

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 11TH DAY OF AUGUST 2017/20TH SRAVANA, 1939

WP(C).No. 12126 of 2011 (M)

PETITIONER(S):

1. NITHU, S/O. SUKUMARAN,
RESIDING AT MANJAMKUZHY, PATTIMATTOM,
ERNAKULAM-683 562.
2. M.K. REGIMON, S/O. KUMARAN,
RESIDING AT THURUTHEL, VAIKAPRAYAR P.O.,
VAIKOM.
3. SMITHA BABU, D/O. NARAYANAN,
RESIDING AT PULPPARAYIL HOUSE,
CHETHICODE P.O., KANJIRAMATTOM,
ERNAKULAM-682 315.
4. T.N. RAJANI, W/O. K.R. MURALEEDHARAN,
RESIDING AT KULATHUMKADAVIL, NADAMA,
VYMEETHY, TRIPPUNITHURA-682 301.
5. PREMA M.P., D/O. PRABHAKARAN,
RESIDING AT MURUTHATTIL HOUSE,
IRUMPANAM P.O., ERNAKULAM-682 309.
6. BEENA BABU, W/O. BABU K.N.,
RESIDING AT KUMBATHIL HOUSE,
KANJIRAMATTOM P.O., ERNAKULAM.
7. SABUMON K.K., S/O. KUTTAPPAN,
KIZHAKKE MALIYIL, IRUMBOGHIKKARA,
UDAYANAPURAM P.O., VAIKOM.
8. AMBIKA P, W/O. LATE CHANDRAN,
RESIDING AT PUNATHIL PARAMBIL,
IRIMPANAM P.O., PIN-682 309.
9. PRAKASAN P.G, S/O. LATE GOVINDAN,
RESIDING AT PANAVELLIL HOUSE,
AMBIKA MARKET P.O., VAIKOM-686 145.

BY SRI.K.GOPALAKRISHNA KURUP, SENIOR ADVOCATE.
ADVS. SMT.K.DEEPA (PAYYANUR),
SRI.S.MANU.

WP(C).No. 12126 of 2011 (M)

RESPONDENT(S):

1. REGISTRAR OF CO-OPERATIVE SOCIETIES (DIARY),
(DIRECTOR DIARY DEVELOPMENT DEPARTMENT),
DIRECTORATE OF DIARY DEVELOPMENT,
THIRUVANANTHAPURAM-1.
2. GENERAL MANAGER,
ERNAKULAM CO-OPERATIVE MILK PRODUCER'S UNION LTD.,
ERNAKULAM DIARY, TRIPPUNITHURA-682 301.
3. ERNAKULAM REGIONAL CO-OPERATIVE MILK
PRODUCER'S UNION LTD. NO.150 (D),
REP. BY ITS MANAGING DIRECTOR,
P.B.NO.2212, EDAPPALLY, KOCHI-682 024.
4. DIARY MANAGER, ERNAKULAM DIARY, PIN-682 301.
5. DISTRICT LABOUR OFFICER,
ERNAKULAM-682 331.

R1, R4 & R5 BY GOVT. PLEADER SRI.RON BASTIAN.
R2 BY SRI.B.S.KRISHNAN, SENIOR ADVOCATE.
ADV. SRI.K.ANAND.
R3 BY ADV. SRI.GEORGE POONTHOTTAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2017, ALONG WITH WP(C).NO.12353 OF 2011 AND
CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE CIRCULAR DATED 15/12/1992.
- EXT.P2 COPY OF THE CIRCULAR DATED 10/12/2010.
- EXT.P3 COPY OF THE ESI IDENTITY CARD ISSUED BY THE EMPLOYER TO THE PETITIONER.
- EXT.P4 COPY OF THE 1ST PETITIONER'S ESI ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2009-2010.
- EXT.P5 COPY OF THE ADVICE MEMO DATED 18/12/1996 ISSUED BY THE 4TH RESPONDENT TO THE 2ND PETITIONER.
- EXT.P6 COPY OF THE ESI IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 2ND PETITIONER.
- EXT.P7 COPY OF THE FRONT PAGE OF THE SSLC BOOK OF THE 3RD PETITIONER.
- EXT.P8 COPY OF THE ESI IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 3RD PETITIONER.
- EXT.P9 COPY OF THE 3RD PETITIONER'S ESI ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2001-2002.
- EXT.P9A COPY OF THE 3RD PETITIONER'S ESI ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2004-2005 SHOWING THE INTEREST RATE.
- EXT.P10 COPY OF THE IDENTITY CARD ISSUED FROM THE MILMA DIARY.
- EXT.P11 COPY OF THE FRONT PAGE OF THE SSLC BOOK OF THE 4TH PETITIONER.
- EXT.P12 COPY OF THE ESI IDENTITY CARD ISSUED BY TH EMPLOYER TO THE 4TH PETITIONER.
- EXT.P13 COPY OF THE 2ND PETITIONER'S ESI ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2001-2002.
- EXT.P14 COPY OF THE IDENTITY CARD ISSUED FROM THE MILMA DIARY.
- EXT.P15 COPY OF THE FRONT PAGE OF SSLC BOOK OF THE 5TH PETITIONER.
- EXT.P16 COPY OF THE ESI IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 5TH PETITIONER.

- EXT.P17 TRUE COPY OF THE 5TH PETITIONER'S E.S.I ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2001-2002.
- EXT.P18 TRUE COPY OF THE IDENTITY CARD ISSUED BY THE SECRETARY, IRUMBANAM KSHEEROLPADAKA SAHAKARANA SANGHAM.
- EXT.P19 TRUE COPY OF THE ADVICE MEMO DATED 25.11.1997 BY THE 4TH RESPONDENT TO THE 6TH PETITIONER
- EXT.P20 TRUE COPY OF THE E.S.I IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 6TH PETITIONER OF THE 6TH PETITIONER.
- EXT.P21 TRUE COPY OF THE FRONT PAGE OF THE S.S.L.C BOOK OF THE 6TH PETITIONER.
- EXT.P22 TRUE COPY OF THE 6 PETITIONER'S E.S.I ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2001-2002 SHOWING THE INTEREST RATE.
- EXT.P22A TRUE COPY OF THE 6H PETITIONER'S E.S.I ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2001-2002 SHOWING THE INTEREST RATE.
- EXT.P23 TRUE COPY OF THE FRONT PAGE OF THE S.S.L.C BOOK OF THE 7TH PETITIONER.
- EXT.P24 TRUE COPY OF THE ADVICE MEMO DATED 02.12.1995 BY THE 4TH RESPONDENT TO THE 7TH PETITIONER.
- EXT.P25 TRUE COPY OF THE E.S.I IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 7TH PETITIONER.
- EXT.P26 TRUE COPY OF THE 7H PETITIONER'S E.S.I ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2002-2003 SHOWING THE INTEREST RATE.
- EXT.P27 TRUE COPY OF THE FRONT PAGE OF THE S.S.L.C BOOK OF THE 8TH PETITIONER.
- EXT.P28 TRUE COPY OF THE 8 PETITIONER'S E.S.I ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2001-2002 SHOWING THE INTEREST RATE.
- EXT.P28A TRUE COPY OF THE 8TH PETITIONER'S E.S.I ANNUAL STATEMENT OF ACCOUNTS FOR THE YEAR 2004-2005 SHOWING THE INTEREST RATE.
- EXT.P29 TRUE COPY OF THE IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 8TH PETITIONER.

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- EXT.P30 TRUE COPY OF THE E.S.I IDENTITY CARD ISSUED BY THE EMPLOYER TO THE 9TH PETITIONER.
- EXT.P31 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE ERNAKULAM REGIONAL MILMA CASUAL AND CONTRACT EMPLOYEES UNION (C.I.T.U) REG.NO.07.05/2005 TO THE 1ST RESPONDENT.
- EXT.P32 TRUE COPY OF THE LETTER DATED 22.11.2010 SUBMITTED BY THE ERNAKULAM MEKHALA MILMA CASUAL WORKERS CO-ORDINATION COMMITTEE BEFORE THE 5TH RESPONDENT.
- EXT.P33 TRUE COPY OF THE NOTICE DATED 04.12.2010 ISSUED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P34 TRUE COPY OF THE NOTIFICATION DATED 29.01.2011 ISSUED BY THE 3RD RESPONDENT.
- EXT.P35 TRUE COPY OF THE NOTIFICATION DATED 01/03/2016 PUBLISHED IN MALAYALA MANORAMA DAILY.

RESPONDENT'S EXHIBITS:-

- EXT.R3A COPY OF THE EMPLOYEE DETAILS OF ERCMPU AS PER APPROVED STAFF PATTERN AND THE PRESENT STRENGTH.
- EXT.R3B COPY OF THE CATEGORY WISE RETIREMENT DETAILS FOR THE YEAR 2011, 2012, 2013 AND 2014 OF ERCMPU.
- EXT.R3C COPY OF THE MEMORANDUM OF SETTLEMENT NO.D-8388/2010 DATED 28/12/2010.

//TRUE COPY//

P.S. TO JUDGE

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A. MUHAMED MUSTAQUE, J.

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W.P.(C).Nos.12126, 12353, 12354, 13469, 13998,
15931, 20085 & 20848/2011
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Dated this the 11<sup>th</sup> day of August, 2017

**J U D G M E N T**

These bunch of writ petitions are filed by the casual labourers working under the Ernakulam Regional Co-operative Milk Producers' Union ("ERCMPU" for short). As seen from the pleadings, some of them were either engaged from primary Co-operative Societies after selection process or sponsored by Employment Exchange. Most of these casual labourers have put nearly 20 years of service. Originally, there were around 40 petitioners.

2. According to the learned counsel for the ERCMPU, at present only eight members are working with them. It seems that some of the petitioners have left the service and joined elsewhere. Anyhow, this court is not entering into that issue now. The petitioners main prayer in these writ petitions is for regularisation with the ERCMPU. They also challenge a notification issued by the ERCMPU dated 29/1/2011 inviting applications for filling up the posts manned by them, the casual employees. The learned

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counsel for the ERCMPU argued that the writ petitions are not maintainable in as much as the Co-operative Society cannot be treated as a State and the petitioners have an efficacious remedy under the Co-operative Societies Act. It is further argued that under the Co-operative Societies Act, a Co-operative Society can fill a post only in accordance with the Act and Rules made thereunder and also based on the circulars issued from time to time. Therefore, it is not possible for the Management even to consider the petitioners case sympathetically.

3. It is to be noted that these labourers have put in service with the ERCMPU for more than two decades. Most of them are now over aged for applying for regular employment. The upper age limit for applying for regular employment is 37 years. Therefore, they cannot seek any regular employment with the ERCMPU. As seen from the notification there were also vacancies in ERCMPU. This court, by various interim orders reserved certain number of vacancies, namely, 9 posts of Plant Attender Grade-III in W.P.(C).No.12126/2011, 8 posts of Plant Attender Grade-III in W.P.(C). No.12353/2011, 6 posts of Plant Attender Grade-III in W.P.(C). No.12354/2011 and, 3 posts of Plant Attender Grade-III in W.P.(C).

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No.15931/2011. Therefore, posts are available to consider the claim of the petitioners.

4. It is appropriate to refer the dictum laid down by the Hon'ble Supreme Court in **State of Karnataka v. Umadevi [(3), (2006) 4 SCC 1]**, wherein it was held in paragraphs 13 and 15 as follows:

“13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have

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also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab v. Jagdip Singh (1964) 4 SCR 964 : AIR 1964 SC 521*). It was held therein: (SCR pp. 971-72)

“In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.”

**15.** Even at the threshold, it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. In *State of Mysore v. S.V. Narayanappa (1967) 1 SCR 128 : AIR 1967 SC 1071*) this Court stated that it was a misconception to consider that regularisation meant permanence. In *R.N. Nanjundappa v. T. Thimmiah (1972) 1 SCC 409 : (1972) 2 SCR 799*) this Court dealt with an argument that regularisation would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

“Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on

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behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

5. However, it is to be noted that the ERCMPU cannot take a decision for regularisation of the petitioners without concurrence of the Registrar of Co-operative Societies (Dairy), (Director, Dairy Development Department). This Court is of the view that the labour of the petitioners for 2 decades (those who are continuing as on today) shall not be deprived of. These people have no other pasture for their livelihood. It is to be noted that these persons, who are now continuing have expertised in this field. Instead of replacing these experts, it is appropriate to regularise them in the larger

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interest of the society as well as in the larger public interest. In such circumstances, this Court is of the view that the petitioners case shall be considered for regularisation prospectively without any delay.

6. Therefore, this Court dispose of these writ petitions with a direction to the Managing Director of the ERCMPU to prepare a list of casual labourers, who are among the petitioners presently working with the ERCMPU as on day today and forward the same to the Director for consideration of their claim for regularisation in terms of the judgment in **Umadevi's** case (*supra*). Needful shall be done within a period of one month from the date of receipt of a copy of this judgment. It is made clear that those petitioners, who are working on rotation basis shall also be considered and the artificial break shall be ignored for the purpose of forwarding the list. Thereafter, the Director, Dairy Development Department shall take appropriate decision within a further period of two months after hearing the ERCMPU and the petitioners. No costs.

Sd/-  
**A. MUHAMED MUSTAQUE, JUDGE**

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