

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

MONDAY, THE 21ST DAY OF MARCH 2022 / 30TH PHALGUNA, 1943

WP(C) NO. 5835 OF 2021

PETITIONER/S:

LIJI A.S
AGED 28 YEARS
D/O. SADANANDAN, AMBATT HOUSE,
P.O.VELLANUALLUR, TRISSUR DT. -680662.
BY ADVS.
KALEESWARAM RAJ
VARUN C.VIJAY
A.ARUNA
THULASI K. RAJ
MAITREYI SACHIDANANDA HEGDE

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 RURAL DEVELOPMENT COMMISSIONER AND MISSION
DIRECTOR,
MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT
GUARANTEE SCHEME, FIRST FLOOR, PUNARJANI,
T.C.26/1333(2), PANAVILA JUNCTION,
THIRUVANANTHAPURAM-695001.
- 3 ANNAMANADA GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, MALA BLOCK,
ANNAMANADA P.O., THRISSUR-680741.
- 4 THE SECRETARY,
ANNAMANADA GRAMA PANCHAYATH, MALA BLOCK,
ANNAMANADA P.O., THRISSUR-680741.
- 5 THE PANCHAYAT COMMITTEE,
REPRESENTED BY ITS PRESIDENT, ANNAMANADA GRAMA
PANCHAYAT, ANNAMANADA P.O., MALA BLOCK,
THRISSUR-680741.

6 THE PRESIDENT,
ANNAMANADA GRAMA PANCHAYAT, ANNAMANADA P.O.,
MALA BLOCK, THRISSUR - 680741.
BY ADV GOVERNMENT PLEADER

OTHER PRESENT:

GP VENUGOPAL V; SC FOR R3-6 ADV.O.D.SIVADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16.03.2022, THE COURT ON 21.03.2022 DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 21st day of March, 2022

The petitioner had applied for the post of Accountant-cum-Data Entry Operator notified by the Annamanada Grama Panchayat under the MNREGS. After interview, The petitioner was ranked No.1 in Ext.P2 list. In the Panchayat committee meeting held on 11.09.2020, appointment to the notified post was considered. Nine members, including the Vice President, were against appointing the petitioner(1st rank holder) for the reason that her place of residence is not within Annamanada Grama Panchayat. According to the petitioner, the dubious intention behind the dissent is to ensure appointment for one Anumol Babu, who, from among the applicants, is the only resident of Annamanada Grama Panchayat, but had scored the least marks. The writ petition is filed seeking to quash Ext.P3 resolution as

arbitrary and unconstitutional and to declare the petitioner's entitlement for appointment, based on her position in Ext.P2 rank list. Pending the writ petition, the Annamanada Grama Panchayat decided not to effect appointment to the post of Accountant-cum-Data Entry Operator for the time being, as there are no pending works. Thereupon, the petitioner amended the writ petition by incorporating a prayer to quash the decision (Ext.P6) dated 17.02.2022.

2. Adv.Thulasi K.Raj, learned Counsel for the petitioner, contended that the Panchayat Committee had taken Ext.P6 decision to defeat the petitioner's chance of appointment and to avoid a decision on merits by this Court. It is contended that the Panchayat is bound to appoint the petitioner based on her rank and the decision not to appoint persons from outside the Panchayat militates against the constitutional guarantee under Article 16. Moreover, in Ext.P1, there is

no mention in Ext.P1 notification that only persons from Annamanada will be considered for appointment or that preference will be given to persons residing in the Panchayat. Hence, the attempt of the Panchayat Committee is to change the rules after selection. Even otherwise Ext.P3 will not stand the scrutiny when tested on the touchstone of Articles 16 of the Constitution of India.

3. According to Advocate O.D.Sivadas, learned Counsel appearing for Annamanada Grama Panchayat, the question whether the Panchayat Committee could have denied appointment to persons from outside Annamanada is not relevant now, since the Panchayat had decided not to fill up the post of Accountant-cum-Data Entry operator for the present. The petitioner has no indefeasible right to appointment, for reason of her inclusion in the rank list. The Panchayat doesn't need the service of an Accountant-cum-

Data entry operator at present and the petitioner can participate in the selection, if and when a fresh notification is issued.

4. Adv.V.Venugopal, learned Senior Government Pleader submitted that, denial of appointment to the petitioner for the reason that she is not a resident of Annamanada Panchayat is illegal. There is no provision in the MNREGS Act or in any Government Order providing preference to candidates from within the Panchayat or excluding persons from outside the Panchayat. Hence, place of residence has no relevance in appointments under the MNREGS.

5. In reply, Counsel for the petitioner contented that Ext P6 decision of the Panchayat is actuated by legal malice. In support of the contention, reliance is placed on the decision in

Kalabharati Advertising v. Hemant Vimalnath Narichania and others [(2010) 9 SCC 437]

Moreover, as the appointment is for the purpose

of implementation of MNREG Schemes, the Panchayat cannot unilaterally decide to not fill, up the post of Accountant-cum-Data entry operator.

6. The legal position that there cannot be discrimination in public employment based on the place of residence or domicile of a candidate is no more *res integra*. In **Kailash Chand Sharma v State of Rajasthan [(2002) 6 SCC 562]**, the Apex Court considered the issue in the back drop of a challenge against the award of bonus marks to candidates from within the District and rural areas. After considering the purport and object of Articles 14, 15 and 16, it was held as under;

"13. Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for

classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself – be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article.

14. Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted

that in the allied article – Article 15 – the word “residence” is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilute the rigour of clause (2) by (i) conferring an enabling power on Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State, and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the article. Here, we should make note of two things : firstly, discrimination only on the ground of residence (or place of birth) insofar as public employment is concerned, is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence

within the State is a taboo."

The dictum in **Kailash Chand Sharma** has been followed by this Court in a series of decisions. Hence, Ext.P3 decision of the Panchayat Committee refusing appointment to the petitioner for the sole reason that she is not a resident of Annamanada is liable to be set aside and I do so.

7. The other question is whether Ext.P6 decision of the Panchayat not to fill up the post of Accountant-cum-Data Entry Operator, despite the publication of rank list after a due process of selection is sustainable. No doubt, mere inclusion in the rank list does not confer any vested right for appointment on a candidate (see **Shankarsan Dash v. Union of India [(1991) 3 SCC 471]**)

8. Here, the appointment is under the MNREGS. Hence, the question is whether the Panchayat can unilaterally decide not to fill up a post created for the purpose of implementation

of the Scheme. Even though the financial crises faced by the Panchayat is put forth as a reason for not filling up the post, no material is placed before this Court to substantiate that reason. Moreover, this Court is not expected to decide such factual disputes in a proceeding under Article 226. Therefore, I deem it appropriate to relegate the decision regarding validity of Ext.P6, to the first respondent.

In the result, the writ petition is disposed of as under;

(i) Ext.P3 order is set aside and it is declared that the Panchayat cannot deny appointment to the most meritorious candidate for the reason that she is not a resident of the Panchayat.

(ii) The first respondent shall take a decision on the validity of Ext.P6 decision, with reference to the provisions of the MNREGS Act and relevant Government orders,

after affording an opportunity of hearing to the petitioner and the third respondent Panchayat.

(ii) The order as directed above shall be passed within two months of receipt of a copy of the judgment.

(iii) In the nature of the directions issued above, the contention regarding legal malice is left open.

Sd/-
V.G.ARUN
JUDGE

Sc1/

APPENDIX OF WP(C) 5835/2021

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF NOTIFICATION DATED 1.3.2020.
EXHIBIT P2	TRUE COPY OF RANKED LIST.
EXHIBIT P3	TRUE COPY OF DISSENT NOTE ISSUED BY THE PANCHAYAT COMMITTEE DATED 11.9.2020.
EXHIBIT P4	TRUE COPY OF ATTENDANCE SHEET OF THE INTERVIEW DATED 8.9.2020.
Exhibit P5	TRUE COPY OF THE G.O(RT) NO.1552/2019/LSGD DATED 23.07.2019.
Exhibit P6	TRUE COPY OF THE DECISION DATED 17.02.2022.