

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 28TH DAY OF JUNE 2018 / 7TH ASHADHA, 1940

WP(C).No. 10054 of 2016

PETITIONER

SINI.K.C,
W/O.KUNJU,AGED 43 YEARS, RESIDING AT THEKKUMKATTIL HOUSE,
MULLIRINGAD KARA, THODUPUZHA TALUK, IDUKKI DISTRICT.

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER
SMT.S.JESSIN

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO KERALA CO-OPERATIVE
MILK MARKETIING FEDERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE MANAGING DIRECTOR,
KERALA CO-OPERATIVE MILK MARKETING FEDERATION,
THIRUVANANTHAPURAM - 695 001.
3. THE CO-OPERATIVE REGISTRAR (DAIRY) ,
THIRUVANANTHAPURAM - 695 001.
4. THE JOINT REGISTRAR CO-OPERATIVE (DAIRY) ,
COLLECTORATE, KAKKANAD - ERNAKULAM - 682 030.
5. MULLARINGADU KSHEEROLPADAKA SAHAKARANA SANGAM LTD.NO.1-146D,
REPRESENTED BY ITS SECRETARY, MULLARINGADU KARA,
MULLARINGADU P.O.,THODUPUZHA TALUK, IDUKKI DISTRICT, PIN -685 607.
6. THAMPY KURIAKOSE,VATTAKAVIL HOUSE,
PRESIDENT MULLARINGADU KSHEEROLPADAKA SAHAKARRANA SANGAM LTD.NO.1-146D,
MULLARINGADU KARA, MULLARINGADU P.O. ,
THODUPUZHA TALUK, IDUKKI DISTRICT, PIN - 685 607.

R1,R3 & R4 BY GOVERNMENT PLEADER SRI SUNIL KURIAKOSE
R2 BY SMT.LATHA ANAND
R5,R6 BY ADV. SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-06-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.V.

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P1: TRUE COPY OF THE CERTIFICATE DATED 25.8.2008 FROM MILMA TRAINING CENTRE, THRISSUR.
- EXT.P2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEPUTY DIRECTOR OF IDUKKI DATED 8.2.2013.
- EXT.P3: TRUE COPY OF THE COMPLAINT DATED 1.3.2016 BY THE PETITIONER.
- EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 8.3.2016 BEFORE THE AUTHORITIES.
- EXT.P5: PHOTOCOPY OF THE ORDER BEARING NO C.1659/06 KIDS DATED 18.7.2006.
- EXT.P6: PHOTOCOPY OF THE APPLICATION TO STATE INFORMATION COMMISSION DATED 30.5.2017.
- EXT.P7: PHOTOCOPY OF LETTER BEARING NO.7562/SIC-GEN/2017 DATED 20.6.2017.
- EXT.P8: PHOTOCOPY OF THE REPLY GIVEN 5TH RESPONDENT TO STATE INFORMATION COMMISSION DATED 3.7.2017.
- EXT.P9: PHOTOCOPY OF THE INFORMATION GIVEN BY PUBLIC INFORMATION OFFICER BEARING NO.A/2813/12 (RTIA) DATED 14.11.2012.

RESPONDENT EXHIBITS: NIL

/TRUE COPY/

K.V.
16.07.2018

P.S.TO JUDGE

P.V.ASHA J.

W.P.(C).No.10054 of 2016

Dated this the 28th day of June, 2018

J U D G M E N T

The case of the petitioner is that she was working in the Mullaringadu Ksheerolpadaka Sahakarana Sangam Limited-the 5th respondent. Her initial appointment was as a Milk Assistant on daily wages. She was being paid a sum of Rs.5250/- towards wages, monthly on vouchers. Petitioner has produced Ext.P1 certificate which shows that she was deputed from the 5th respondent Society to undergo a training programme in Veterinary First Aid for the period from 19.08.2008 to 25.08.2008. Petitioner claims that she was thereafter engaged against the post of Lab Assistant when Smt.Lijy John, who was a regular incumbent in the post, left the society, to take up

employment under Government. It is her contention that from October 2008 onwards she was engaged as Lab Assistant on daily wages. Petitioner has produced Ext.P2 certificate dated 08.02.2013 issued by the Dairy Development Department which shows that Sini Kunju (petitioner) Lab Assistant of the 5th respondent society has successfully completed 2 days awareness programme on Food Safety and Standards Act 2006 conducted for Primary Dairy Co-operative Society Personnels organised by the Department from 07.02.2013 to 08.02.2013. While continuing so, petitioner had occasion to submit complaints against the President of the 5th respondent Society regarding misappropriation. On 01.03.2016, she had submitted a complaint stating that one of the members of the Board-Shri Johny Xavier behaved towards her indecently on 01.03.2016. Petitioner claims that these complaints against the President as well as the member of the Board resulted in denial of employment

to her. It is her case that President had openly declared that she will not be given employment and it is accordingly that she was denied employment from 01.03.2016 onwards.

2. Petitioner submits that she had submitted Ext.P3 complaint explaining the sexual harassment she was subjected to, by Shri Johny Xavier, the member of the Board, who sent her out from the work place. It is stated that Ext.P3 complaint was submitted before the Assistant Accounts Officer Smt.B.K.Jayanthi, who was the Senior Lady Officer under the 2nd respondent, under which the Society is functioning. But no action was taken on it, though she had forwarded the complaint to the Home Minister, Women's Commission as well as the President of the Society, also.

3. It is also pointed out by the learned counsel for the petitioner that there is not even a committee formed in the society to enquire into the

complaints regarding sexual harassment. Petitioner thereafter submitted Ext.P4 complaint before the Assistant Registrar of Co-operative Societies stating the denial of employment to her from 01.03.2016. Since there was no response to her complaints, petitioner filed this writ petition, seeking a direction to the respondents to regularise her in the post of Lab Assistant under the 5th respondent and for a direction to the respondents 5 and 6 to allow her to work as Lab Assistant without any obstruction.

4. Respondents 5 and 6 filed counter affidavit, stating that the petitioner was engaged only occasionally, as a Helper in Milk Collection on daily wages on hand receipts. It is stated that she was paid daily wages at the rate of Rs.100/- initially and it was enhanced to Rs.200/-later. According to the Society, there is no sanctioned post

or vacancy of Milk Assistant or Lab Assistant and the Society had not conducted any process of selection for engaging petitioner as daily wage labourer. It is stated that petitioner has not been working on regular basis and that she used to keep herself away from employment without any reason after 29.02.2016 and that there are no records with reference to the employment of the petitioner other than the vouchers, the petitioner had signed.

5. Petitioner filed a reply affidavit producing Ext.P5 order issued in the case of Smt.Lijy John, who was a regular employee in the post of Lab Assistant who worked from 2006 to 2008. It is stated that petitioner was engaged as against her vacancy on daily wages which varied between Rs.30/- in 2007 and Rs.175/- as on 28.02.2016, with periodical enhancement.

6. Petitioner has produced several documents

collected under the Right to Information Act, in order to show that her complaint about the misappropriation committed by the President of the Society, asserting that her complaint against him was genuine. In Ext.P9 letter received under RTI Act, it was stated that the President had withdrawn a sum of Rs.4,37,500/- from the account of the Society and that recovery was being made from him at the rate of Rs.43,750/- towards 10% interest. Petitioner pointed out that she was denied employment because of the complaint she submitted against the member of the Board. Despite availability of records with the Society, regarding her employment and the interim order passed by this Court on 16.03.2016 directing to maintain status quo, she is not re-engaged after 01.03.2016.

7. On consideration of the pleadings and contentions, it is seen that the respondents have not stated any thing regarding the complaint Ext.P3

regarding the sexual harassment. They only denied the allegation against Ext.P9. The Kerala Co-operative Milk Marketing Federation under which the 5th respondent Society functions and before whom the petitioner submitted Ext.P3 complaint has not filed any Counter affidavit.

8. It is seen that despite the directions of the Apex Court in Visakha v. State of Rajasthan [(1997) 6 SCC 624] and the enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 either the 2nd respondent nor the officers under the respondents 3 or 4 and the 5th respondent chose to take any action on a complaint received from the petitioner relating to sexual harassment at workplace. The Society which filed a counter affidavit has not denied the receipt of Ext.P3, but chose to avoid any reply to it. The complaint of the petitioner is that she was sent out after subjecting her to sexual harassment by a member

of the Board and she was not given employment thereafter.

9. It is highly unfortunate that the respondents did not take any action on Ext.P3 complaint submitted by petitioner who had been working on daily wages for about 10 years.

10. The fact that petitioner was engaged on daily wages and that there was a regular post of Lab Assistant, are not denied. On the other hand, it is admitted that petitioner was engaged in the Society as and when required, on daily wages. She was denied employment merely for the reason that she preferred complaints against the President, without enquiring into it.

11. As the regular appointment under the Society is to be made in accordance with the provisions contained in the Kerala Co-operative Societies Act, petitioner's claim for regular appointment cannot be accepted.

However, as it is admitted that the petitioner had been working on daily wages and it is stated that no regular appointment is made in the post of Lab Assistants, there shall be a direction to the 5th respondent to engage the petitioner on daily wages subject to requirement, in preference to any body who got initial engagement in the Society subsequent to 2008. Appropriate action shall be taken within a period of 'one month' from the date of receipt of a copy of this judgment.

Accordingly, this writ petition is disposed of.

Sd/-

P.V.ASHA, JUDGE.