

(2021) 01 KL CK 0372

In the High Court Of Kerala

Case No : Original Petition (KAT) No. 19 Of 2021

State Of Kerala And Ors

APPELLANT

Vs

Suprabha S

RESPONDENT

Date of Decision : 15-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 01 KL CK 0372

Hon'ble Judges : Alexander Thomas, J;T.R. Ravi, J

Bench : Division Bench

Advocate : B. Vinod

Final Decision : Dismissed

Judgement

Alexander Thomas, J

1. The prayer in the aforecaptioned Original Petition (KAT) filed under Articles 226 and 227 of the Constitution of India is as follows;

â??... â?¡ to set aside Exhibit P7 impugned order dated 09.08.2019 in O.A.No.625/2017 and to dismiss the Original Application.â??

2. Heard Sri B.Vinod, learned Senior Government Pleader appearing for the petitioners (State of Kerala and others) in the original petition/respondents

in the OA before the Tribunal. In the nature of the order proposed to be passed in this original petition, notice to the contesting respondent herein/sole

applicant before the Tribunal will stand dispensed with.

3. The petitioners in the original petition/respondents in the OA are aggrieved by the impugned Ext.P7 final order dated 09.08.2019 rendered by the

Kerala Administrative Tribunal in O.A.No.625 of 2017 filed by the respondent herein/original applicant, whereby it has been ordered that the services

of the said original applicant as casual sweeper in the unit concerned should be regularised with effect from 1.04.2002 and to grant her all

consequential benefits, as she is fully entitled to get the benefit of regularisation as envisaged in Annexure A5 G.O. (P)No.501/2005/Fin. dated

25.11.2005, more particularly, paragraph No.8 thereof. In this regard, incidentally it is to be noted that the competent authority of the State

Government in the Administrative Department concerned has issued Annexure A8 G.O.(Ms.)No.133/ 2015/AD dated 07.08.2015, whereby it has

been ordered that the petitioner is entitled for regularisation only with effect from 07.08.2005, the date of Annexure A8 order. The interdiction made

by the Tribunal is only to the limited extent of the plea of the original applicant for getting regularisation with effect from 1.4.2002 and not merely from

07.08.2015.

4. The case lies in an extremely narrow compass. As can be seen from the pleadings in page 1 of this paper book, it is admitted by the petitioners that

the respondent herein/original applicant was indeed engaged as casual sweeper from 13.07.2001 onwards at the Mobile Farm Aid Unit concerned

which was later shifted to a new building on 01.04.2002 and it was subsequently upgraded as a Veterinary Dispensary on 24.6.2013.

5. The following aspects are beyond any factual controversy and those aspects mentioned hereinafter are fully admitted by the petitioners

herein/respondent in the OA as can be seen from the pleadings and materials on record and more particularly the admitted documents issued by none

other than the petitioners herein. Annexure A2 (see page 33 of this paper book) is a letter dated 19.07.2005 issued by the Assistant Executive

Engineer, Buildings Sub Division, Pathanamthitta which contains therewith the certificate issued by the said PWD official on 19.07.2005 certifying that

sweeping area of the building for Mobile Farm Aid Unit as a whole is measured and calculated as 132.49 M2 including the yard. Later, the Assistant

Engineer, PWD has issued Annexure A2(a) letter dated 24.06.2006 (see page 34 of this paper book) addressed to the Veterinary Surgeon concerned

enclosing therewith the measurement details of the sweeping area. The measurement certificate and the measurement details given on 06.11.2013

enclosed along with Annexure A2(a) letter dated 24.06.2006 issued by the Public Works Department are available at pages 35 and 36 of this paper

book, wherein it has been certified beyond any doubt that the total sweeping area concerned is 113.82 M2. The final details of the measurement of the sweeping area to arrive at the total sweeping area as 113.82 M2 are given on internal page 21 of Ext.P1 (see page 36 of this paper book). It is also admitted by the petitioners, more particularly, by none other than the 1st respondent State Government at Annexure A8 G.O.(Ms)No.133/2015/AD dated 07.08.2015 in paragraph 3 that the sweeping area in question is 113.82 M2 (see page 51 of this paper book).

6. It is by the aforesaid Annexure A8 G.O.(Ms)No.133/ 2015/AD dated 07.08.2015 the competent authority of the State Government in the Administrative Department has taken the stand that though the original applicant is entitled for the benefit of regularisation, the new date of such regularisation could only be from 07.08.2015.

7. So it can be seen that as per Annexure A2 measurement certificate dated 19.07.2005 issued by none other than the competent officials of the

Public Works Department, the total sweeping area is 132.49 M2 including yard. As per the subsequent measurement given at Annexure A2(a)

certificate dated 06.11.2013 (see page 35 of this paper book) issued by the Public Works Department Officials concerned, the measurement area is

then shown as 113.82 M2. It is admitted by the petitioners at page 1 of this paper book that the respondent was engaged as casual sweeper on

13.07.2001 in the Mobile Farm Aid Unit, which was shifted to new building on 01.04.2002, which was later changed as Veterinary Dispensary on

24.06.2013. But the fact that the measurement was more than 100 M2 ever since the measurement was taken initially on 19.7.2005 as per Annexure

A2 is not in any manner disputed. When exactly the measurement area was reduced from 132.49 M2 as shown in Annexure A2 (given on page 33 of

the paper book) to 113.82 M2 as shown in Annexure A2(a) (given on pages 35 and 36 of this paper book) is not stated by the petitioners either before

the Tribunal or before this court. The petitioners have no case that the measurement referred to in Annexure A2 is not in accordance with the

guidelines issued by the Government in the Appendix to Annexure A5 G.O. (P)No.501/2005/Fin. dated 25.11.2005. There is no dispute that the Mobile

Farm Aid Unit was shifted to the new building on 01.04.2002. No materials are placed either before the Tribunal or before this Court to show that the

total sweeping area of the place of work of the respondent herein was in fact below the permissible limit of 100 M², before 25.07.2011 (date of

issuance of Annexure A1 G.O.). The entitlement of the sole respondent herein is to be evaluated on the basis of the basic norms provided in

Annexure A5 G.O.(P)No.501/2005/Fin. dated 25.11.2005. As per Annexure A5 Government order dated 25.11.2005 (see pages 40 to 44 of this paper

book), Government have ordered for regularisation of existing casual sweeper posts, where the sweeping area exceeds 100 M² and also for creation

of posts of part time contingent employees, depending upon the sweeping area involved and that the sweeping area will be calculated on the basis of

the guidelines given in the Appendix to the said Government order. It is further ordered therein that if on fixation, the area is seen to exceed 100 M²

and if there is no post of part time sweeper sanctioned to the office in question, but there is a casual sweeper being engaged, then the Head of the

Department shall immediately take up the matter for creation of post of part time contingent sweeper, etc. Further, it is also, inter alia, ordered therein

that the post shall be created, with effect from the date of appointment of the incumbent as casual sweeper or from 18.6.2001 (three years preceding

the date of the judgment referred to as item No.10 in Annexure A5, viz, judgment dated 18.06.2004 of this Court in W.P.(C)No.30927/2003 and 47

other connected cases) whichever is later. It would be pertinent to extract paragraph 8 of Annexure A5 G.O. (P)No.501/2005/Fin. dated 25.11.2005

(see pages 42 to 43 of this paper book), which reads as follows:

â??8. For the regularization 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 causal 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 Govt. 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 Annexure shall be furnished along with the proposal. The Administrative Dept. in Govt. shall then issue orders before 21-1-2006, in consultation with the Finance Dept., 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 p.m. (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 [i.e., 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.â??

8. In the instant case, the original applicant has been employed continuously from 13.07.2001 and the unit was shifted to the new building only on 01.04.2002. Therefore, there is no question of the original applicant getting regularisation either from the date of the first appointment (13.7.2001) or with effect from 18.06.2001 (three years preceding the date of judgment of this Court referred to hereinabove), as the sweeping area has exceeded the minimum permissible limit of 100 M² and above only with effect from 1.4.2002, consequent to the shifting to the new building. It is in the light of these crucial facts circumstances, that the Tribunal has found that the original applicant is entitled to get the benefit of regularisation on the basis of Annexure A5 G.O. at least from 01.04.2002 and that the stand of the petitioners that the original applicant is entitled to get the benefit of regularisation only with effect from 07.08.2015, is patently wrong. A reading of Annexure A1 GO(Rt)No.1368/2011/AD dated 25.07.2011 (see page 32 of this paper book) would show that what is involved therein is that the existing Mobile Farm Aid Unit was redesignated as Veterinary Dispensary and

formal sanction for the establishment of the Veterinary Dispensary is accorded. The petitioners have no case either before the Tribunal or before this

Court that the sweeping area had in fact exceeded the minimum threshold limit of 100 M2 only on or after 25.7.2011 and that the sweeping area of the

place where the original applicant had worked was below 100 M2 , prior thereto. On the other hand, the above said documents produced herein, more

particularly, Annexure A2 would show that the sweeping area had indeed exceeded the minimum threshold limit of 100 M2. The only issue is as to

whether the sweeping area was always 132.49 M2 as shown in Annexure A2 or 113.82 M2 as shown in Annexure A2(a). There is no necessity for

resolution of the issue in that regard and irrespective of as to whether the sweeping area was on the basis of Annexure A2 or on the basis of

Annexure A2(a), indisputably the said area was above the minimum threshold limit of 100 M2 . The shifting to the new building admittedly occurred on

01.04.2002. Hence the Tribunal is fully justified to arrive at the impugned conclusion that the original applicant is indeed entitled for the benefit of

regularisation at least with effect from 01.04.2002. Hence the impugned stand of the petitioners that the original applicant is entitled for regularisation

only with effect from 07.08.2005 is factually and legally wrong and hence the Tribunal cannot be found fault with for having issued the impugned

directions. Hence the contentions of the petitioners are devoid of any merit. However, we extend the time limit for compliance with the direction of

the Tribunal as contained in Ext.P7 final order in O.A.No.625 of 2017 dated 09.08.2019 by a further period of two months from the date of production

of a certified copy of this judgment.

With these observations and directions, the above Original Petition (KAT) will stand dismissed.