

(2024) 01 KL CK 0179

In the High Court Of Kerala

Case No : Original Petition (KAT) No.386 Of 2023

State Of Kerala

APPELLANT

Vs

R.S. Anithakumari

RESPONDENT

Date of Decision : 25-01-2024

Acts Referred:

Citation : (2024) 01 KL CK 0179

Hon'ble Judges : A.Muhammed Mustaque, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : Saigi Jacob Palatty, R.Reji, M.V.Thamban, Thara Thamban, B.Bipin, Arun Bose, Jeena A.V., Thomas Thomas

Final Decision : Partly Allowed

Judgement

Shoba Annamma Eapen, J

1. The State and its officials, who are the respondents in OA No. 1339 of 2022, have come up with this original petition challenging the order of the Kerala Administrative Tribunal. The issue pertains to the entitlement of the respondent/applicant, who was engaged as "Casual Sweeper" in a Government Homoeo Dispensary, for regularization as Part-Time Sweeper in accordance with Annex.A1 GO(P)501/2005/Fin. dated 25.11.2005 along with consequential monetary benefits.

2. The respondent/applicant was engaged as "Casual Sweeper" in the Government Homoeo Dispensary, Kulakkuda from 01.11.2005 onwards except for a break of five years from October, 2010 to December, 2015. During the said period, she served as Member of Kulakkada Grama Panchayat and after completion of the term, she rejoined duty on 01.01.2016 and continued to work as "Casual Sweeper" at the Government Homeo Dispensary, Kulakkada without any break till 20.07.2022, the date on which she was terminated as per Annex.A5 order. Challenging Annex.A5, the respondent/applicant approached the Tribunal; and the Tribunal, after elaborate consideration of the issue, set aside

Annex.A5 order dated 20.07.2022 and directed the petitioners/respondents to take emergent steps for regularisation of the respondent/applicant as Part-Time Sweeper and to grant her all benefits with effect from 01.01.2007. It was further ordered that the period, during which the respondent/applicant was serving as the Member of the Grama Panchayat, i.e., from October, 2010 to December, 2015, shall be excluded for the purpose of granting benefits. It is challenging this, the State and its officials have come up before this Court.

3. Learned Government Pleader submitted that the sweeping area of the relevant building was, admittedly, below the threshold limit of 100 sq.m. It was further argued that Annex.A1 Government Order does not include any provision for regularization of Casual Sweepers engaged against sanctioned posts. It is further submitted that the tenure of the respondent/applicant as "Casual Sweeper" was not continuous from 01.11.2005 and other Casual Sweepers were also employed during her period of absence. It was pointed out that the respondent/applicant was serving as "Panchayat Member" from October, 2010 to December, 2015, during which period she ceased her employment as "Casual Sweeper" and that the service details of the respondent/applicant clearly indicate break in service with several other Casual Sweepers working during subsequent years. It is further submitted that the respondent/applicant worked only for 15 days in some months and on certain occasions, she worked part-time and other sweepers covered the remaining period. According to the learned Government Pleader, Annex.A2 Government Order does not have any retrospective effect, rendering the respondent/applicant ineligible for regularization from 01.01.2007 and that even if the respondent/applicant is entitled for regularization from the specified date, she is not entitled for monetary benefits for the periods of non-employment. It is further argued that the direction of the Tribunal may be modified to include monetary benefits for the period of non-employment and not to grant any pensionary benefits for the period from October, 2010 to December, 2015 and also to hold that the respondent/applicant is not entitled to any pensionary benefits during the period from October, 2010 to December, 2015.

4. Per contra, the learned counsel for the respondent/applicant, submitted that the respondent/applicant was engaged as "Casual Sweeper" from 01.11.2005, receiving a fixed monthly remuneration, against a sanctioned post. Hence, according to the learned counsel, as per Annex.A1 Government Order which was modified as Annex.A2 Government Order, she is entitled for regularization and consequential monetary benefits. It is admitted that the criterion of sweeping area falls below the threshold limit of 100 sq.m., but, the Government modified Annex.A1 Government Order dated 25.11.2005 by Annex.A2 Government Order dated 09.02.2010, specifically stating in Sub Clause (iv) of Clause 3 that in cases where sweepers were engaged against existing sanctioned posts, for any reason, shall also be entitled to regularization, provided the date of appointment was on or before 25.11.2005. It is further submitted that since the respondent/applicant was engaged from 01.11.2005 onwards against an existing sanctioned post, she is entitled for regularization and

consequential benefits.

5. We have considered the rival submissions put forward by the learned counsel on both sides. Prior to Annex.A1 Government Order, the respondent/applicant was engaged as "Casual Sweeper" on 01.11.2005 even though the sweeping area of the building was less than the threshold limit of 100 sq.m. On a perusal of Annex.R2(a), it is seen that out of the 20 casual sweepers, the respondent/applicant worked for the major period though there was a break in period, during October, 2005 to December, 2010, while she was serving as the Member of Kulakkada Grama Panchayat. There were several casual sweepers from 2005 to 2015. Admittedly, the claim was raised only by the respondent/applicant. The Government accepted the findings in the judgment dated 12.08.2005 in W.A.No.1863 of 2004 and issued Annex.A2 Government Order dated 09.02.2010.

6. Sub Clause (iv) of Clause 3 of Annex.A2 Government Order reads as follows:

"(iv) In cases, where the sweepers engaged against sanctioned posts for any reason shall also be eligible for regularisation, provided the date of appointment was on or before 25.11.2005. On retirement of the existing sweeper in such offices, the vacancy will be filled up through Employment Exchange only."

The respondent/applicant was engaged from 01.11.2005 onwards against an existing sanctioned post. Thus, as per Annex.A2 Government Order, the respondent/applicant is entitled for regularization.

7. Admittedly, the respondent/applicant was out of service from October, 2010 to December, 2015. The objection raised by the State to the regularization sought for by the respondent/applicant putting reliance on Annex.R2(d) Circular No.19/2016 dated 05.03.2016 is untenable. A circular cannot supersede a Government Order granting benefits to underprivileged categories such as Casual Sweepers. The vested right accrued to the respondent/applicant through Annexes.A1 and A2 Government Orders cannot be revoked by a circular.

8. Hence, on a consideration of the entire facts and circumstances of the case, we are of the opinion that the respondent/applicant is entitled for regularization and the impugned order of the Tribunal does not call for any interference. However, the respondent/applicant can be granted pensionary benefits only for the period during which she actually worked. In the impugned order, the Tribunal has excluded the period from October, 2010 to December, 2015 for the purpose of granting benefits. We make it clear that the period from October, 2010 to December, 2015, during which the respondent/applicant was absent from duty, shall be excluded for the purpose of granting monetary benefits and shall not be treated as qualifying service for pensionary benefits.

Accordingly, the OP(KAT) is partly allowed and the impugned order is modified to the above extent.