

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

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

**OP (KAT) .No. 140 of 2015 (Z)**

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AGAINST THE ORDER/JUDGMENT IN OA 564/2014 of KERALA  
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 12-12-2014

PETITIONER/PETITIONERS:

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1. SHAJIMOL.R. AGED 44 YEARS  
W/O.JAIMON, THOGANETHARAYIL, NORTH ARYAD P O  
ALAPPUZHA DIST, PIN 688538, PRESENTLY R/A.C P QUARTERS  
THIRUNAVAYA P O, MALAPPURAM DIST, PIN 676301

2. ASHA T K AGED 43 YEARS  
W/O.SURESH KARUNAKARAN, SURESH BHAVAN  
PUTHUPPALLIKKUNNAM, CHARUMMOODU P O, ALAPPUZHA DIST  
PIN 690505, PRESENTLY R/A.TEACHERS 'QUARTERS  
PUTHUPPALLI P O, PURUTHOOR, MALAPPURAM DIST  
PN 676102

3. ANITHA M AGED 42 YEARS  
W/O.SUBRAMANNYAN, THAZHATHEYIL HOUSE, CHETTIPPADI P O  
MALAPPURAM DIST, PIN 673319

4. SHYLAJA CHERIKKALUMMEL AGED 34 YEARS  
W/O.SURESH KUMAR, CHERIKKALLINGAL HOUSE, PANGCHENDI  
KULATHUR VIA, MALAPPURAM DIST, PIN 679388

5. SAROJINI P P AGED 43 YEARS  
W/O.MANI KALLADIKUNNATH HOUSE, CHATTIPPARAMBA  
EAST KODUR, MALAPPURAM DIST, PIN 676504

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/RESPONDENTS:

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1. THE DIRECTOR OF HEALTH SERVICES  
DIRECTORATE OF HEALTH SERVICE  
THIRUVANANTHAPURAM 690035

2. THE DISTRICT MEDICAL OFFICER OF HEALTH  
OFFICE OF THE DMO(H), MALAPPURAM , MALAPPURAM DIST  
PIN 676121

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3. KERALA PUBLIC SERVICE COMMISSIONER  
REP BY ITS SECRETARY, PATTOM, THIRUVANANANTHAPURAM  
PIN 695004

4. THE DISTRICT OFFICER  
OFFICE OF KERALA PUBLIC SERVICE COMMISSION  
MALAPPURAM, MALAPPURAM DIST, PIN 676121

5. SONA V K, AGED 31 YEARS  
D/O.V KUHUKUTTAN, VENNIKKAL HOUSE, AYNOR  
PAZHANJI P O, THRISSUR

6. JANU A, AGED 43 YEARS  
W/O.LATE SUNDARAN, CHERUKANDASSERRI HOIUSE, BIYYAM P O  
PUZHAMBRUM, PONNANI, MALAPPURAM DIST

R1 AND R2 BY SENIOR GOVERNMENT PLEADER SRI. E.M. ABDUL KHADER  
R3 & 4 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY  
HEARD ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

OP(KAT).No. 140 of 2015 (Z)

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APPENDIX

PETITIONER(S) ' EXHIBITS

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P1:-TRUE COPY OF THE MEMORANDUM OF O A 564/2014 ALONG WITH ITS ANNEXURES

P2:-TRUE COPY OF THE ORDER DTD 12/12/2014 IN OA NO 564/2014 OF THE

KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANANTHAPURAM

P3:-TRUE COPY OF THE LETTER DTD 23/3/2015 ISSUED BY THE 2ND RESPONDENT

P4:-TRUE COPY OF THE ORDER DTD 9/3/2015 ISSUED BY THE HEALTH AND FAMILY  
WELFARE DEPARTMENT

RESPONDENT(S) ' EXHIBITS : NIL

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/TRUE COPY/

P.A. TO JUDGE

**P.R. RAMACHANDRA MENON  
&  
BABU MATHEW P JOSEPH, JJ.**

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O.P.(KAT) No. 140 of 2015

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Dated, this the 20<sup>th</sup> day of July, 2015

**JUDGMENT**

Ramachandra Menon, J.

Challenge is against the order passed by the Tribunal in O.A. No. 564 of 2014, wherein the grievance was with reference to non-reporting the vacancies of Junior Public Health Nurse Gr.II in the Malappuram district.

2. The case of the petitioners is that they were included in the PSC rank list for the post of JPHN Gr.II, on proving their mettle. Despite the availability of sufficient number of vacancies, such vacancies were not being reported by the PSC, by virtue of which, adverse circumstances were resulted affecting rights of the persons like the petitioners to get advised and appointed.

3. It is revealed from the pleadings and proceeding that, taking note of the facts and figures, there was an interim direction to report as many as '26' vacancies of JPHN Gr.II in the Health Services Department on 22.03.2010 before the close of office hours on

28.03.2014. As a matter of fact, the rank list got expired on '21.09.2014'. In the statement filed by the the first respondent before the Tribunal availability of three more vacancies set apart for inter-district transfer was also mentioned. Subsequently, it was reported from the part of the learned Government Pleader that those vacancies were also reported to the PSC.

4. During the pendency of the proceedings, some other proceedings were filed before the Tribunal as to the availability of vacancies in JPHN Grade I. After hearing both the sides, the Tribunal directed the first respondent to examine whether there were any vacancies in the cadre of JPHN Gr.II, as on the date of expiry of the rank list, remaining unreported. If any such vacancy was found to be available, the first respondent was directed to report the same to the PSC, upon which the PSC was to advice candidates in respect of those vacancies, subject to maximum of 26 vacancies (presumably with reference to the interim order passed by the Tribunal to report 26 vacancies of JPHN Gr.II on 22.03.2010). The said verdict is sought to be challenged before this Court by the applicants, contending that, by virtue of the subsequent G.O. issued by the Government, during pendency of the proceedings, the vacancies of JPHN Gr.I were also liable to

be reported and that the Tribunal has not given any direction in this regard. Hence the challenge.

5. Heard the learned Government Pleader appearing for the respondents 1 and 2, the learned standing counsel appearing for the 3<sup>rd</sup> and 4<sup>th</sup> respondents .

6. After hearing both the sides, this Court finds that the claim of the petitioner could only be to have an appointment in the vacancy earmarked for JPHN Gr. II, if advised, in so far as the prayers raised in the O.A. are concerned. They are in the following terms :

"a) Declare that the appointments as per Annexure A2 are illegal and set aside the same and direct the 2<sup>nd</sup> respondent to report all the vacancies of JPHN Gr. II occupied by the provisional hands in Malappuram district, to the 4<sup>th</sup> respondent forthwith.

b) Direct the 2<sup>nd</sup> respondent to report all the vacancies of JPHN Grade II in Malappuram district to the PSC without any further delay, after relieving those occupying the posts event after promotion and after displacing all the illegal appointees in the post; direct the respondents 3 and 4 to advise candidates against the vacancies thus reported, from Annexure A1 ranked list and direct the 2<sup>nd</sup> respondent to appoint those candidates without any further delay.

(c) Declare that the action of the PSC in keeping the NCA turns pending for a long time without any outer limit, as evident from Annexure A6 and A8 to A11, is contrary to the true intent behind Rule 15(a) of KS & SSR and direct the respondents to fill up at least the vacancies set apart as NCA turns since the previous selection year by advice and appointment of candidates from Annexure A1 list;

(d) to issue such other directions as this Hon'ble Tribunal may deem fit and proper.

(e) Grant the cost of this petition.

7. It is relevant to note that, no case was put up before the Tribunal with reference to the subsequent G.O. or for getting the pleadings and prayers amended. At the time of finalization of the proceedings by the Tribunal, the scope of the relief to be granted was only with reference to the prayers as mentioned herein before. The Tribunal was only called upon to decide as to the right of the petitioners to get appointed to the post of 'JPHN Grade II' and not with reference to the post of JPHN Grade I. The appointments to the above two posts, as per the Recruitment Rules, are to be made in the ratio of 1 : 1. It is also brought to the notice of this Court that there were some litigations with regard to the excess appointment to the post of JPHN Grade I occupying the chairs of

JPHN Gr. II, thus spoiling the chance for recruitment to the post of JPHN Gr. II. The pleadings in the present O.A. appears to be only with reference to the lapses on the part of the respondents in reporting the vacancies of JPHN Gr. II to the PSC for advice and appointment. It was this aspect which was considered by the Tribunal, finalizing the proceedings by passing the verdict on 12.12.2014. The grievance sought to be projected by way of present original petition, is virtually to widen the relief sought for in the O.A., which cannot be entertained.

In the above circumstances, interference is declined and the O.P. is dismissed. It is made clear that this will not bar the way of the petitioner in pursuing other appropriate steps, if any, in accordance with law.

sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,  
JUDGE**

kmd