in the Constitution itself. (See the judgment in W. P. (C). No. 14429/2005 and connected cases). Viewed in this backdrop, the power of the Government to issue any guidelines under S.166(2) of the Act can relate only to "issuing guidelines" and not to interfere or issue directions in individual cases. The case in hand is not one where the Government was exercising authority under S.191 of the Act. So much so, the contents of Ext. P4 are without the sanction of law and hence without authority.

9. In view of the statutory provisions and the principles of the law laid down in **Valanchery Service Co-operative Bank Ltd. (supra)**, the contention of the petitioner that Ext.P2 minutes of the Panchayat is valid and legal, and will have to be accepted.

10. Now, the question is as to whether the 4th respondent is empowered to appoint respondents 5 and 6. In view of Section 166(2) and the law laid down in **Valanchery Service Co-operative Bank Ltd. (supra)**, I am of the considered opinion that the said action taken by the 4th respondent cannot be sustained under law.

11. Now the question is whether the directions can be issued to respondents 1 to 4 to re-engage the petitioner in the 3rd respondent



Panchayat on a contract basis until a selection procedure is put in place in accordance with law for the post of Anganwadi workers that is broken by the due process of law. In the instant case, the Panchayat has not recorded their appearance before this Court. In the facts and circumstances, I am of the view that such a decision will have to be taken by the Panchayat itself. It is for the petitioner to approach the Panchayat and seek re-engagement on a contract basis.

Resultantly, this writ petition is ordered as under :-

(i) The appointment of the 5th and 6th respondents to the post of permanent Anganwadi workers with the 3rd respondent Panchayat will stand quashed.

(ii) There will be a direction to the 3rd respondent to consider re-engagement of the petitioner in the 3rd respondent Panchayat in terms of the observations and directions issued in Ext.P7. The 3rd respondent shall be entitled to take an appropriate decision in accordance with law.

This writ petition is disposed of.

Sd/-
RAJA VIJAYARAGHAVAN V
JUDGE

SMA



APPENDIX OF WP(C) 6171/2023

PETITIONER EXHIBITS :-

- Exhibit P1 TRUE COPY OF THE MINUTES BOOK DATED 27.08.2016 OF THE 3RD RESPONDENT PANCHAYAT
- Exhibit P2 TRUE COPY OF THE MINUTES OF THE MEETING DATED 26.08.2020 OF THE 3RD RESPONDENT PANCHAYAT
- Exhibit P3 TRUE COPY OF THE CIRCULAR NO. DWCD/190/2023-ICDSB4 DATED 03.02.2023 ISSUED BY THE DIRECTORATE OF WOMEN AND CHILD DEVELOPMENT
- Exhibit P4 TRUE COPY OF THE ATTENDANCE REGISTER OF THE 3RD RESPONDENT PANCHAYAT FOR FEBRUARY, 2023
- Exhibit P5 TRUE EXTRACT OF GO. NO. 74/2012/SJD DATED 22.12.2012 ISSUED BY THE 1ST RESPONDENT
- Exhibit P6 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 26.11.2019 IN WP(C) 24893 OF 2018
- Exhibit P7 TRUE COPY OF THE JUDGMENT DATED 16.12.2021 IN WP(C) 12966 OF 2021
- Exhibit P8 True copy of the RTI reply dated 11.04.2023 issued by the 4th respondent

RESPONDENT EXHIBITS :-

- Exhibit R4(a) True copy of GO(MS) No. 58/2008/SWD dated 22.10.2008 of Social Welfare Department
- Exhibit R4 (b) True copy of GO(MS) No. 74/2012/SJD dated 22.12.2012 of Social Welfare Department
- Exhibit R4 (c) True copy of GO(MS) No. 10/2013/SJD dated 01.02.2013 of Social Welfare Department
- Exhibit R4 (e) True copy of the proceedings No. A4-5669/19 dated 07.09.2019 of Kadapra Grama Panchayath



01.02.2013 of Social Welfare Department

- Exhibit R4 (g) True copy of the Order WCD/PTA/A4-1687/22 dated 06.02.023 of District Women and Child Development officer
- Exhibit R4 (h) True copy of the minutes of Kadapra Grama Panchayath dated 26.08.2020
- Exhibit R4 (i) True copy of the letter No. ICDS/PK2/210/18 dated 25.09.2020
- Exhibit R4 (f) True copy of the Order WCD/PTA/90/06/2019 dated 08.11.2019 of District Women and Child Development Department, Pathanamthitta
- Exhibit R4 (d) True copy of the proceedings No. ICDS/B4-23176/12 dated 26.02.2016 of Social Welfare Department
- Exhibit R5(a) The Copy of the Order dated 10.02.2023 of the Child Development Officer, Pulikeezhu Block Panchayat