
(2009) 07 KL CK 0081

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 36179 of 2007 (F)

K. Vasu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 07 KL CK 0081

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : K.N. Ramachandra Panicker, for the Appellant; A. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—Heard Sri.K.N.Ramachandra Panicker, the learned counsel appearing for the petitioner, Sri. Muhammed Fazil, the learned Government Pleader appearing for respondents 1 to 4 and Sri.V.Sathish, the learned Counsel appearing for the fifth respondent.

2. The petitioner who is admittedly a Casual Sweeper engaged by the fifth respondent Panchayat since the year 1994 had earlier filed W.P.(C) No. 12261 of 2005 in this Court, claiming regularisation in service, relying on the terms and stipulations in Ext.P5 Government order dated 25.11.2005. By Ext.P6 judgment delivered on 14.6.2006 in W.P (C) No. 12261 of 2005 this Court directed the petitioner to move the Government and the Government was also directed to consider the claim of the petitioner and pass orders thereon. The petitioner accordingly moved the Government. The Government by Ext.P7 order dated 13.7.2007 rejected the application on the ground that as the petitioner was being engaged on contract basis, he is not entitled to be regularised in service notwithstanding the recommendation of the Panchayat to regularise him in service. Ext.P7 is under challenge in this writ petition.

3. The fact that the petitioner has been continuously working as Casual Sweeper

in the fifth respondent Panchayat since the year 1994 is not in dispute. Ext.P19, the counter affidavit filed by the Panchayat in the writ petition that was disposed by Ext.P6 judgment would indicate that he was being engaged on contract basis but the payment was being made on monthly basis. The engagement was no doubt on contract basis, but he was being paid consolidated monthly wages. The official respondents have filed a counter affidavit justifying the stand taken by the Government in Ext.P7. It is stated that as the petitioner was engaged on contract basis, he is not entitled to regularisation in service in terms of Ext.P5 Government order.

4. I have considered the submissions made at the Bar by the learned Counsel appearing on either side. Para 8 of Ext.P5 Government order which deals with regularisation of Casual Sweepers, reads as follows:

8. For the regularisation of the existing casual sweepers (where the sweeping area exceeds 100 sq. mtrs), creation of posts of part time contingent employees depending on the sweeping area has to be made. The sweeping area will be calculated in accordance with the guidelines given in the Appendix. As far as regularisation of existing casual sweepers are concerned, the measurement will be made by the PWD official after notice to the incumbent casual sweeper and in his presence. The incumbent casual sweeper will also sign in the format at Annexure either agreeing with the measurement or disagreeing with it. This exercise will be completed in all cases by 15.12.2005. If, on fixation, the area is seen to exceed 100 sq. mtrs and if there is no post of part time sweeper sanctioned for the office in question, but there is a casual sweeper being engaged, the Head of the Office shall immediately take up with the Government for creation of a post of part time contingent sweeper. Copies of the certificate of the PWD Engineer and full details of the case in the proforma in the Annex shall be furnished along with the proposal. The Administrative Department in Government shall then issue orders before 21.1.2006, in consultation with the Finance Department, for the creation of the post of part-time sweeper in relaxation of the economy orders and absorbing the existing casual sweeper by giving the remuneration of Rs. 1250/- plus DA pm (for area of 100 sq. mtrs and above but below 400 sq. mtrs) and Rs. 1500/- plus D.A. p.m (for area of 400 sq. mtrs and above but below 800 sq. mtrs). The posts shall be created with effect from the date of appointment of the incumbent as Casual Sweeper or from 18.6.2001 (ie. 3 years preceding the date of judgment vide ref (10) above) whichever is later. In the case of those covered by earlier orders of the High Court (for regularisation) the relevant date shall be the date of appointment of the incumbent as Casual Sweeper or the date 3 years preceding the date of such judgment ordering regularisation, whichever is later. The absorption/regularisation shall be done with effect from this date only. Back arrears shall be payable only with effect from this date of regularisation. The period spent prior to regularisation shall not count for any purpose.

5. Ext.P5 Government order issued after a series of decisions were rendered by

this Court regarding regularisation of Casual Sweepers. By Ext.P5 the Government decided to regularise Casual Sweepers by creating a post of Part-time Contingent Sweeper if the sweeping area exceeds 100 sq. mtrs. There is nothing in Ext.P5 Government order which justifies the stand taken by the Government that Casual Sweepers engaged on daily wages/contract basis are not entitled to regularisation. Ext.P5 Government order does not contain any stipulation regarding the nature of engagement of the Casual Sweeper whose service is sought to be regularised. The emphasis in para 8 of Ext.P5 Government order is on the sweeping area and not on the nature of the engagement of the Casual Sweeper. I am therefore persuaded to agree with the learned Counsel appearing for the petitioner that the petitioner is entitled to be regularised in service. I accordingly hold that the stand taken by the Government in Ext.P7 is not sustainable in law.

In the result, I allow this writ petition, quash Ext.P7 and direct the Government to pass orders regularising the service of the petitioner as requested by the Panchayat. Final orders in the matter shall be passed within three months from the date on which the petitioner produces a certified copy of this judgment before the Secretary to Government, Local Self Government Department. The petitioner shall be given regularisation strictly in terms of para 8 of Ext.P5 Government order. Needless to say he will also be entitled to salary and allowances at the applicable rates with effect from the date of regularisation. He will also be entitled to the benefit of periodical pay revisions if any. Payment of monetary benefits shall be made within three months from the date on which the orders are issued regularising the service of the petitioner.

The writ petition is allowed as above. No costs.