



WP(C) Nos.37185 of 2016
and 17064 of 2019

2024:KER:96619

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 20TH DAY OF DECEMBER 2024 / 29TH AGRAHAYANA, 1946

WP(C) NO.37185 OF 2016

PETITIONERS:

- 1 S.SAFEER, AGED 39 YEARS
S/O.H.ZAINUDEEN, RESIDING AT
"SAJITHA MANZHIL", K.N.73, KEERTHI NAGAR,
6TH CROSS ROAD, ELAMAKKARA P.O., KOCHI -682 026,
WORKING AS FIREMAN (LEAVE RESERVE LIST),
COCHIN PORT TRUST, WILLINGTON ISLAND,
KOCHI -682 009.
- 2 T.I.INSAP, AGED 38 YEARS, S/O.T.I.ISMAIL,
RESIDING AT THALAKKATT HOUSE, THEKKUMPURAM,
CHENDAMANGALAM P.O., PIN - 683 512, WORKING AS
FIREMAN, (LEAVE RESERVE LIST), COCHIN PORT TRUST,
WILLINGTON ISLAND, KOCHI-682 009.

BY ADV DR.V.N.SANKARJEE

RESPONDENTS:

- 1 COCHIN PORT TRUST, REPRESENTED BY ITS SECRETARY,
WILLINGTON ISLAND, KOCHI-682 003.
- 2 UNION OF INDIA, REPRESENTED BY MINISTRY OF
SHIPPING AND TRANSPORT, TRANSPORT BHAVAN,
I PARLIAMENT STREET, NEW DELHI -110 001.
- 3 THE SECRETARY, MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSIONS,
NORTH BLOCK, NEW DELHI -110 001.

BY ADVS.
SRI.K.ANAND (SR.)



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R.MURALEEKRISHNAN (MALAKKARA)
SMT.LATHA ANAND, SC, COCHIN PORT TRUST
SRI.SIDHARTH P.S.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18.12.2024,
ALONG WITH WP(C).17064/2019, THE COURT ON 20.12.2024 DELIVERED THE
FOLLOWING:



WP(C) Nos.37185 of 2016
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 20TH DAY OF DECEMBER 2024 / 29TH AGRAHAYANA, 1946

WP(C) NO. 17064 OF 2019

PETITIONERS:

- 1 P.H.PRAKASH, AGED 42 YEARS,
FIREMAN (LRP), COCHIN PORT FIRE SERVICE,
STAFF NO.25000051, COCHIN - 3,
RESIDING AT PUTHUPARAMBIL HOUSE,
UDAYAPEROR P. O., ERNAKULAM - 682 301.
- 2 SUDHEESH M.S., FIREMAN (LRP), COCHIN PORT FIRE SERVICE,
STAFF NO.25000042, COCHIN - 3, RESIDING AT
CHITTEPARAMBIL HOUSE, PANANGAD P. O.,
ERNAKULAM - 682 506.
- 3 K. U. MANOF, FIREMAN (LRP), COCHIN PORT FIRE SERVICE,
STAFF NO.25000053, COCHIN - 3, RESIDING AT
KIZHAKKEVALAYIL HOUSE, VADUTHALA JETTY P. O.,
AROOKUTTY P. O., ALAPPUZHA - 688 535
- 4 K. NIGEESH BOSE, FIREMAN (LRP), COCHIN PORT FIRE
SERVICE, STAFF NO.25000046, COCHIN - 3,
RESIDING AT KANNOTH HOUSE, NAMBIAPURAM WEST,
PALLURUTHY, ERNAKULAM, COCHIN - 682 006.
- 5 T. S. PRAVEEN, FIREMAN (LRP),
COCHIN PORT FIRE SERVICE, STAFF NO.25000050,
COCHIN - 3, RESIDING AT THUNDIPARAMBIL HOUSE,
KUNDANOOR, MARADU P.O., ERNAKULAM - 682 034.
- 6 SHAJIMON K., FIREMAN (LRP), COCHIN PORT FIRE SERVICE,
STAFF NO.25000045, COCHIN - 3, RESIDING AT KALARAYI
HOUSE, AROOKUTTY P. O., ALAPPUZHA - 688 535.



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- 7 C. VINOD KUMAR, FIREMAN (LRP), COCHIN PORT FIRE SERVICE,
STAFF NO.25000047, COCHIN - 3, RESIDING AT AMRUTHA
BHAVAN, EROOR SOUTH, TRIPUNITHURA, ERNAKULAM - 682 306.
- 8 P. R. SHIBU, FIREMAN (LRP), COCHIN PORT FIRE SERVICE,
STAFF NO.25000044, COCHIN - 3.
- 9 K.S.SUBEESH, S/O. K. K. SUPRAN, THONDIPARAMBIL,
MULAVUKADU P. O., ERNAKULAM DISTRICT, FIREMAN (LRP),
COCHIN PORT FIRE SERVICE, COCHIN - 3.

BY ADV S.SUJIN
BY SRI.N.N.SUGUNAPALAN (SR)

RESPONDENTS:

- 1 CHAIRMAN, COCHIN PORT TRUST,
OFFICE OF THE PORT TRUST, WILLINGTON ISLAND,
KOCHI - 682 001.
- 2 COCHIN PORT TRUST, REPRESENTED BY ITS CHAIRMAN
OFFICE OF THE PORT TRUST, WILLINGTON ISLAND,
KOCHI - 682 001.
- 3 SECRETARY, COCHIN PORT TRUST
OFFICE OF THE PORT TRUST, WILLINGTON ISLAND,
KOCHI - 682 001.

BY ADVS.
SMT.LATHA ANAND
SRI.M.N.RADHAKRISHNA MENON
SRI.K.ANAND (SR)
SRI.SIDHARTH P.S.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18.12.2024,
ALONG WITH WP(C).37185/2016, THE COURT ON 20.12.2024 DELIVERED THE
FOLLOWING:

**JUDGMENT****[WP(C) Nos.37185/2016 and 17064/2019]**

These two writ petitions are filed by the petitioners presently working as Firemen in the Leave Reserve Pool (LRP), seeking appropriate directions to the respondents to fix the pay of the petitioners at par with the salary paid to the regular Fireman working in the respondent Port Trust and also seeking directions to regularise their services in the post of Fireman with retrospective effect.

2. The short facts as culled out from W.P.(C) No.17064 of 2019 are as under;

The respondent Port Trust came out with the Ext.P1 advertisement in the newspapers in the year 2003, dated 16.05.2003, inviting applications for appointment to the post of Fireman in the LRP. The qualifications required for such appointments are also laid down in the said notification and the petitioners contend that the qualifications prescribed for



appointment in the LRP were the same as the qualification that was expected for a permanent appointment as a Fireman in the Cochin Port Trust. On the basis of Ext.P1, the petitioners applied and after undergoing the selection process, they have been appointed as Firemen on a daily wage of Rs.187/-. They contend that the pay was subsequently revised and at present, they are being paid Rs.630/- per day. The petitioners contend that the activities performed by the petitioners and those who have been appointed on a regular basis are one and the same. However, their pay is different from those who are appointed on regular basis. They further point out that, in spite of having put in more than 20 years of service in the respondent Port Trust, their services are not being regularised. It is in the afore circumstances that the captioned writ petitions are filed by the petitioners seeking the reliefs as pointed out above.

3. I have heard Sri.Sugunapalan N.N., the learned senior counsel for the petitioners in W.P.(C) No.17064 of 2019,



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Dr.V.N.Sankarjee, the learned counsel for the petitioners in W.P.(C) No.37185 of 2016 and Sri. K. Anand, the learned senior counsel for the respondent Port Trust.

4. Sri.Sugunapalan, the learned senior counsel would contend that there is no justification on the part of the respondent Port Trust in refusing to regularise the services of the petitioners since the selection process undergone by the petitioners is the same as that required for recruitment on a regular basis. He highlights that the qualifications, experience, etc. prescribed under the notification pursuant to which they were appointed were the same as those required for recruitment on a regular basis. It is further pointed out that most of the petitioners are made to work on a daily basis even without an off day a week, in comparison to those who were appointed on a regular basis who were enjoying the weekly off etc. to contend that the petitioners are being made to toil hard in their work. He relies on Ext.P4 attendance register for the various periods



during 2019 and 2020 to point out that many of the petitioners were working on a daily basis during those months. Similarly, reliance is also placed on the communication issued by the Regional Chief Labour Commissioner (Central), Cochin produced as Ext.P6 to point out that the afore authority has also found that many of the petitioners are made to work without rest and this itself is a pointer to the fact that the request for regularisation put forth by the petitioners requires to be considered favourably. He further points out that the respondent Port Trust has subsequently revised the pay structure of its various employees as seen from the proceedings dated 31.12.2021 produced along with I.A. No.1 of 2022 and contends that merely for the reason that the petitioners have approached this Court through the captioned writ petition, they have been singled out and their pay alone is not revised.

5. Dr. Sankarjee, the learned counsel, apart from adopting the submissions made as above by the learned senior counsel



Sri. Sugunapalan, also invites the attention of this Court to Ext.P2 communication dated 30.06.2003 in W.P.(C) No.37185 of 2016 to point out that the Central Government had imposed certain bans on the appointments on regular basis and it is pursuant thereto that the respondent Port Trust had decided to make appointments of Fireman as LRP and from the afore, it is clear that the petitioners were entitled to be appointed on regular basis and it is merely on account of the ban imposed by the Government that they were not appointed on regular basis and appointed as LRP during 2003.

6. Per contra, Sri.Anand, the learned senior counsel for the respondent Port Trust contends that the petitioners are not entitled to regularisation or parity in pay as those appointed on regular basis for the simple reason that the petitioners were appointed only as LRP workers. He contends that the petitioners were not being engaged on a daily basis and were being engaged only when necessity arose, as seen from Ext.P4 itself,



wherein, on many dates, some of the petitioners are seen as “not working”.

7. I have considered the rival submissions as well as the connected records.

8. The fact that the petitioners have entered service in the respondent Port Trust pursuant to Ext.P1 advertisement is not in dispute. Ext.P1 advertisement specifically points out that the petitioners have been appointed as LRP workers. Though the petitioners contend that they have been made to work on a daily basis, even from the documents produced by them - Ext.P4, it is seen that the afore contention is not correct. The petitioners are being offered work only as and when the need arises for the respondent Port Trust. The appointment of the petitioners cannot be termed to be casual employment also insofar as in such casual employment, the petitioners would have to work on a daily basis in the organisation to which they are appointed. On the contrary, as noticed above, the petitioners are appointed



or taken in a pool and are being offered employment only when the regular hands are proceeding on leave. It may be that there are vacancies in the respondent Port Trust and that it is without making permanent appointments in such regular vacancies, the respondent Port Trust is making appointments on an LRP basis. But that by itself, in my opinion, would not confer any right on the petitioners to contend that they should be regularised and that they should be provided the same pay as that is being paid to the regular hands.

9. In this connection, the petitioners relied upon the judgment of the Apex Court in **Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1]**.

True, in the afore judgment, the Apex Court held that the Union of India/State Governments and their instrumentalities should take steps to regularise as a one-time measure the services of irregularly appointed persons who have put in 10 years or more work in duly sanctioned posts. But in the case at hand, the afore



judgment was rendered by the Hon'ble Supreme Court on 10.04.2006 and by that time, the petitioners had not put in the period of 10 years' service as ordered by the Apex Court so as to get entitled to the one-time benefit. The principles laid down in **Umadevi** (*supra*) were again considered in the judgment reported as **Narendra Kumar Tiwari v. State of Jharkhand [(2018) 8 SCC 238]**. There, the question arose before the Apex Court as to whether the benefits of regularisation can be extended to those who have not put in the 10 years' service as on the date of the Apex Court judgment. The Apex Court found that a pragmatic approach is required in such cases, as under:

"7. The purpose and intent of the decision in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right



to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and *Kesari* [*State of Karnataka v. M.L. Kesari*, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise — the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the



process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.”

10. In my opinion, though the petitioners are not covered by the directions contained in **Umadevi** (*supra*), their claims have to be considered with reference to the touchstones of the principles laid down in the afore judgments of the Apex Court. As already noticed, the petitioners in these writ petitions have been appointed in the LRP, pursuant to Ext.P1 notification in 2003. In other words, for the last more than 21 years, the petitioners have been working in the respondent Port Trust, though not on a permanent basis. Sri. Anand, the learned senior counsel for the respondent Port Trust may be correct in



submitting that the petitioners are offered employment/work purely on a need basis. However, the respondent Port Trust is not denying that they have been so accommodated for the last 21 years. The fact that such appointments on an LRP basis were resorted to only on account of the ban imposed by the Central Government is also to be taken note of, as seen endorsed by Ext.P2 letter in W.P(C) No.37185 of 2016 by the Port Trust. The said communication also accepts that the respondent Port Trust is facing severe hardships to maintain the minimum staff strength of the fire unit on account of the ban on appointments.

11. In such circumstances, I am of the opinion that though the petitioners are not entitled to the reliefs as sought for in these writ petitions, the same can be disposed of with the following directions:

- i. The petitioners to file an appropriate representation before the respondent Port Trust pointing out the facts and figures seeking their preference for appointment,



when regular appointments are being carried out.

- ii. If such a representation is being filed by the petitioners, the respondent Port Trust to keep in mind the claim available to the petitioners as above on account of their having put in more than 21 years of service, though on an LRP basis and consider them also for regular appointment, providing some additional grace marks or preferential treatment by virtue of their experience in the service of the respondent Port Trust and offering age relaxation if required.

Sd/-
HARISANKAR V. MENON
JUDGE

In



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APPENDIX OF WP(C) 17064/2019

PETITIONERS' EXHIBITS:

- | | |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF THE ADVERTISEMENT IN MATHRUBHUMI DAILY DATED 18.05.2003 PUBLISHED BY THE 1ST RESPONDENT THROUGH DEPUTY CONSERVATOR. |
| EXHIBIT P2 | TRUE COPY OF LIST OF FIREMAN INCLUDING THE LEADING FIREMAN VACANCIES. |
| EXHIBIT P3 | TRUE COPY OF THE LETTER DATED 30.06.2003 ISSUED BY THE RESPONDENT. |
| EXHIBIT P4 | TRUE COPY OF THE ATTENDANCE REGISTER FOR THE PERIOD FROM JANUARY, 2019 TO AUGUST, 2020. |
| EXHIBIT P5 | TRUE COPY OF THE BANK STATEMENT IN RESPECT OF THE 2 ND PETITIONER SHOWING THE REMITTANCE OF THE MONTHLY WAGES FOR THE PERIOD FROM 01.01.2018 TO 02.11.2020. |
| EXHIBIT P6 | TRUE COPY OF THE ORDER DATED 31/12/2021 ISSUED BY THE SECRETARY OFFICE OF THE ADMINISTRATION OF THE COCHIN PORT TRUST |
| EXHIBIT P7 | TRUE COPY OF THE BID DOCUMENT DATED 22.06.2022 PUBLISHED BY RESPONDENT. |



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APPENDIX OF WP(C) 37185/2016

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ADVERTISEMENT IN MATHRUBHUMI DAILY DATED 18.5.2003 PUBLISHED BY THE 1ST RESPONDENT THROUGH DEPUTY CONSERVATOR.
- EXHIBIT P2 TRUE COPY OF THE LETTER DATED 30.6.2003 OF THE DEPUTY CONSERVATOR OF THE 1ST RESPONDENT ADDRESSED TO COCHIN PORT STAFF ASSOCIATION.
- EXHIBIT P3 TRUE COPY OF THE MEMO DATED 8.8.2003 ISSUED TO THE 1ST PETITIONER BY THE DEPUTY CONSERVATOR OF THE 1ST RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE MEMO DATED 13.10.2003 WITH TERMS AND CONDITIONS ISSUED TO THE 1ST PETITIONER.
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 22.7.2016 ADDRESSED TO THE RESPONDENTS BY THE PETITIONERS.
- EXHIBIT P6 TRUE COPY OF THE OM DATED 13.8.2010 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P7 COPY OF THE LETTER DATED 21.9.2016 OF 1ST RESPONDENT ADDRESSED TO THE PETITIONERS.
- EXHIBIT P8 TRUE COPY OF THE LETTER DATED 5.1.2004 ISSUED BY CHIEF FIRE CUM ASSISTANT SAFETY/POLLUTION CONTROL OFFICER TO THE DEPUTY CONSERVATOR OF THE 1ST RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE LETTER DATED 11.8.2011 OF THE DEPUTY CONSERVATOR OF THE 1ST RESPONDENT ISSUED TO THE 1ST PETITIONER.
- EXHIBIT P10 TRUE COPY OF THE SALARY CERTIFICATE DATED 27.10.2016 ISSUED IN THE NAME OF THE 1ST PETITIONER BY THE DEPUTY CONSERVATOR OF THE 1ST RESPONDENT.



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- EXHIBIT P11 TRUE COPY OF THE SCHEDULE OF EMPLOYEES OF THE 1ST RESPONDENT AS ON 1.4.2016.
- EXHIBIT P12 TRUE COPY OF THE LIST OF FIRE SERVICE STAFF OF THE 1ST RESPONDENT
- EXHIBIT P13 TRUE COPY OF THE RELEVANT EXTRACT OF THE BOARD OF TRUSTEES OF THE MEETING HELD ON 23.4.2001 AND EXTRACT OF RESOLUTION NO.146.
- EXHIBIT P14 TRUE COPY OF THE ORDER DATED 19.5.2001 OF THE CHIEF MEDICAL OFFICER OF THE 1ST RESPONDENT
- EXHIBIT P15 TRUE COPY OF THE ORDER DATED 18.1.2002 OF THE CHIEF MEDICAL OFFICER OF THE 1ST RESPONDENT.
- EXHIBIT P16 TRUE COPY OF THE ORDER DATED 27.12.2017 OF THE CHIEF FIRE OFFICER OF THE 1ST RESPONDENT
- EXHIBIT P17 TRUE COPY OF THE NEWS ITEM APPEARED IN THE MATHRUBHUMI MALAYALM DAILY DATED 28.1.2018
- EXHIBIT P18 TRUE COPY OF THE ABOVE ORDER DATED 7.2.2019 OF THE DEPUTY CONSERVATOR OF 1ST RESPONDENT
- EXHIBIT P19 TRUE COPY OF ORDER DATED 29.12.2018 OF THE CHIEF MECAHNICAL ENGINEER OF THE 1ST RESPONDENT
- EXHIBIT P20 TRUE COPY OF THE LETTER DATED 6.9.2019 OF THE COCHIN PORT STAFF ASSOCIATION ADDRESSED TO DEPUTY CONSERVATOR, COCHIN PORT TRUST.
- EXHIBIT P21 TRUE COPY OF THE APPOINTMENT ORDER OF FIRE GUARD(LRP) IN THE FIRE SERVICE DATED 18.10.2019 ISSUED BY THE DEPUTY CONSERVATOR OF THE 1ST RESPONDENT.
- EXHIBIT P34 A COPY OF THE ADVERTISEMENT DATED 22.6.2022 AS APPEARED IN THE GEM/2022/B/2284555 IN THE GEM GOVERNMENT E MARKETPLACE PORTAL.
- EXHIBIT P35 TRUE COPY OF THE UNDERTAKING GIVEN BY ONE SRI. BESELIN P.M., AGED 23 YEARS, S/O MATHAI,



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RESIDING AT KIZHAKKAMBALAM

EXHIBIT P36 THE TRUE COPY OF THE RELEVANT PAGES OF THE
SENIORITY LISTS OF THE MANPOWER STAFF IN THE
MARINE DEPARTMENT OF THE 1ST RESPONDENT AS ON
16.4.2024.

EXHIBIT P37 THE TRUE COPY OF THE TENDER INVITING FOR THE
SUPPLY OF MANPOWER DATED 6.9.2024 FOR THE
FIREMAN CUM DRIVER IS THE 1ST RESPONDENT.