

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 4<sup>TH</sup> DAY OF APRIL 2022 / 14TH CHAITHRA, 1944

WP(C) NO. 11836 OF 2021

PETITIONER/S:

SMITHA V  
AGED 37 YEARS  
THADATHIVILTHEKKIL HOUSE, SURESH BHAVANAM,  
SOORANAD NORTH, ANAYADI P.O, KOLLAM-690561  
KOLLAM, PIN - 690561  
BY ADV MAITREYI SACHIDANANDA HEGDE

RESPONDENT/S:

- 1 UNION OF INDIA  
UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF  
HEALTH AND FAMILY WELFARE,  
NEW DELHI- 110011, PIN - 110011
- 2 NATIONAL HEALTH MISSION  
NATIONAL HEALTH MISSION,  
REPRESENTED BY ITS DIRECTOR,  
MINISTRY OF HEALTH AND FAMILY WELFARE  
NEW DELHI- 110011., PIN - 110011
- 3 STATE MISSION DIRECTOR KERALA  
STATE MISSION DIRECTOR, KERALA  
NATIONAL HEALTH MISSION  
DEPARTMENT OF HEALTH AND FAMILY WELFARE  
GOVERNMENT OF KERALA,  
GENERAL HOSPITAL JN.,  
THIRUVANANTHAPURAM- 695035., PIN - 695035
- 4 SOORANAD NORTH GRAMA PANCHAYATH  
SOORANAD NORTH GRAMA PANCHAYATH  
REPRESENTED BY THE SECRETARY  
SOORANAD NORTH P.O.  
KOLLAM- 690561, PIN - 690561
- 5 SECRETARY SOORANAD NORTH GRAMA PANCHAYAT  
THE SECRETARY,  
SOORANAD NORTH GRAMA PANCHAYATH  
SOORANAD NORTH P.O.  
KOLLAM- 690561, PIN - 690561
- 6 PANCHAYATH COMMITTEE SOORANAD NORTH GRAMA  
PANCHAYATH  
THE PANCHAYATH COMMITTEE

- REPRESENTED BY ITS PRESIDENT  
SOORANAD NORTH GRAMA PANCHAYATH  
SOORANAD NORTH P.O.  
KOLLAM- 690561., PIN - 690561
- 7 PRESIDENT SOORANAD NORTH GRAMA PANCHAYATH  
THE PRESIDENT  
SOORANAD NORTH GRAMA PANCHAYATH  
SOORANAD NORTH P.O.  
KOLLAM- 690561., PIN - 690561
- 8 THE MEDICAL OFFICER SOORANAD NORTH AYURVEDA  
DISPENSARY  
THE MEDICAL OFFICER  
SOORANAD NORTH AYURVEDA DISPENSARY,  
SOORANAD NORTH GRAMA PANCHAYATH  
SOORANAD NORTH P.O.  
KOLLAM- 690561  
KOLLAM, PIN - 690561
- 9 ADDL R9. DIRECTOR OF PANCHAYATS,  
SWARAJ BHAVAN, GROUND FLOOR, NANTHANCODU,  
KOWDIAR P.O, THIRUVANANTHAPURAM-695003.  
IS SUO MOTU IMPEADED AS ADDITIONAL R9 AS PER  
ORDER DATED 04.04.2022 IN WP(C) 11836/2021  
BY ADV SHRI.SIJU KAMALASANAN, SC, SOORANAD  
NORTH GRAMA PANCHAYATH

**OTHER PRESENT:**

ASGI S. MANU; SR.GP. PREMCHAND R. NAIR; SC FOR  
R2, 3 M. AJAY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 04.04.2022, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

**JUDGMENT**

Dated this the 4<sup>th</sup> day of April, 2022

The petitioner was appointed as Attender on temporary basis at the NRHM-Ayurveda Dispensary, in Sooranad North Grama Panchayath on 20.01.2016 and continued in service uninterruptedly. Now the respondents are trying to replace the petitioner with a fresh hand. The writ petition is filed seeking a declaration that the petitioner is entitled to be retained as Attender in Sooranad North Ayurveda Dispensary as long as National Health Mission Scheme exists and that the petitioner cannot be replaced with another temporary hands.

2. Heard Advocates Maitreyi Sachchindananda Hegde for the petitioner, M.Ajay for respondents 2 and 3, K. Siju for respondents 4 to 7 and the Government Pleader, Premchand R Nair for the 8<sup>th</sup>

respondent.

3. Learned Counsel for the petitioner relied on various Government Orders to contend that, for the purpose of tackling the spread of Covid-19 pandemic, the Government had directed all Local Self Government Institutions to continue the service of temporary hands. Reliance is also placed on Ext.P6 in W.P.(C) No.4100/2021, wherein this Court has passed an interim order permitting the writ petitioner to continue in service.

4. Learned Standing Counsel for the Panchayath submitted that the Government Orders relied on by the petitioner are with respect to temporary hands appointed under MGNRE Scheme and hence, not applicable. It is contended that, being a temporary hand, the petitioner has no legal right to seek either continuance or regularisation.

5. Learned Counsel for respondents 1 and 2 pointed out that the National Health Mission and

Ministry of Health and Family Welfare are unnecessary parties, since there is no privity of contract between those respondents and the petitioner. Further, the role of respondents 2 and 3 is only to supplement the efforts taken by the Government in the Primary Health Sector.

6. In view of the Division Bench judgment in **writ appeal No.925/2021 dated 27.09.2021**, rendered under similar circumstances, I deem it appropriate to dispose the writ petition, leaving the contention regarding applicability of the Government Orders to be decided by the appropriate authority. The writ petition is hence disposed of, permitting the petitioner to file a detailed representation before the Director of Panchayaths along with certified copy of this judgment and relevant Government Orders. A copy of the representation along with documents shall be forwarded to the Panchayath Secretary

and thereupon, the Panchayath Secretary also shall submit a detailed report before the Director of Panchayaths, touching upon the factual aspects and the applicability, or otherwise, of the Government orders and Departmental Circulars. A copy of that report shall be furnished to the petitioner also.

After receiving the Panchayath Secretary's report, the Director of Panchayaths shall issue notice of hearing to the petitioner and the Secretary and decide the petitioner's claim for continuance in service. To effectuate an early decision in the matter, the petitioner shall file the representation within two weeks of receipt of a copy of this judgment and the Panchayath Secretary shall file the report within two weeks thereafter. The Director of Panchayaths shall pass final orders in the matter within one month of receipt of the Panchayath Secretary's report. Till a decision is taken by the Director of

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Panchayats, the petitioner shall be allowed to  
continue in service.

Sd/-

**V . G . ARUN**  
**JUDGE**

Scl/

**APPENDIX OF WP(C) 17478/2019**

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE APPOINTMENT ORDER NO.S3-5656/2015 DATED 30.01.2016 ISSUED BY THE 5TH RESPONDENT
EXHIBIT P2	TRUE COPY OF THE AGREEMENT DATED 31.3.2018 SUBMITTED BY THE PETITIONER
EXHIBIT P3	TRUE COPY OF THE DECISION NO.4/1 DATED 20.3.2020 OF THE PANCHAYATH COMMITTEE MEETING
EXHIBIT P4	TRUE COPY OF THE AGREEMENT DATED 01.04.2020 SUBMITTED BY THE PETITIONER
EXHIBIT P5	TRUE COPY OF THE LETTER DATED 18.02.2021 SUBMITTED BY THE 8TH RESPONDENT TO THE 5TH RESPONDENT
EXHIBIT P6	TRUE COPY OF THE INTERIM ORDER DATED 17.2.2021 IN WPC NO.4100/2021