

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

OP(KAT).No. 132 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 2193/2014 of KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM DATED 28-01-2015

PETITIONERS:

1. SETHULAKSHMI.C.R. AGED 39 YEARS
W/O.GIREESAKUMAR R., LAB TECHNICIAN GRADE-I
COMMUNITY HEALTH CENTRE, VILAPPIL, THIRUVANANTHAPURAM
RESIDING AT SAROVARAM, MULAMOODU P.O
THIRUVANANTHAPURAM-695 575.
2. BOBBY K.S., W/O.P.B.SANTHOSHKUMAR AGED 40 YEARS
LAB TECHNICIAN GRADE-I
STATE PUBLIC HEALTH CLINICAL LAB
GENERAL HOSPITAL JUNCTION THIRUVANANTHAPURAM-695 035
RESIDING AT SOUPARNIKA, T.C.64/1869(2)
THIRUVALLAM P.O, THIRUVANANTHAPURAM-695 027.
3. ASWATHY B.S. AGED 41 YEARS
W/O.HAREENDRAN NAIR, LAB TECHNICIAN GRADE-I
STATE PUBLIC HEALTH CLINICAL LAB
GENERAL HOSPITAL JUNCTION THIRUVANANTHAPURAM-695 035
RESIDING AT SREEPADMAM, VISHAKHOM, K.K.LANE
POWDIKONAM P.O. THIRUVANANTHAPURAM-695 587.
4. REKHA, W/O.SAJEEV S. AGED 39 YEARS
LAB TECHNICIAN GRADE-I, TALUK HEAD QUARTERS HOSPITAL
VARKALA, VARKALA P.O, RESIDING AT NAKSHATHRA
KALLAMBALAM P.O, THIRUVANANTHAPURAM-695 605
5. SREEHARSHADEV V. AGED 44 YEARS
S/O.VISWANATHAN, LAB TECHNICIAN GRADE-I
COMMUNITY HEALTH CENTRE, CHITTATTUMUKKU PO
PUTHANTHOPPU, THIRUVANANTHAPURAM-695 301
RESIDING AT SAI KRIPA, CHEMPAKA MANGALAM, KORANI P.O
THIRUVANANTHAPURAM-695 104.

BY ADVS. SRI.C.A.CHACKO
SMT.C.M.CHARISMA

:2:

RESPONDENTS:

1. PREETHA.P.R., AGED 32 YEARS
W/O.RAJEEV D, KARTHIKA, MADAPANTHINVILA
PAZHAKUTTY PO, NEDUMANGAD, THIRUVANANTHAPURAM-695 561.
2. SHEEBA B., W/O.SAYYED J., AGED 27 YEARS
VELLARITHOTTAM VEEDU, PATHUMURI LANE
PAZHAKUTTY PO, NEDUMANGAD, THIRUVANANTHAPURAM-695 020.
3. SAREENA S.R., AGED 28 YEARS
W/O.RADHAKRISHNAN, MANGALATH HOUSE
MANGALATH NADA, POTHANCAUD
THIRUVANANTHAPURAM-695 584.
4. NIMMY T., W/O.BIJU V.S., AGED 27 YEARS
MELATTINGAL HOUSE, ALAMCAUD P.O, ATTINGAL
THIRUVANANTHAPURAM-695 012.
5. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
6. THE DIRECTOR OF HEALTH SERVICES,
THE DIRECTORATE OF HEALTH SERVICES
GENERAL HOSPITAL JUNCTION
THIRUVANANTHAPURAM-695 035.
7. THE DISTRICT MEDICAL OFFICER OF HEALTH
OFFICE OF DISTRICT MEDICAL OFFICER OF HEALTH
GENERAL HOSPITAL JUNCTION
THIRUVANANTHAPURAM-695 035.
8. THE DISTRICT OFFICER
KERALA PUBLIC SERVICE COMMISSION
DISTRICT OFFICE PATTOM, THIRUVANANTHAPURAM-695 004.
9. MAYA P.S., W/O.SURESHKUMAR, AGED 39 YEARS
LAB TECHNICIAN GRADE-I
STATE ENTOMOLOGY UNIT, DIRECTORATE OF HEALTH SERVICES
THIRUVANANTHAPURAM RESIDING AT SREE VISHAGHAM
TC13/2089(6), ALTHARA LANE, KANNAMMOOLA
MEDICAL COLLEGE P.O. THIRUVANANTHAPURAM-695 011.
10. PUSHPAKUMARI, W/O.UBENDRA P.I., AGED 43 YEARS
LAB TECHNICIAN GRADE-I
STATE TB DEMONSTRATION AND TRAINING CENTRE
THIRUVANANTHAPURAM, RESIDING AT POORAM, KACHANI
KARAKKULAM P.O, THIRUVANANTHAPURAM-695 564.

:3:

11. S. SINDHULEKHA, W/O.PRIYADARSANAN, AGED 43 YEARS
LAB TECHNICIAN GRADE-I
STATE PUBLIC HEALTH AND CLINICAL LAB
THIRUVANANTHAPURAM, RESIDING AT ARUNODAYAM
TC.13/1920(1), BRRA 66A
KUMARAPURAM MEDICAL COLLEGE P.O
THIRUVANANTHAPURAM-695 011.
12. CHITHRA C.R., AGED 41 YEARS
W/O.SURENDRAN NAIR, LAB TECHNICIAN GRADE-I
PRIMARY HEALTH CENTRE, PERUMKADAVILA
THIRUVANANTHAPURAM RESIDING AT MAKAYIRAM
PERUMPAZHATHUR P.O. THIRUVANANTHAPURAM-695 126.
13. SUDHA V., W/O.BABU G., AGED 34 YEARS
LAB TECHNICIAN GRADE-I, GENERAL HOSPITAL
THIRUVANANTHAPURAM, RESIDING AT SAKETHAM
THALAYAL, BALARAMAPURAM, THIRUVANANTHAPURAM-695 501.
14. BHARATHI P., W/O.GOPAN P.N., AGED 44 YEARS
LAB TECHNICIAN GRADE-I, W&C HOSPITAL
THAICAUD P.O. THIRUVANANTHAPURAM
RESIDING AT BHARATHI BHAVAN TC.8/1001
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM-695 011.
15. JALAJAKUMARI R., AGED 44 YEARS
W/O.SASIDHARAN NAIR, LAB TECHNICIAN GRADE-I
TALUK HEAD QUARTERS, CHIRAYINKEEZHU
THIRUVANANTHAPURAM RESIDING AT POORAM, KUDAVOOR P.O
THIRUVANANTHAPURAM-695 313.
16. SABU A.S., S/O.E.ABDUL SALAM, AGED 39 YEARS
LAB TECHNICIAN GRADE-I
PRIMARY HEALTH CENTRE POOZHANAD
THIRUVANANTHAPURAM-695 125, RESIDING AT MINA
KODDOD P.O, MALAYINKEEZHU, THIRUVANANTHAPURAM-695 571.
17. MUHAMMAD, AGED 44 YEARS
S/O. IBRAHIMKUNJU, LAB TECHNICIAN GRADE-I
PRIMARY HEALTH CENTRE, PERUMATHURA P.O
THIRUVANANTHAPURAM-695 303
RESIDING AT MUHAMMADEEYA MANZIL
MANJAMALA THIRUVANANTHAPURAM-695 313.

R BY GOVERNMENT PLEADER
R BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 132 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1 - TRUE COPY OF ORDER DATED 28/1/2015 IN OA.NO.2193/14 OF THE KERALA ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM.

EXT.P2 - TRUE COPY OF OA.NO.480/2014 ON THE FILE OF KERALA ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM.

EXT.P3 - TRUE COPY OF REPLY STATEMENT FILED BY RESPONDENTS 1 TO 3 IN THE OA

EXT.P4 - TRUE COPY OF REJOINDER FILED BY APPLICANTS

EXT.P5 - TRUE COPY OF MA NO.62/15 FILED FOR IMPEADING.

EXT.P6 - TRUE COPY OF REPLY STATEMENT FILED BY ADDITIONAL RESPONDENTS 5 TO 19 IN THE OA

EXT.P7 - TRUE COPY OF ORDER DATED 28/1/2015 IN OA.(EKM)NO.693/2014

EXT.P8 - TRUE COPY OF ORDER DATED 7/8/2014 OF ADDITIONAL DIRECTOR OF HEALTH SERVICES.

RESPONDENT(S)' EXHIBITS

: NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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O.P. (KAT) No. 132 of 2015

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Dated, this the 2nd day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Alleged conflict in the directions given by the Tribunal in Exts.P1 and P7 judgments made the petitioners to approach this Court for immediate interference. Grievance is only with regard to time limit specified in Ext. P1 order. The prayers raised are in the following terms :

"(i) Set aside Exhibit P1 order to the extent of fixing time limit for complying with the directions by the 6th respondent so as to enable the 5th respondent to comply with the direction in Ext.P7 order in just and proper manner.

ii) direct the 6th respondent to comply with the direction in Ext. P1 after a decision is taken by the 5th respondent as per Ext. P7 order.

&

(iii) Issue such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The crux of the case is that the petitioners are working as Lab Technician Gr. I in Thiruvananthapuram district. The recruitment to the post of Lab Technician Gr. II was sought to be pursued and on completion of the selection process, rank list was published by the P.S.C. The petitioners before the Tribunal contended that there was violation of the quota of 1 : 1 with regard to the available vacancies of Lab Technician Gr. I & II and that excess persons have already been accommodated in Thiruvananthapuram district, by virtue of which chance for the petitioners to get advised and appointed, was virtually defeated. The petitioners herein got impleaded in the said proceedings as well. In the meanwhile, the present petitioners and the others concerned were ordered to be transferred by the Director, to various districts where vacancies of Lab Technician I were available. The petitioners approached the Tribunal challenging the order of Transfer by filing O.A. No. 693 of 2014. The Tribunal considered the said petition and it was also disposed of on the very same day, when Ext. P1 judgment was rendered on 28.01.2014. The direction contained in Ext.P1 judgment was that 5th respondent herein/Government shall consider grievance with regard to the transfer with reference to their seniority, as already declared by the

Tribunal in O.A., as extracted in Ext. P7, within a span of three months.

3. As per Ext. P1 verdict, right of the concerned applicants for appointment as Lab Technician Gr. II, in terms of the quota fixed for Lab Technicians was affirmed, after repelling the contention raised from the part of Lab Technicians Grade I that the post of Lab Technician Gr. I was a state wise post. It was held that Lab Technician Gr. II was district wise appointment; whereas Lab Technician Gr. I was a state wise post. The Tribunal, after declaring the legal position, directed the 5th respondent herein to report the vacancies in conformity with the quota, to the PSC within one month. The findings and directions as contained in paragraph 14 of Ext. P1 are in the following terms :

"In the result, Annexures A10 and A12 to the extent they support retention of excess Grade I Laboratory Technicians in Thiruvananthapuram are quashed. It is ordered that the Laboratory Technicians Grade I retained in excess of their cadre strength in Thiruvananthapuram district shall be deployed elsewhere where there are vacancies in the cadre of Grade I and the resultant vacancies shall be reported to the Public Service Commission. If the stand of the

official respondents is upheld, all the vacancies arising in the cadre of Laboratory Technician Grade II in Thiruvananthapuram can be filled up by the Director of Health Services by transferring the Laboratory Technicians Grade I from outside, provided they were advised/appointed in Thiruvananthapuram in Grade II post and the rights of the candidates in Annexure A1 rank list can be defeated. The same cannot be permitted, So, the second respondent shall report or cause to report all the vacancies of Laboratory Technician Grade II occupied presently by Laboratory Technician Grade I to the Public Service Commission within one month from the date of receipt of a copy of this order.

4. The case put up by the petitioners before this Court is that, the directions given by the Tribunal vide Ext. P1 and P7 do not reconcile with each other, as the vacancies can be reported only after identifying the vacancies with reference to the seniority of persons like the petitioners herein, which has to be done by the Government; for which 3 month's time has been granted. 'Ground C' has been raised in the following terms :

C. Vide Ext. P1 the Tribunal directed the 6th respondent to report or cause to report all vacancies of Grade II occupied presently by Lab Technician Grade I to PSC

within one month from the date of receipt of copy of the order, after deploying excess Lab Technician Grade - I elsewhere in order to maintain the ratio 1 : 1. Vide Ext. P7 order the Tribunal directed the 5th respondent to consider the grievance of petitioners regarding transfer in three months from the date of receipt of copy of the order.

On going through the direction contained in the Ext. P1 judgment, particularly the last sentence, it is seen that the idea and understanding as to the alleged conflict is thoroughly wrong and misconceived. This Court does not find any conflict or mistake with regard to the directions given. The number of posts in excess of the prescribed quota had to be worked by the 6th respondent independently and it has to be done within 'one month'. The direction given, as per Ext. P7, to the 5th respondent was only with regard to the transfer, which was the subject matter of the O.A; and the same in no way can bar way of the beneficiaries to Ext. P7 judgment in getting appointment.

5. In the course of arguments, the learned senior Government Pleader made a mention that the applicants before the Tribunal, because of the delay in complying with Ext. P1 judgment, had initiated Contempt of Court proceedings alleging willful

disobedience. It is stated that the Director considered the matter in detail and identified 21 vacancies and appropriate direction was given in this regard on 22.04.2014. Pursuant to this, the 7th respondent has pursued further steps to issue appointment orders. It is also stated that the Government is pursuing further steps based on Ext. P7 judgment with regard to the grievance projected by the petitioners in respect of transfer and that the matter will be finalized, at the earliest, in accordance with law.

In the above circumstances, this Court does not find any reason to interfere with the orders passed by the Tribunal. The Original Petition is dismissed accordingly.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd