
(2022) 04 KL CK 0159
In the High Court Of Kerala
Case No : Writ Petition (C) No. 4413 Of 2022

Tiju S. Nair

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 29-04-2022

Acts Referred:

Citation : (2022) 04 KL CK 0159

Hon'ble Judges : V.G.Arun, J

Bench : Single Bench

Advocate : B.Renjithkumar, Clara Sherin Francis, R.S.Kalkura, Mansoor.B.H., Sakeena Beegum, Libin Joseph, M.S.Kalesh, R.Bindu, Harish Gopinath, P.I.Najumal Hussain, Anjali B Chandran, George Augustine, Alex Midhun K.M., Gentle C.D., Venugopal V

Final Decision : Dismissed

Judgement

V.G.Arun, J

1. Petitioners are Ex-service men deployed by the third respondent Corporation to work as security guards at the Government Medical College, Konni. The third respondent has been constituted to implement schemes for the welfare and rehabilitation of ex-service men and their dependents. The Government has issued Exts.P1 to P3 orders requiring Government Departments, Local Self Government Institutions and quasi-Government bodies and establishments to engage personnel from the third respondent for security related duties. In spite of the Government orders, security personnel were being engaged through private agencies. Complaining that the second respondent was engaging security guards at the Government Medical College, Konni through private agencies, the petitioners, along with 11 others, filed W.P.(C) No.15882 of 2020 before this Court. Therein, an interim order was passed on 05.08.2020, directing the second respondent not to appoint temporary security staff otherwise than in accordance with Exts.P1 and P2 orders. According to the petitioners, the interim order prompted the second respondent to appoint security staff from the panel

maintained by the third respondent and in that process, the petitioners were also appointed under Exts.P4 and P5 orders. While the petitioners were continuing in service, the second respondent issued Ext.P6 letter requesting the third respondent to reduce the number of security staff to 15 (10 male and 5 females). Acceding to the request, the third respondent withdrew 15 security personnel. Even then, the service of the petitioners continued. While so, the third respondent issued Ext.P7 e-mail message, calling upon the ex-servicemen awaiting employment in Pathanamthitta District to inform their willingness to join as temporary security staff. Apprehending that Ext.P7 will result in the petitioner's termination, the writ petition is filed seeking the following reliefs;

"i) Issue a writ of certiorari or any other appropriate writ, order direction to quash Ext.P7.

ii) Issue a declaration that the petitioners are entitled to continue in the service of the 2nd respondent as temporary security staffs till they attain the age of 62 years."

2. Learned Counsel for the petitioner contended that despite Government orders, the third respondent Corporation had never sought implementation of the Government orders by ensuring appointment of ex-servicemen in the Departments and bodies mentioned in those orders. It was the petitioners who had sought implementation of the order and obtained the interim direction, restraining the second respondent from appointing private security staff. The said interim order had promoted the second respondent to approach the third respondent for sponsoring the names of enlisted ex-servicemen. Being convinced that the petitioners were the rightful claimants, the third respondent had deployed them. A collusive attempt is now being made by respondents 2 and 3 to replace the petitioners with ex-servicemen of their choice. Learned Counsel relied on the decision in *State of Haryana and others v. Piara Singh and others* [(1992) 4 SCC 118] to contend that adhoc/temporary employees continuing for long have the right to be considered for regularisation and at any rate, they should not be replaced with another set of adhoc/temporary employees.

3. Learned Standing Counsel for the third respondent Corporation took strong objection to the manner in which the writ petition is filed by suppressing material facts. The following factual submission were made on behalf of the third respondent;

The Kerala State Ex-servicemen Development and Rehabilitation Corporation (KEXCON) was constituted on 23.06.2000, with the objective of formulating and implementing schemes for the rehabilitation and welfare of ex-servicemen and their dependents. To achieve the objective by ensuring employment for the ex-servicemen enlisted with the KEXCON, the Government issued Ext.R3(b) to R3(d) orders, directing all local bodies and quasi-government organisations to engage personnel from the third respondent for security related duties. The question whether Ext.R3(b) to R3(d) orders and related circulars/notification are binding

on Hospital Developmental Societies came up for consideration before this Court in W.P.(C) No.33329 of 2018.

Therein, Ext.R3(e) judgment was rendered, upholding the Government orders. In the meanwhile, the petitioners and others approached this Court and obtained an interim order in W.P.(C) No.15882 of 2020, requiring the second respondent to desist from engaging private security staff. Thereafter, the third respondent requested the second respondent to intimate willingness to deploy required number of security personnel at the Government Medical College Hospital. Acting upon the request, the second respondent issued Ext.R3(j) letter requiring the third respondent to take steps for appointing of 10 security guards. In the meanwhile, the ex-servicemen who had filed W.P.(C) No.15882 of 2020 approached the third respondent requesting to consider their names for deployment to the second respondent claiming that the second respondent had come forward with the offer to engage security guards sponsored by the third respondent based on the interim orders obtained by them. The request of the 21 ex-servicemen was accepted and 10 among them (petitioners) deployed as temporary security guards at the Konni Medical College. The deployment of the petitioners led to widespread complaint from the ex-servicemen included in the annual rank list of Pathanamthitta District, who alleged that their seniority was overlooked. After complaint was considered, the Board of Directors of the third respondent decided to deploy 50% security guards from the 21 ex-servicemen and the balance 50%, from the annual rank list in upcoming vacancies. While so, as per Ext.R3(g) communication, the second respondent informed about the need for Ex-servicemen Security Guards including 5 lady guards. Accordingly, Ext.R3(r) was issued, deploying 15 ex-servicemen security guards (male) of whom, 8 were from among the 21 ex-servicemen. Thus, a total of 18 ex-servicemen were deployed from the 21 petitioners in W.P.(C) No.15882 of 2020. Later, the second respondent issued Ext.R3(s) letter requesting the third respondent to withdraw 15 security guards. Accordingly, decision was taken to withdraw the 15 security guards deployed under Ext.R3(r). Subsequently, the second respondent requested to withdraw any 15 security guards and not to limit the withdrawal to the second batch. In the meanwhile, representations were submitted by two groups of ex-servicemen, the ex-servicemen who figured as petitioners in W.P.(C) No.15882 of 2020 and the ex-servicemen included in the annual rank list. After considering both representations, the Board of Directors of the third respondent decided to withdraw the 15 ex-servicemen security guards, as decided by the second respondent as per Ext.P6 dated 17.01.2022. It was also decided that 10 security guards who were deployed with effect from 15.02.2021 (writ petitioners) to be withdrawn with effect from 14.02.2022 and deploy fresh ex-servicemen security guards from the annual rank list of Pathanamthitta District. The decision was taken considering that deployments are to be carried out as per Ext.R3(z) (Policy for Conduct of Screening and Deployment of Ex-Servicemen with clients of KEXCON) under rehabilitation programme. It is contended that the petitioners are demanding continuance is

against Ext.R3(z) policy and against the interest of hundreds of ex-servicemen awaiting engagement based on their seniority in the annual rank list.

4. Having heard the learned Counsel on either side, I find the claim raised by the petitioners to be wholly meritless and mischievous. The petitioners are also the members of the third respondent and included in the annual rank list prepared in accordance with Ext.R3(z) policy. The policy envisages conduct of screening and selection of ex-servicemen for deployment with various establishments. The process of selection is clearly set out in Ext.R3(z). The deployment should be in terms of the prescribed procedure. The petitioners managed to steal a march over their seniors in the annual rank list by raising a claim that the second respondent had sought for deployment of ex-servicemen based on the interim order passed in their writ petition. Unfortunately, the third respondent played into the hands of the petitioners and deployed them overlooking the seniority of others included in the annual rank list. Having secured deployment through dubious means, the petitioners have no vestige of right to claim continuance, by keeping away the rightful claimants. Even though I find substantial merit in the contention of the learned Counsel for the third respondent that the petitioners are guilty of suppression of material facts, I refrain from imposing cost on the petitioners for the sole reason that they had, at one point of time, protected our country. Needless to say that Piara Singh (*supra*) has absolutely no application as far as the petitioners are concerned. The decision of the Board of Directors of the third respondent to withdraw the petitioners and replace them with persons included in the annual rank list in accordance with the procedure prescribed in Ext.R3(z), is well founded and therefore, warrant no interference.

In the result, the writ petition is dismissed.