

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

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(KAT).No. 163 of 2015 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 430/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 18-03-2015)

PETITIONER:

C.PRAVEENKUMAR AGED 31 YEARS
SON OF CHELLAPPAN, MORTUARY ATTENDER,
GOVERNMENT HOMOEOPATHI MEDICAL COLLEGE,
AYRANIMUTTAM, THIRUVANANTHAPURAM - 695 033
(RESIDING AT MARUTHUMMOODU VEEDU PO,
CHULLIMANOOR , NEDUMANGANGAD,
THIRUVANANTHAPURAM - 695 541)

BY ADVS.SRI.V.A.MUHAMMED
SRI.V.RAJASEKHARAN NAIR

RESPONDENTS:

1. THE PRINCIPAL AND CONTROLLING OFFICER
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE,
AYRANIMUTTUM, THIRUVANANTHAPURAM 695 033
2. THE DISTRICT EMPLOYMENT OFFICER,
DISTRICT EMPLOYMENT OFFICE, THIRUVANANTHAPURAM
KERALA - 695 001

BY SR. GOVERNMENT PLEADER JOSEPH GEORGE.

THIS OP (KERALA ADMINISTRATIVE TRIBUNAL) HAVING COME UP FOR
ADMISSION ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 TRUE COPY OF THE LETTER OF THE IST RESPONDENT DATED 16.03.2015

EXT.P2 TRUE COPY OF THE ORDER IN O.A.430/2015 DATED 18.03.2015 OF THE
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXT.P3 TRUE COPY OF THE ORIGINAL APPLICATION ALONG WITH ANNEXURES.

/TRUE COPY/

P.S. TO JUDGE.

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

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Dated this the 28th May, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Interference declined by the Tribunal in the O.A. filed by the petitioner seeking to direct the 2nd respondent/District Employment Officer to include the name of the petitioner in the list of candidates to be sponsored by him to the post of 'Mortuary Attender' and to direct the 1st respondent/the Principal and Controlling Officer to interview the petitioner and to give appointment is under challenge in this Original Petition.

2. The petitioner obtained employment as a Mortuary Attender under Rule 9(a)(i) of Part II of KS&SSR, on having sponsored by the Employment Exchange concerned. The appointment, by virtue of the very nature of engagement and the relevant Rule, was only for a tenure of '179 days'. After joining service as above, the petitioner sought for regularisation before expiry of the term and with this intent, he approached the KAT by filing O.A. No.922/2013. Admittedly, interference was declined

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and the O.A. was dismissed. However, the Tribunal permitted the petitioner to continue in service till the post held by him was filled up by other eligible candidate sponsored by the Employment Exchange. While so, the 1st respondent, vide Annexure A2 letter, made a fresh requisition to the Employment Exchange for filling up of the vacancies of Mortuary Attender, specifying the particulars of the post and the qualification required. In response to the said requisition, Annexure A3 communication was issued by the 2nd respondent, allegedly to the effect that no candidate having the requisite qualification was available and as such, whether others having no experience could be considered and sponsored.

3. The contention of the petitioner is that, non availability of qualified hands stands conceded, by virtue of Annexure- A3 communication issued by the second respondent/Dist.Employment Officer and as such, the bar under the proviso to Rule 9(a)(i) of Part II , KS & SSR will not stand in the way of the petitioner for being considered. As a matter of fact, the petitioner approached the Tribunal by filing O.A.430 of

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2015 seeking for the following reliefs:

"(a) Direct the 2nd respondent to include the applicant in the list of candidates sponsored by him for the post of Mortuary Attender.

(b) direct the 1st respondent to interview the applicant also while the interview conducted for the post of Mortuary Attender.

© pass such other order or direction which this Hon'ble Tribunal may deem fit and proper to grant in the circumstances of the case. "

4. After considering the matter, the Tribunal observed that, by virtue of the specific stipulation under the proviso to Rule 9 (a)(i), there is a specific bar to the effect that the persons appointed under the said clause shall not be reappointed to the same post by the same appointing authority, except when fresh candidates are not available for appointment through Employment Exchange and such re-appointment shall be made only with the prior concurrence of the Commission. It was accordingly that, interference was declined and the O.A. was dismissed, which made the petitioner to approach this Court with the present Original Petition.

5. The learned Counsel for the petitioner submits with

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reference to Annexure-A3 issued by the second respondent/District Employment Officer that no qualified hands are available to be sponsored and as such, it is open for the petitioner to get appointed, after being considered along with others and as such, the second respondent is bound to sponsor the name of the petitioner as well.

6. On going through the materials on record and also the mandate of Rule 9(a)(i), this Court finds that the finding and reasoning given by the Tribunal are perfectly within the four walls of law and do not require to be interfered under any circumstances . It is also to be borne in mind, that as disclosed from Annexure A2 communication dated 26.11.2014 sent by the first respondent/the Principal & Controlling Officer to the second respondent (while forwarding the requisition), it is stated that 'Special Rules' are still to be formulated in the Department, in respect of the post of 'Mortuary Attender' and as such, vacancy could not be reported to the PSC, which made the first respondent to make the requisition .

7. There is no dispute for the petitioner that,Special Rules

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are still to be framed and no orders have been issued by the Government so as to make appointment with reference to a particular qualification. Contents of the requisition made by the first respondent have to be examined in the said circumstance. After showing '**7th standard pass**', as the essential qualification, the desirable qualification for temporary appointment to the post of Mortuary Attender for a period of less than 'six months' is shown as "**Not below one year experience in handling dead bodies and parts of dead bodies.** " There is no case for the petitioner that, at the time of appointment of the petitioner, such desirable qualification was there or that he was having one year experience in handling dead bodies and parts of dead bodies. It appears that a change has been resulted after the declaration of fate of the petitioner, who lost the battle originally before the Tribunal, when interference was made in the OA and also before this Court, when the challenge raised against the said verdict was not favourably considered by virtue of dismissal of O.P.(KAT) preferred before this Court, as observed in the opening paragraph of Ext.P2 verdict. It appears that the

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petitioner, by virtue of the experience now gathered is continuing in the post, in view of the 'concession' given by the Tribunal on an earlier instance, as per Annexure-A1 judgment and this is apparently made use of to show it as a 'desirable qualification', while sending Annexure -A2 requisition.

This Court finds that the petitioner is not entitled to have any relief. The idea and understanding of the petitioner is thoroughly wrong and misconceived. No interference is called for. The Original Petition(KAT) fails and it is dismissed accordingly.

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

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

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