

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 28TH DAY OF JANUARY 2016/8TH MAGHA, 1937

WP(C).No. 24385 of 2015 (W)

PETITIONER:

JIJU. P.,
LAB ASSISTANT,
SASIMALA KSHEEROLPADAKA SAHAKARANA SANGHAM LTD.NO. W.22(D)
ANAND PATTERN CO-OPERATIVE SOCIETIES, (APCOS),
POOVATHINKAL HOUSE, SASIMALA P.O., PULPPALLY,
WAYANAD.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. SASIMALA KSHEEROLPADAKA SAHAKARANA
SANGHAM LTD. NO W.22(D),
ANAND PATTERN CO-OPERATIVE SOCIETIES, (APCOS),
P.O.SASIMALA, PULPPALLY, WAYANAD
PIN-673 579, REPRESENTED BY ITS SECRETARY.
2. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT,
DAIRY DEVELOPMENT OFFICE, KALPPATTA, WAYANAD-673 579.

R1 BY ADV. SRI.P.N.MOHANAN

R2 BY ADV. SRI. T.R. RAJESH, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-01-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1- TRUE PHOTOCOPY OF THE G.O.P.NO 210/2008/AGI. DATED 15-12-2008.

EXHIBIT P2- TRUE PHOTOCOPY OF THE ORDER ISSUED BY SECOND RESPONDENT DATED 8-3-2013.

EXHIBIT P3- TRUE PHOTOCOPY OF THE JUDGMENT IN WPC 7728/2014 DATED 26-2-2015.

EXHIBIT P4- TRUE PHOTOCOPY OF THE APPLICATION FILED BY THE PETITIONER ALONG WITH THE MEDICAL CERTIFICATE DATED 17-4-2014.

EXHIBIT P5- TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE PRESIDENT OF THE FIRST RESPONDENT DATED 26-05-2015.

EXHIBIT P6- TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 15-6-2015.

EXHIBIT P7- TRUE PHOTOCOPY OF THE LETTER ISSUED TO THE PETITIONER BY THE PRESIDENT OF THE FIRST RESPONDENT DATED 20-6-2015.

EXHIBIT P8- TRUE PHOTOCOPY OF THE REPRESENTATION DATED 27-6-2015 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXHIBIT P8(a)- TRUE ENGLISH TRANSLATION OF EXT. P8.

EXHIBIT P9- TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DATED 15-7-2015.

EXHIBIT P9(a)- TRUE ENGLISH TRANSLATION OF EXT. P9.

RESPONDENTS' EXHIBITS:

EXT.R1(A): TRUE COPY OF THE LETTER DATED 30.07.2015 SENT TO THE DISTRICT MEDICAL OFFICER WITH TRANSLATION.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 24385 of 2015 (W)

Dated this the 28th day of January, 2016.

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondent society, apart from perusing the record.

2. The petitioner, a Lab Assistant working in the first respondent society, initially went on leave for about a month's time, and later wanted to re-join duty. The petitioner reported back to duty armed with Ext.P6 fitness certificate to establish that he is fit to resume his duty. The respondent Bank, according to the petitioner, instead of admitting him to duty, reported his case to the Medical Officer as regards his fitness. The said Medical Officer seems to have issued Ext.P6 Medical Certificate dated 15.06.2015 opining that the petitioner's case should be referred to the Medical Board. Aggrieved, the petitioner has filed the present writ petition.

3. As a matter of further developments, the Medical Board issued a certificate dated 03.11.2015 to the effect that the petitioner is fit for job. And the petitioner joined duty.

4. In response to the submissions made by the learned counsel for the petitioner, the learned counsel for the respondent society has submitted that the petitioner having already joined the services, nothing survives in the writ petition and it has, in fact, become infructuous.

5. In reply, the learned counsel for the petitioner has submitted that though the petitioner is a Lab Assistant, the respondent society has been insisting that he should perform the duty of Procurement Assistant, which entails physical labour. According to him, the petitioner is ill-suited to undertake any physically strenuous task, given his delicate health.

6. The learned counsel for the petitioner has also submitted that the respondent society has been insisting that the petitioner should perform duties other than those of a Lab Assistant, but without issuing any orders in writing. He has also contended that the petitioner has not been paid salary since May, 2015.

7. Be that as it may, it is the prerogative of the respondent society to extract work from its employee keeping in view their suitability and also the needs of the Organisation. At the same time, it

is further pertinent to observe that if at all the respondent Bank intends to use the service of an employee in the capacity other than the one that has been originally assigned as per the allotted job requirement of the said employee, it is incumbent on the administration to issue proper communication to the said employee as regards the nature of duties he is required to discharge.

8. In this context, if at all the respondent society insists by way of a written communication that the petitioner should perform duties other than those assigned to the post of Lab Assistant, the petitioner is always at liberty to take recourse to a statutory or legal remedy, such as Section 45 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, if he is ill-suited to undertake any job involving physical exertion. It is, however, made clear that the respondent society shall pay to the petitioner the arrears of salary, if any, for the days he has already worked .

This writ petition is disposed of.

sd/- DAMA SESHADRI NAIDU, JUDGE.

