

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

OP(KAT).NO. 227 OF 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN TA 4038/2012 OF KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM DATED 31.12.2014

PETITIONER(S):

1. SINDHU R.S., AGED 32 YEARS
SHIBU BHAVAN, OOTTUKUZH, MANGALATHKONAM
KATTACHAL KUZHI P.O., BALARAMAPURAM (VIA)
THIRUVANANTHAPURAM 695 509.
2. SANDHYALEKSHMI R.S
SHIBU BHAVAN, OOTTUKUZH
MANGALATHKONAM KATTACHAL KUZHI P.O.
BALARAMAPURAM (VIA), THIRUVANANTHAPURAM 695 509.

BY ADV. SMT. KEERTHI SOLOMON

RESPONDENT(S)/RESPONDENTS:

1. THE DIRECTOR, DIRECTORATE OF MEDICAL EDUCATION
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM - 695 011.
2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695 011.
3. PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY
THIRUVANANTHAPURAM - 695 004.

R1 & R2 BY SR. GOVERNMENT PLEADER SRI MOHAMMED SHAFI
R3 BY SRI. P.C. SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PETITIONER(S)' EXHIBITS

- ANNEXURE P1A: COPY OF W.P.(C)NO. 33690/2011 WHICH WAS TRANSFERRED TO THE KERALA ADMINISTRATIVE TRIBUNAL AS NUMBERED AS T.A.4038/2012 ALONG WITH EXT.P1 TO P10.
- EXHIBIT P1: COPY OF THE RANK LIST FOR THE POST OF ECG TECHNICIANS
- EXHIBIT P2: COPY OF G.O.(MS) 21/94/H&FWD DATED 28/1/1994.
- EXHIBIT P3: COPY OF STATEMENT DATED 14/1/2010.
- EXHIBIT P4: COPY OF THE INFORMATION SUPPLIED BY THE 1ST RESPONDENT UNDER RIGHT TO INFORMATION ACT
- EXHIBIT P5(A): COPY OF INFORMATION RECEIVED FROM MEDICAL COLLEGE HOSPITAL, KOTTAYAM.
- EXHIBIT P5(B): COPY OF INFORMATION RECEIVED FROM TD MEDICAL COLLEGE, ALAPPUZHA.
- EXHIBIT P5(C): COPY OF INFORMATION RECEIVED FROM MEDICAL COLLEGE , THIRUVANANTHAPURAM.
- EXHIBIT P5(D): COPY OF INFORMATION RECEIVED FROM MEDICAL COLLEGE, KOZHIKODE.
- EXHIBIT P5(3): COPY OF INFORMATION RECEIVED FROM MEDICAL COLLEGE , THRISSUR.
- EXHIBIT P6: COPY OF LETTER DATED 24/1/2011 OF THE PRINCIPAL, MEDICAL COLLEGE, KOTTAYAM TO THE DIRECTOR OF MEDICAL EDUCATION, THIRUVANANTHAPURAM
- EXHIBIT P7: COPY OF LETTER DT.29.6.10 OF THE DIRECTOR OF MEDICAL EDUCATION, THIRUVANANTHAPURAM.
- EXHIBIT P8: COPY OF LETTER DATED 21/2/2011 OF THE PRINCIPAL OF MEDICAL COLLEGE HOSPITAL, KOTTAYAM
- EXHIBIT P9: COPY OF LETTER DATED 25/7/2008 OF THE 1ST RESPONDENT
- EXHIBIT P10: GOVERNMENT ORDER DATED 23/5/1990.
- EXHIBIT P2(A): TRUE COPY OF THE IMPEADING PETITION FILED BY THE 1ST PETITIONER AS IA NO.1499/2012 IN WPC NO.33690/2011.
- EXHIBIT P3(A): TRUE COPY OF THE IMPEADING PETITION FILED BY THE 1ST PETITIONER AS IA NO.1478/2012 IN WPC NO.33690/2011.
- EXHIBIT P4(A): TRUE COPY OF THE ORDER DATED 22/12/2011 IN WPC NO.29955/2011 OF THIS HONOURABLE COURT
- EXHIBIT P5(A): COPY OF THE MISCELLANEOUS APPLICATION DATED 2/11/2014 FILED BEFORE THE ADMINISTRATIVE TRIBUNAL BY THE PETITIONERS AS MA NO.3135/2014 ALONG WITH ANNEXURE MA 11 (A) TO M.A. 15(A)
- ANNEXURE MA11(A): COPY OF QUESTIONS BY ADV.M.D.PRASANTH TO CIO, ALAPPUZHA MEDICAL COLLEGE HOSPITAL, DT.3.3.12.
- ANNEXURE MA 12(A): COPY OF QUESTIONS BY ADV.M.D.PRASANTH TO CIO, THRISSUR MEDICAL COLLEGE HOSPITAL, DT.3.3.12.
- ANNEXURE MA13(A): COPY OF QUESTIONS BY ADV.M.D.PRASANTH TO CIO, KOZHIKODE MEDICAL COLLEGE HOSPITAL, DT.3.3.12.
- ANNEXURE MA14(A): COPY OF QUESTIONS BY ADV.M.D.PRASANTH TO CIO, THIRUVANANTHAPURAM MEDICAL COLLEGE HOSPITAL, DT.20.10.12.
- EXHIBIT P6(A): COPY OF THE REPLY STATEMENT DATED 18/12/2014 ALONG WITH ANNEXURE R1(A) FILED BEFORE THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL IN T.A NO.4038/2012.
- EXHIBIT P7(A): COPY OF THE ORDER DATED 31/12/2014 IN T.A.NO.4038/2012 ON THE FILE OF KERALA ADMINSTRATIVE TRIBUNAL, THIRUVANANTHAPURAM
- EXHIBIT P8(A): TRUE COPY OF THE JUDGMENT OF THIS COURT IN O.P.(KAT) NO.89/2015 DATED 23/03/2015.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

.....
O.P.(KAT)No.227 OF 2015
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Dated this the 8th July, 2015

J U D G M E N T

Anil K. Narendran, J:

The petitioners, who are additional respondents 5 and 7 in T.A.No.4038 of 2012 on the file of the Kerala Administrative Tribunal ('KAT' in short) has filed this O.P.(KAT) seeking for an order for setting aside Ext.P7A order dated 31.12.2014 of the KAT and for other consequential reliefs.

2. According to the petitioners, the Tribunal by Ext.P7A order dismissed T.A.No.4038 of 2012 along with T.A.No.3546 of 2012, taking note of the stand taken by the 1st respondent herein in the reply filed before the Tribunal that no vacancy of ECG Technician was available as on 30.12.2011, the date on which Ext.P1 Ranked List expired and that the candidates included in the said ranked list are not liable to be accommodated in the 25 vacancies reported to the Public Service Commission pursuant to

the interim order passed in that case. The Tribunal has also noticed that, the applicants in T.A.No.4038/2012 (who are not even made parties to this O.P.(KAT)) have not filed any rejoinder to the reply filed by the 1st respondent herein. Since the aforesaid statement made by the 1st respondent herein remained uncontroverted, the Tribunal declined relief to the applicants and the T.A. was accordingly dismissed by Ext.P7A order.

3. The applicants in T.A.No.4038/2012 challenged Ext.P7A order of the Tribunal by filing O.P.(KAT)No.89 of 2015 before this Court. This Court, by Ext.P8A judgment dated 23.03.2015 disposed of OP.(KAT) 89 OF 2015 with the following observations:

"4. Admittedly, the rank list in question, viz., Ext.P1 has expired on 31/12/11. Even according to the pleadings of the petitioners, they have only stated that proposal for creation of additional vacancies is pending consideration of the Government. This, therefore, means that, as at present, or at any time during the expiry of the list, even according to the petitioners, actual vacancies were not in existence for them to sustain a claim against the vacancies. In such a situation, petitioners could not have sought any relief based on their inclusion in Ext.P1 ranked list.

5. Be that as it may, learned Counsel for the petitioners referred us to Annexure R1(a), a judgment of this Court in W.A.No.200/11. We note that the said writ appeal was filed by

another candidate, who was also included in the list. The said appeal was disposed of with an observation that candidates included in the PSC list should be considered for contract appointment. Relying on this, learned Counsel wanted to make a similar observation in this judgment also. We note from Annexure R1(a), which was rendered in the background of the very same ranked list, an observation as indicated above has already been noted. Therefore, if the appellants are entitled for the benefit thereof, we leave it open to them to raise their claims, which, if raised, shall be dealt with in accordance with law.”

4. A reading of Ext.P8A judgment would make it clear that, as on 31.12.2011 there were no available vacancies in which persons included in Ext.P1 ranked list could have been accommodated/appointed. Now on the basis of the observation made by this Court in Ext.P8A judgment, the petitioners herein, who are additional respondents 5 and 7 in the T.A.No.4038/2012 are seeking extension of the very same benefit granted to the applicants in that T.A.

5. Heard the arguments of the learned Counsel for the petitioners, the learned Government Pleader appearing for the respondents 1 and 2 and also the learned Standing Counsel for the third respondent /PSC.

6. It is not in dispute that the petitioners were only

additional respondents in T.A.No.4038 of 2012, which was disposed of by the Tribunal as per Ext.P7A order. They have not chosen to challenge before the Tribunal their non-appointment based on their ranking in Ext.P1 ranked list. In such circumstances, they cannot seek an order for extending the benefit granted in Ext.P8A judgment of this Court to the applicants in T.A.No.4038 of 2012.

7. We also notice that, Ext.P1 ranked list has already expired on 31.12.2011. In the judgment in W.A.No.200/2011 (referred to as Annexure R1(a) in Ext.P8A judgment), this Court has observed that, the candidates included in Ext.P1 ranked list should be considered for contract appointment. But, that observation was made at a time when Ext.P1 ranked list was in force. Para.2 of the judgment in W.A.No.200/2011 reads thus:

"2. The appellant's case is that even now positions are vacant and the same are filled up through adhoc appointments. The single Judge stated that since the appellant is a claimant under the quota for direct recruitees, she is not entitled to be appointed. Therefore, if at all there is grievance against contract appointments, it is for the persons in service waiting for appointment by promotion to raise objection. The finding is that the appellant is not entitled to be

appointed merely because she is in the rank list prepared by the P.S.C. In view of the position stated above, we do not find any merit in this appeal. However, what we feel is that eligible persons like the appellant selected by the P.S.C. should be considered for contract appointment. Further, if vacancy position increases in Government making available more posts for direct recruitment and if P.S.C. list is still valid by virtue of the extension of time granted to it, then the respondents should consider the appellant for appointment."

Much after the expiry of the said ranked list, this Court will not be justified in making any such observation in this O.P.(KAT) filed by the petitioners, who are only additional respondents in T.A. No.4038/2012, who have not chosen to challenge their non-appointment before the Tribunal, at appropriate time.

In the result, we do not find any merit in this OP(KAT) and it is dismissed. No order as to costs.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

Sd/-
ANIL K. NARENDRAN,
JUDGE.