

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 6<sup>TH</sup> DAY OF OCTOBER 2021 / 14TH ASWINA, 1943

WP(C) NO. 33702 OF 2018

PETITIONER/S:

R. AJAYAKUMAR  
AGED 41 YEARS  
S/O.LATE RAJAPPAN, KOCHUVEEDU, KUTHUKALLINMOODU,  
MANACAUD.P.O., TRIVANDRUM.  
BY ADVS.  
KURIAN GEORGE KANNANTHANAM (SR.)  
SRI.TONY GEORGE KANNANTHANAM  
SRI.THOMAS GEORGE  
ALEX GEORGE

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT, HEALTH AND  
FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT,  
TRIVANDRUM-695 001.
- 2 THE DIRECTOR OF HEALTH SERVICES,  
GENERAL HEALTH SERVICES, GENERAL HOSPITAL JUNCTION,  
TRIVANDRUM 695 001
- 3 THE DISTRICT MEDICAL OFFICER (HEALTH)  
TRIVANDRUM 695 001
- 4 THE DIRECTOR  
VIGILANCE AND ANTICORRUPTION BUREAU,  
PMG JUNCTION, TRIVANDRUM 695 002.
- 5 C. JAYACHANDRAN,  
JUNIOR HEALTH INSPECTOR GRADE-1  
COMMUNITY HEALTH CENTRE, PULLUVILA, TRIVANDRUM  
695 526  
BY ADVS.  
SRI.S.V.PREMAKUMARAN NAIR  
SRI.R.T.PRADEEP FOR R5  
SRI. K.P.HARISH, SR GP FOR R1 TO R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
06.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## J U D G M E N T

S. Manikumar, C. J.

On 30.09.2021, recording the memo dated 29.09.2021, filed by the learned counsel for the petitioner, wherein it is stated that pursuant to certain queries made by the petitioner in his application dated 10.09.2018, documents were furnished, we passed the following order:-

“Earlier, we directed the petitioner to offer explanation as to how he could lay his hands on the documents enclosed along with the writ petition.

2. A memo dated 29.09.2021 is filed by the learned counsel for the petitioner, wherein it is stated that pursuant to certain queries made by the petitioner, in his application dated 10.09.2018, documents were furnished.

3. Queries and answers, stated to have been furnished by the Medical Officer in-charge, Community Health Centre, dated 17.09.2018, are reproduced:-

“303/18/CHC Pulluvila

R.Ajayakumar,  
TC 49/282, Kochuveedu,  
Kuthukallinmoodu, Manacaud.P.O.  
Trivandrum.

To

The Public Information Officer,  
CHC  
Pulluvila.

RIGHT INFORMATION 2005

1. Is Junior Health Inspector Sri. Jayachandran working in Pulluvila CHC?
2. Did a new born baby's death occur in the above Jayachandran's area of operation / responsibility?
3. Was there any dereliction of duty in Jayachandran's work.
4. As the authority of the hospital what action did you recommend against Jayachandran.
5. Kindly give the documents relating to this.
6. What is the amount I should pay for getting documents.

10-9-2018

Sd/-

R.AJAYAKUMAR

From

The Right Information Officer,  
CHC  
Pulluvila.

To

R.Ajayakumar,  
TC 49/282, Kochuveedu,  
Kuthukallinmoodu, Manacaud.P.O..  
Trivandrum.

Right to Information:

Ref: Your Right to information application dated 10-9-2018.

1. JHI Shri. Jayachandran, is working here.
2. The death of new born baby, occurred in JHI Jayachandran's area.
3. Derelictions were found.
4. Memo was given for derelictions and was reported to higher authorities for disciplinary action.
5. Documents will be given to you.
6. Remit in this office Rs.30 at Rs.2 per document for 15 documents.

17-9-2018

Pulluvila.

E/863/17/CHC P

Documents relating to JHI Jayachandran in this office, as requested by you.

1. Leave application of JHI Jayachandran.
2. Medical Certificate submitted by Jayachandran JHI.
3. Letter to DMO, from the head of establishment, to verify the genuiness of Medical Certificate of Jayachandran.
4. Application of JHI Jayachandran extending leave without time limit.
5. Recently submitted medical certificate.
6. Unauthorized leaves proforma - 597/19/CHC.
7. Notice from DMO to Jayachandran to attend for second Medical Examination.
8. Letter entrusting Supdt. Of Trivandrum. General Hospital for above examination.
9. Further leave application of Jayachandran.
10. Subsequent Medical Certificate.
11. Proforma reporting continuous unauthorized leave.
12. Notice dated 30-1-2018 to Jayachandran, intimating him to appear before Medical Boardad.
13. E.863/17 CHC P letter of Pulluvila Medical Superintendent to Kalliyoor Medical Officer who issued Medical Certificate.

14. Copy of Letter of District Medical Officer, Trivandrum, to the Director of Health Department given to Pulluvila MO Charge 156/18 dated 24-2-2018.
15. Letters relating to obstructing of block conference in hospital by Jayachandran JHI who is alleged to be conducting Kovalam beach resort for last 5 months.

17-9-2018

Medical Officer in Charge  
Community Health Centre”

4. Mr. K. P. Harish, learned Senior Government Pleader, is directed to produce the entire files relating to the questions and answers, stated to have been furnished by the Public Information Officer, CHC, Pulluvila, under the Right to Information Act, 2005.

Learned Senior Government Pleader is also directed to produce the files relating to disciplinary action, if any, stated to have been taken against Mr. C. Jayachandran, Junior Health Inspector, Pulluvila, Trivandrum, the 5<sup>th</sup> respondent, by the District Medical Officer (Health), Trivandrum, the 3<sup>rd</sup> respondent, on or before 05.10.2021.”

2. Pursuant to the directions, files relating to disciplinary proceedings said to have been taken against Mr. C. Jayachandran, Junior Health Inspector Grade-I, Community Health Centre, Pulluvila, Thiruvananthapuram, respondent No. 5, and connected files are produced.

3. Mr. K. P. Harish, learned Senior Government Pleader, submitted that a cursory search of the files does not indicate filing of any application under the Right to Information Act, 2005, pursuant to which documents were furnished to the writ petitioner.

4. He further submitted that pursuant to Ext. P7, letter from the District Medical Officer, Thiruvananthapuram, directing the 5<sup>th</sup> respondent to appear before the Medical Board, appearance has been made, but then, the files do not disclose any finality.

5. He further added that some files are said to have been taken by one Dr. Dibu John, who was then working as Medical Officer of the Community Health Centre, Pulluvila, Thiruvananthapuram.

6. Mr. R. T. Pradeep, learned counsel for the 5<sup>th</sup> respondent, submitted that being aggrieved by the denial of leave, an original application has been filed before the Kerala Administrative Tribunal, in which, the respondents therein, have produced the abovesaid report.

7. Be that as it may, going through the averments, it is manifestly clear that instant public interest writ petition has been filed for a direction to respondent Nos. 1 and 2 herein, to take appropriate

disciplinary action against Mr. C. Jayachandran, Junior Health Inspector Grade-I, Community Health Centre, Pulluvila, Thiruvananthapuram, the 5<sup>th</sup> respondent.

8. On more than one occasion, the Hon'ble Supreme Court has held that public interest writ petition in service matters is not maintainable.

9. Reference can be made to a few decisions:-

"(i) When maintainability of the public interest writ petition, in service matters, was raised by us, Mr.J.Pooventhera Rajan, learned counsel for the petitioner, relied on a Full Bench judgment of the Punjab and Haryana High Court, in **Jaskaran Singh Brar v. State Of Punjab And Ors.**, [2005 (3) SLJ 354 P & H]. At that juncture, we pointed out to the learned counsel for the petitioner that judgments of other High Courts, do not have any binding effect, more particularly, when the law declared by the Hon'ble Supreme Court, under Article 141 of the Constitution of India, is to the effect that, a public interest writ petition is not maintainable in service matters, he sought for an adjournment.

(ii) Way back in 1998, in **Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others**, reported in (1998) 7 SCC 273, the Hon'ble Supreme Court dealt with an issue, as to whether a Public Interest Writ Petition, at the instance of a stranger, could be entertained, by the

Administrative Tribunal. After considering the decision in **Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed and others** (1976) 1.S.C.C. 671, the law declared in **Chandra Kumar v. Union of India** (1997) 3 SCC 261, and the provisions of the Administrative Tribunals Act, 1985, the Hon'ble Supreme Court held as follows:-

“18..... Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the work 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in **Smt. Amitarani Khuntia Versus State of Orissa** 1996. (1) OLR (CSR)-2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant:

*"....A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act."*

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article



empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power."

*We agree with the above reasoning.*

21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

(iii) In **Ashok Kumar Pandey v. State of W.B.**, reported in (2004) 3 SCC 349, the Hon'ble Apex Court, at paragraphs 5 to 16, held as follows:-

"5. It is necessary to take note of the meaning of the expression "public interest litigation". In Stroud's Judicial Dictionary, Vol. 4 (4<sup>th</sup> Edn.), "public interest" is defined thus:

"Public interest.—(1) A matter of public or general interest 'does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected'."

6. In Black's Law Dictionary (6<sup>th</sup> Edn.), "public interest" is defined as follows:

“Public interest.—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.”

7. In **Janata Dal v. H.S.Chowdhary and Others** [(1992) 4 SCC 305] the Hon'ble Supreme Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, the Hon'ble Apex Court has laid down as follows:

“The expression ‘litigation’ means a legal action including all proceedings therein initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression ‘PIL’ means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

8. In para 62 of the said judgment, it was pointed out as follows:

“Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.”

9. In para 98 of the said judgment, it has further been pointed out as follows:

“While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to

be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.”

10. In subsequent paras of the said judgment, it was observed as follows:

“It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.”

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having

their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to lose but trying to gain for nothing and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined “public interest litigation” in its Report of Public Interest Law, USA, 1976 as follows:

“Public interest law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.”

14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See **State of Maharashtra v. Prabhu** ((1994) 2 SCC 481 = 1994 SCC (L&S) 676)

and **A.P. State Financial Corpn. v. Gar Re-Rolling Mills** [(1994) 2 SCC 647 = AIR 1994 SC 2151]. No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See **Buddhi Kota Subbarao (Dr) v. K. Parasaran** [(1996) 5 SCC 530 = 1996 SCC (Cri) 1038 = JT 1996 (7) SC 265]. Today people rush to courts to file cases in profusion under this attractive name of public interest. Self-styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in courts and among the public, failing which such litigation should be axed with a heavy hand and dire consequences.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in **Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra** (1998) 7 SCC 273, this Court held that in service matters PILs should not be entertained, the inflow of the so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting

aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases shows proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”

(iv) In **Dr. B.Singh (Dr.) v. Union of India**, reported in (2004) 3 SCC 363, the Hon'ble Supreme Court decided the case on the same lines and held that PIL is not maintainable in service matters.

(v) In **Gurpal Singh v. State of Punjab**, reported in (2005) 5 SCC 136, the Hon'ble Apex Court held that PIL is not maintainable in service matters. Relevant portion of the said decision is reproduced:

“13. When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object. Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when

the petition is itself not maintainable. In any event, by order dated 15.4.2002 this Court had stayed operation of the High Court's order.”

(vi) In **Indian Consumers Welfare Council v. Union of India and another**, reported in 2005 (3) L.W. 522, the abovesaid Council, filed a public interest writ petition, challenging a notification, issued by the 2<sup>nd</sup> respondent therein, by which, applications were invited, from degree holders, with degree in education, and consequently, prayed for a direction to the respondent therein, to appoint only those teachers, who were trained in teaching primary sections, for handling classes from 1<sup>st</sup> to 7<sup>th</sup> standards, to the post of Secondary Grade Teachers. Following the decision in **Gurpal Singh v. State of Punjab**, reported in 2005 J.T. [5] SC 389, a Hon'ble Division Bench of Madras High Court held as under:

“This is a public interest litigation in respect of a service matter. It has been repeatedly held by the Supreme Court that no public interest litigation lies in service matters, the last decision being **Gurpal Singh v. State of Punjab**, (2005 J.T. [5] SC 389). Accordingly, this writ petition is dismissed.”

(vii) In **N. Veerasamy v. Union of India**, reported in (2005) 2 MLJ 564, while considering a public interest litigation filed by a treasurer of a political party, praying to take action again Mrs.Lakshmi Pranesh, IAS, the fifth respondent therein, under the All India Services (Discipline and Appeal) Rules, 1969, for allegedly making allegations against a leader of a political party, following the above judgments of the Honourable Apex Court, a Hon'ble Division Bench of this Court held as follows:-

"It is settled law that no writ in the form of public interest litigation will lie under Article 226 of the



Constitution in service matters. The petitioner has no locus standi to file the public interest litigation. The extraordinary powers of the High Court under Art.226 of the Constitution in matters of this kind is required to be used sparingly and only in extraordinary cases." "The service matters are essentially between the employer and the employee and it would be for the State to take action under the Service Rules and there is no question of any public interest involved in such matters."

"The petition is not only not maintainable either in law of facts but also would amount to abuse of the process of Court."

(viii) In **B.Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees Association and others**, reported in (2006) 11 SCC 731, at paragraph 61, the Hon'ble Apex Court held that in service matters only the non appointees can assail the legality of the appointment procedure.

(ix) In **Neetu v. State of Punjab**, reported in (2007) 10 SCC 614, the Hon'ble Apex Court held as follows:-

"The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases."

"Referring to the decisions in **Dr.Duryodhan Sahu and others v. Jitendra Kumar Mishra and others**, reported in 1998 (7) SCC 273 and **Ashok Kumar Pandey v. State of W.B** reported in (2004 (3) SCC 349), cited supra, the Apex Court held that PIL in service matters has been held as not maintainable."

(x) In **Seema Dharmdhare, Secretary, Maharashtra Public Service Commission vs. State of Maharashtra**, reported in (2008) 2 SCC 290, the Hon'ble

Apex Court restated that PIL is not maintainable in service matters.

(xi) In **Hari Bansh Lal v. Sahodar Prasad Mahto and others**, reported in (2010) 9 SCC 655, claiming himself as Vidyut Shramik Leader, a writ petition was filed before the High Court, challenging the appointment of Mr. Hari Bansh Lal, who was appointed, as the Chairman of Jharkand State Electricity Board. The High Court declared that his appointment was not only arbitrary, but also, contemptuous, and ultimately, quashed his appointment, which gave rise to an appeal, before the Apex Court. Addressing the issue, as to whether a public interest writ petition, is maintainable in service matters, following the earlier decisions in **Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others**, reported in (1998) 7 SCC 273 and **Ashok Kumar Pandey v. State of W.B** reported in [(2004) 3 SCC 349] and other decisions, the Hon'ble Supreme Court held as follows:-

“PIL in service matters:

11) About maintainability of the Public Interest Litigation in service matters except for a writ of quo warranto, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board, considering the qualifications specified in sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence.

12) We have already pointed out that the person who approached the High Court by way of a Public Interest Litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has not placed any material or highlighted on what way he is suitable and eligible for that post.

.....

The same principles have been reiterated in the subsequent decisions, namely, **Dr. B. Singh v. Union of India and Others**, (2004) 3 SCC 363, **Dattaraj Nathuji Thaware v. State of Maharashtra and Others**, (2005) 1 SCC 590 and **Gurpal Singh v. State of Punjab and Others**, (2005) 5 SCC 136.

15) The above principles make it clear that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters.”

(xii) In **Girjesh Shrivastava and others v. State of Madhya Pradesh and others**, reported in (2010) 10 SCC 707, appointments were challenged in PIL, on the grounds of contravention of rules, regarding reservation of ex-servicemen. The High Court allowed the writ petition and ordered cancellation of appointments, and dismissed the review petitions also. While considering the issue, as to whether the matter ought to have been taken, as service dispute and not PIL, the Hon'ble Supreme Court, after considering a catena of decisions, at paragraphs 14 to 19 has held as follows:-

“14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP(C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention.

15. It is common ground that dispute in this case is over selection and appointment which is a service matter.

16. In the case of **Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others** (1998) 7 SCC 273, a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others**, reported in (2006) 11 SCC 731 (II), the Hon'ble Apex Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

18. This view was very strongly expressed by this Court in **Dattaraj Nathuji Thaware v. State of Maharashtra and others**, reported in (2005) 1 SCC 590, by pointing out that despite the decision in **Duryodhan Sahu** (supra), PILs in service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in **Duryodhan Sahu** (supra) (Para 16, page 596).

19. Same principles have been reiterated in **Ashok Kumar Pandey v. State of W.B.**, reported in (2004) 3 SCC 349, at page 358 (Para 16)."

(xiii) In **Soma Velandi v. Dr. Anthony Elangovan**, reported in (2010) 4 CTC 8, following **Gurpal Singh v. State of Punjab**, reported in JT 2005 (5) SC 389, a Hon'ble Division Bench held that PIL is not maintainable in service

matters.

(xiv) In **Bholanath Mukherjee and others v. Ramakrishna Mission Vivekananda Centenary College and others**, reported in (2011) 5 SCC 464, before the Hon'ble Supreme Court, a direction to set aside the appointment of the 3<sup>rd</sup> respondent therein, as Principal, was sought for, as the 3<sup>rd</sup> respondent was junior, to them, and did not have the requisite qualification. Reiterating the legal position that PIL is not maintainable in service matters, the Hon'ble Apex Court declined to entertain the challenge to the notices issued to Ramakrishna Mission to reconstitute the committees.

(xv) Though the present writ petition has been filed by a practicing advocate, we wish to incorporate the views of the Hon'ble Apex Court, while entertaining Public Interest Writ Petition, in **Ayaubkhan Noorkhan Pathan v. State of Maharashtra and others**, reported in [(2013) 4 SCC 465]. At paragraphs 14 and 15, the Hon'ble Apex Court, observed as follows:

“14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a Visa. Many societal pollutants

create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: **P.S.R. Sadhanantham v. Arunachalam & Anr.**, AIR 1980 SC 856; **Dalip Singh v. State of U.P. & Ors.**, (2010) 2 SCC 114; **State of Uttaranchal v. Balwant Singh Chaufal & Ors.**, (2010) 3 SCC 402; and **Amar Singh v. Union of India & Ors.**, (2011) 7 SCC 69).

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: **Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors.**, AIR 1999 SC 114; **Dattaraj Natthuji Thaware v. State of Maharashtra**, AIR 2005 SC 540; and **Neetu v. State of Punjab & Ors.**, AIR 2007 SC 758)“

(xvi) In **Vishal Ashok Thorat and Ors. v. Rajesh Shrirambapu Fate and Ors.**, reported in AIR 2019 SC 3616, the Hon'ble Supreme Court reiterated the settled proposition of law that PIL in service matters is not maintainable.”

10. That apart, whether the respondent is entitled to leave or not, is a subject matter before the Kerala Administrative Tribunal, in which the abovesaid report is stated to have been filed.

11. In such circumstances also, it may not be appropriate to issue any direction as prayed for.

12. On the issue as to whether the documents produced in this writ petition were furnished under the provisions of the Right to

Information Act, 2005, there is no authentic proof, though the petitioner has contended otherwise by filing a memo dated 29.09.2021. There are no supporting materials.

For all the reasons stated supra, instant writ petition is not maintainable.

Writ petition is dismissed.

**Sd/-**

**S. MANIKUMAR**

**CHIEF JUSTICE**

**Sd/-**

**SHAJI P. CHALY**

**JUDGE**

Eb

///TRUE COPY///

P. A. TO JUDGE

APPENDIX OF WP(C) 33702/2018

## PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE LEAVE APPLICATION  
DATED 17-11-2017 OF THE 5TH RESPONDENT

EXHIBIT P2 TRUE COPY OF THE MEDICAL CERTIFICATE  
DATED 17-11-2017 OF THE 5TH RESPONDENT

EXHIBIT P3 TRUE COPY OF THE MEDICAL REPORT DATED  
18-11-2017 ISSUED BY THE MEDICAL  
OFFICER-IN-CHARGE

EXHIBIT P4 TRUE COPY OF THE LEAVE APPLICATION  
DATED 18-12-2017 OF 5TH RESPONDENT

EXHIBIT P5 COPY OF THE MEDICAL CERTIFICATE DATED  
18-12-2017 ISSUED BY THE MEDICAL  
OFFICER

EXHIBIT P6 TRUE COPY OF THE REPORT DATED 19-1-2018  
ISSUED BY THE MEDICAL OFFICER

EXHIBIT P7 TRUE COPY OF THE LETTER DATED 20-01-  
2018 TO THE 5TH RESPONDENT

EXHIBIT P7 (a) COPY OF THE ENGLISH TRANSLATION OF  
EXT. P7

EXHIBIT P8 TRUE COPY OF THE ORDER DATED 20-01-2018  
ISSUED FROM THE 3RD RESPONDENT

EXHIBIT P8 (a) COPY OF THE ENGLISH TRANSLATION OF  
EXT. P8

EXHIBIT P9 TRUE COPY OF THE LEAVE APPLICATION  
DATED 27-01-2018 OF THE 5TH RESPONDENT.

EXHIBIT P10 TRUE COPY OF THE MEDICAL CERTIFICATE  
DATED 27-1-2018 ISSUED BY THE MEDICAL  
OFFICER

EXHIBIT P11 TRUE COPY OF THE PROFORMA FOR REPORTING  
UNAUTHORIZED ABSENCE

EXHIBIT P12 TRUE COPY OF THE LETTER DATED 30-01-  
2018 ISSUED BY THE MEDICAL OFFICER

EXHIBIT P12 (a) COPY OF THE ENGLISH TRANSLATION OF EXT.  
P12

EXHIBIT P13 TRUE COPY OF THE LETTER DATED 15-2-2018  
ISSUED BY THE 3RD RESPONDENT

EXHIBIT P14 TRUE COPY OF THE LETTER DATED 21-02-  
2018 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P14 (a) COPY OF THE ENGLISH TRANSLATION OF  
EXT. P14



<b>EXHIBIT P15</b>	<b>TRUE COPY OF THE LETTER DATED 5-5-2018 TO THE 3RD RESPONDENT</b>
<b>EXHIBIT P16</b>	<b>COPY OF THE REPRESENTATION DATED 5-5- 2018 FROM THE PETITIONER</b>
<b>EXHIBIT P17</b>	<b>TRUE COPY OF THE REPRESENTATION DATED 5-5-2018 FROM THE PETITIONER TO THE 2ND RESPONDENT</b>
<b>EXHIBIT P18</b>	<b>COPY OF THE REPRESENTATION DATED 5-5- 2018 FROM THE PETITIONER TO THE 4TH RESPONDENT.</b>