

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 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

OP(KAT).No. 244 of 2015 (Z)

AGAINST THE ORDER IN OA 704/2014 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM

PETITIONERS:

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1. M.KRISHNAN, AGED 39 YEARS
S/O.MANIKANTAN ACHARI, DRIVER
HEALTH SERVICE DISTRICT HOSPITAL, NEDUMANGAD
R/AT SINDHU BHAVAN, PULIPPARA, NEDUMANGAD
THIRUVANANTHAPURAM 695541
 2. CP.ASOKA KUMAR, AGED 46 YEARS,
S/O.CHELLAPPAN PILLAI, DRIVER
HEALTH SERVICE DISTRICT HOSPITAL, NEDUMANGAD
R/AT MOHANA BHAVAN, VENKAVILA, IRINJAYAN
NEDUMANGAD, THIRUVNANTHAPURAM 695541

BY ADVS. SRI.P.V.KUNHIKRISHNAN
SRI.P.V.ANOOP

RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001
 2. SECRETARY
HEALTH DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695001
 3. THE DIRECTOR
DIRECTORATE OF HEALTH SERVICES
THIRUVANANTHAPURAM 695035
 4. THE SECRETARY
DISTRICT PANCHAYTH, THIRUVANANTHAPURAM 695004
 5. THE DISTRICT MEDICAL OFFICER HEALTH
THIRUVANANTHAPURAM 695035

OP(KAT).No. 244 of 2015 (Z)

6. SUPERINTENDENT
DISTRICT HOSPITAL, NEDUMANGAD 695541

BY SR. GOVERNMENT PLEADER SRI.JOSEPH GEORGE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 244 of 2015 (Z)

APPENDIX

PETITIONERS' EXHIBITS

P1:TRUE COPY OF THE ORIGINAL APPLICATION FILED BY THE PETITIONER
BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM IN
MARCH 2014 ALONG WITH ANNEXURES A1 TO A28 (a)

P2:TRUE COPY OF THE STATEMENT FILED BY THE 6TH RESPONDENT DATED
23.09.2014 ALONG WITH ANNEXURE R6(a) TO ANNEXURE R6(F)

P3:TRUE COPY OF THE ORDER DATED 14.10.2014 IN O.A.NO.704/2014 OF THE
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVNANTHAPURAM

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

O. P. (KAT) No.244 of 2015

Dated this the 28th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Interference declined by the Kerala Administrative Tribunal in O.A. No.704 of 2014, preferred by the petitioners herein seeking to intercept the proceedings taken by the departmental authorities, whereby the service, which was being rendered by them as drivers (on daily wage basis) of the ambulance run by the Hospital Management Committee of the District Hospital, Nedumangad, was put an end to, is sought to be challenged in this appeal.

2. The petitioners were engaged as ambulance drivers on daily wage basis; the first petitioner having been engaged from 2004 and the second petitioner having been engaged from 2009 respectively. The ambulance service was being offered by the Hospital Management Committee

of the District Hospital, Nedumangad. In the course of engagement as above, some serious dereliction of duty was committed by them, in so far as they did not make themselves available to drive the ambulance to take the dead bodies of two youngsters who were drowned in the Karamana river. It is stated that though intimation was given to the petitioners to render necessary service, the first petitioner did not even lift the phone, but left the office after signing the attendance register on 14/03/2014 without permission of the Superintendent/Nursing Superintendent. Then the second petitioner was called who came to the hospital, but did not take the ambulance and left the hospital. This attracted the attention of mass media. Finally, Annexure-R6(c) was issued by the Superintendent of the District Hospital, Nedumangad on 15/03/2014 as to the serious dereliction of duties committed by them and that their engagement on daily wage basis was no more necessary. They were also required to handover the log book, key of the vehicle and such other belongings of the

Government against proper receipt. This was sought to be challenged by the petitioners by filing O.A.No.704 of 2014 before the Kerala Administrative Tribunal, Thiruvananthapuram.

A detailed reply statement was filed by the sixth respondent who is the Superintendent of the District Hospital, Nedumangad. Paragraph 5 of the reply statement reads as follows:

“5. It is respectfully submitted that as in the same situation Sri.Krishnan the 1st applicant who was on duty and signed on attendance register on 14.03.2014 and he left the hospital premises without the permission of Superintendent/Nursing Superintendent, on the same day at about 03:00 pm call from Police for transferring a dead body from Karamana river near Aryanadu. Nursing Officer in Charge, Superintendent, Lady Secretary called Krishnan over Mobile phone but he didn't attend the phone. Then the other Driver 2nd Applicant Sri.Asoka Kumar was called and he came to Hospital premises but didn't take Ambulance and left the hospital. This had made very much bad remarks in News paper and the matter was noticed to Health Minister/DHS/DMO by Hon'ble speaker who was present at the accident spot of Karamana river and made very much bad impression to the public against the hospital and Health services. The true copy of the paper cutting dated 15.3.2014 is produced

herewith and marked as Annexure R6(d).”

3. After considering the facts and figures, interference was declined by the Tribunal and the O.A. was dismissed as per judgment dated 14/10/2014 which is sought to be challenged in this original petition.

4. Heard both the sides in detail.

5. Learned counsel for the petitioners submits that the insinuation made against the petitioners is not correct and that no opportunity of hearing was given to them, before inflicting the serious punishment of termination of service. There is total violation of the principles of natural justice and that they could not get an opportunity to prove their innocence. The learned counsel also points out that, even though the petitioners were working as daily rated employees, they have the right to get an opportunity of being heard in view of the insinuations, which casts a stigma on them. Reliance is sought to be placed on the decision rendered by the Apex Court in **D.P.Banerjee v. S. N. National Centre for Basic Sciences [1999 (2) KLT Case**

No.20]. The learned counsel further points out that the observation and inference drawn by the concerned authority referring to the status of the first petitioner as a representative of the local body is not correct as such. The relevant provision of law banning a member of the local authority from continuing as a temporary worker of the Hospital Management Committee, is not called for in the case of the petitioner, as he was appointed as a driver on daily wages basis in the Committee way back in 2004, whereas the relevant rule came into operation only in the year 2010.

6. It is an admitted fact that the petitioners were engaged only as 'daily rated employees'. There is no dispute with regard to the fact that they were sought to be contacted by the concerned authorities in connection with the emergency requirement for lifting the dead bodies of two youngsters who got drowned in the Karamana river on 14/03/2014. The report of the Superintendent of the Hospital [a copy of which is produced as Annexure-R6(f)] shows that

the first petitioner came to the hospital in the morning, marked attendance, reported before the Superintendent at 10.30 a.m., got the bill for diesel filled on the previous day signed by the Superintendent and left. He was not seen since then, anywhere in the Hospital.

7. By 3.00 p.m., when the police arrived in the hospital and asked for the ambulance, the duty sister tried to contact the first petitioner over phone (Mobile No.9349426445), but he did not attend the phone. Despite several calls made by the concerned authorities and also by the police, he did not choose to lift the phone. The report of Superintendent of the Hospital further says that the second petitioner was called in the said circumstances; upon which he arrived at the office. He then told the Superintendent that it was for the first petitioner to attend the ambulance, as it was his turn. He added that he will send the first petitioner immediately. Since the first petitioner did not turn up, the second petitioner was contacted again by the Superintendent, when the very same version was repeated. Ultimately, after

several hours, alternate arrangements were made by providing some other ambulance, with the intervention of the then Honourable Speaker of the Legislative Assembly, who belonged to the very same constituency and the dead bodies were taken accordingly. The conduct displayed by the petitioners, apart from serious dereliction of duties, revealed total disrespect to the dead bodies and the departed souls. In the above circumstances, a decision was taken not to allow the petitioners to continue in service of the Hospital Management Committee and pursuant to this decision, the petitioners, who were of daily rated drivers were decided not to be engaged any further, by the Hospital Management Committee. The learned Government Pleader also adds that the Speaker of the Legislative Assembly, who was present, had to wait for three hours to get an ambulance, by way of alternate arrangements.

8. The first petitioner has not stated anywhere, either before the Tribunal or before this Court, that he was very much there in the hospital premises. As mentioned herein

before, he came to the office, marked the attendance register and left the place without any permission from the concerned authorities. So also, there is no case for the second petitioner that he was not contacted by the Superintendent when his service was required to be made available. This being the position, no further fact adjudication was necessary to have taken a decision by the concerned authorities with regard to the desirability of engagement of the petitioners as daily rated employees. There is no violation of principles of natural justice, nor is there any infringement of rule or binding precedent. Daily rated engagement itself is a contract for a day and it does not envisage any right for regularization or continuity in service. If the competent authority is dissatisfied with the work of the daily rated employees, the said authority can decide not to engage them in future.

9. With regard to the status of the first petitioner, it is an undisputed fact that he happened to be a member of the local authority. His case is that, the rule sought to be relied

on against him (that he shall not be a member of the local authority or a representative of the people) for being the temporary employee under the Committee came into existence only in 2010 and hence, the same is not applicable. We find it difficult to accept the said proposition. Since the employment of the first petitioner was only a daily engagement and not a regular employment, the rule should have been given effect to by the concerned authorities then and there and as such, no further engagement could have been made as per the rule which came into force in 2010.

10. The onus cast upon the first petitioner, being a member of the local authority and a representative of the people was much higher. The course and conduct of the first petitioner, displays that he was acting contrary to the duty cast upon him to rise to the situation as a representative of the people. Equally or more was the conduct displayed by the second petitioner as the driver of the ambulance. In the said circumstances, this Court finds that this is not at all a fit case to call for interference. The verdict passed by the

Tribunal vide Ext.P3 is well within the four walls of law and is not liable to be interfered with under any circumstances. The original petition is dismissed.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE