

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

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

OP(KAT) .No. 248 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 981/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 10-07-2015

PETITIONER(S) /APPLICANTS:

1. DEEPAMOL.P.R AGED 38 YEARS
W/O.RATHEESH N.R., STAFF NURSE GRADE-I
PRIMARY HEALTH CENTRE, KOOROPADA, KOTTAYAM DISTRICT
RESIDING AT NADUVILAPURAYIDATHIL HOUSE
KOOROPADA P.O., MADAPPAD, KOTTAYAM.

2. BINDU VARGHESE AGED 36 YEARS
W/O.K.G.VINAYAN, STAFF NURSE GRADE I
PRIMARY HEALTH CENTRE, NATTAKAM, KOTTAYAM DISTRICT
RESIDING AT KOCHUPARAMBIL HOUSE, PAKKIL P.O.
KOTTAYAM.

3. SHIJI JOSE AGED 35 YEARS
W/O.BIJU JOSEPH, STAFF NURSE GRADE I
GOVERNMENT HOSPITAL, MUNDAKKAYAM
RESIDING AT CHEMMARAPALLIL HOUSE, KOORALI P.O.
KOORALLI, KOTTAYAM.

4. NOBY S.VIJAYAN AGED 35 YEARS
W/O.JYOTHISH KUMAR S., STAFF NURSE GRADE-I
PRIMARY HEALTH CENTRE, MANARCAUD, KOTTAYAM DISTRICT
RESIDING AT PUTHUPARAMBIL HOUSE, PAKKIL P.O.
KOTTAYAM.

5. ANU T.D. AGED 43 YEARS
W/O.REMESAN K.L., STAFF NURSE GRADE-I
COMMUNITY HEALTH CENTRE, THALAYOLAPARAMBU, VAIKOM
KOTTAYAM, RESIDING AT KARUKELIL HOUSE
PADINJARAKKARA P.O., VAIKOM, KOTTAYAM.

6. MARY JUNO , AGED 35 YEARS
W/O.JINSON GEORGE, STAFF NURSE GRADE-I, TALUK HOSPITAL
VAIKOM, RESIDING AT KAMPAKKARAN POLICKAN
ANDAKARANAZHY, ALAPPUZHA DISTRICT.

7. MARIAMMA THOMAS AGED 46 YEARS
W/O.JOSY JOSEPH, STAFF NURSE GRADE I, GENERAL HOSPITAL
CHANGANASSERY, RESIDING AT JOSE VILLA
PERUMPANACHI P.O., VATTACHALPADY, CHANGANASSERY.

8. SONYMOL P.S. AGED 37 YEARS
W/O.JOHN MATHAI, STAFF NURSE GRADE-I
DISTRICT HOSPITAL, KOTTAYAM DISTRICT
RESIDING AT THYILMATTOM HOUSE, PAKKIL P.O., KOTTAYAM.

9. MUMTAJ BEEGAM AGED 44 YEARS
W/O.ASHARAF K.A., STAFF NURSE GRADE I
PRIMARY HEALTH CENTRE, MADAPPALLY, CHANGANASSERY
KOTTAYAM, RESIDING AT KAPPILAMCHOTTIL HOUSE
CHERUVATHOOR P.O., KOTHAMANGALAM.

10. ASHARAF K.A. AGED 45 YEARS
S/O.VEERAN ALIYAR, STAFF NURSE GRADE I
GENERAL HOSPITAL, CHANGANASSERY, KOTTAYAM
RESIDING AT KAPPILAMCHOTTIL HOUSE, CHERUVATHOOR P.O.
KOTHAMANGALAM.

11. BINDUMOL T.S. AGED 39 YEARS
W/O.SAJIMON G., STAFF NURSE GRADE I, DISTRICT HOSPITAL
KOTTAYAM, RESIDING AT SATHI SADANAM, VELLOOR P.O.
PAMPADY, KOTTAYAM.

12. SUPRIYA THANKAPPAN AGED 36 YEARS
W/O.P.P.PREMJITH, STAFF NURSE GRADE-I
GOVERNMENT HOSPITAL, RAMAPURAM DISTRICT
RESIDING AT PERIKINALIL HOUSE, EZHACHERRY P.O.
RAMAPURAM.

13. SHINU P.C. AGED 43 YEARS
W/O.JOMON VARGHESE, STAFF NURSE GRADE I
GOVERNMENT HOSPITAL, CHANGANASSERY
RESIDING AT NALPATHIL HOUSE, CHERUKOLE P.O.
MAVELIKKARA.

14. SHEELA S.X. AGED 36 YEARS
W/O.E.ANIL KUMAR, STAFF NURSE GRADE-I
DISTRICT HOSPITAL, KOTTAYAM, RESIDING AT PAMMANCODE
THOTTARIKATHU, PUTHENKULANGARA P.O., NEDUMANGADU
THIRUVANANTHAPURAM.

15. RENJINI DEVI T.S. AGED 38 YEARS
W/O.BIJU R., STAFF NURSE GRADE I
GOVERNMENT HOSPITAL CHANGANASSERY
RESIDING AT THAYYIL HOUSE, KUDAYATHOOR P.O.
THODUPUZHA, IDUKKI DISTRICT.

16. JOLLY MATHEW AGED 35 YEARS
W/O.SIJO GEORGE, STAFF NURSE GRADE I
COMMUNITY HEALTH CENTRE KURICHY
REISIDING AT NEELATHUMMUCKIL HOUSE, NALUKODY P.O.
CHANGANASSERY.

17. BIJI KUMARI M.K. AGED 47 YEARS
W/O.E.G.PRAKASH, STAFF NURESE GRADE I
COMMUNITY HEALTH CENTRE, MUNDAKKAYAM
RESIDING AT EZHAPARAMBIL HOUSE, CHITTADY P.O., CHOTHY
KOTTAYAM DISTRICT.

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18. SHALET JOHN AGED 38 YEARS
W/O.GEJOMON V.P., STAFF NURSE GRADE I
GENERAL HOSPITAL, KANJIRAPPALLY
RESIDING AT VALIYAKAPPIL HOUSE, PERINGULAM P.O.
KUDAYURUTTY.

19. INDHULEKHA V.K. AGED 40 YEARS
W/O.RADHAMOHAN, STAFF NURSE GRADE I, GENERAL HOSPITAL
KOTTAYAM DISTRICT, RESIDING AT THAIPPARAMBIL HOUSE
THUMPOLY P.O., ALAPPUZHA.

BY ADVS.SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR

RESPONDENT(S) /RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF HEALTH SERVICES
DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL
THIRUVANANTHAPURAM-695001.

3. THE ADDITIONAL DIRECTOR OF HEALTH SERVICE (A&T)
DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL
THIRUVANANTHAPURAM-695001.

4. THE DISTRICT MEDICAL OFFICER OF HEALTH KOTTAYAM
CIVIL STATION, KOTTAYAM-2.

R. BY SENIOR GOVERNMENT PLEADER SRI. JOSEPH GEORGE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE O.A.NO.981/2015 ALONG WITH ANNEXURES A1 TO A3 AND MA FOR JOINING TOGETHER FILED BEFORE THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXHIBIT-P2: TRUE COPY OF THE MA.NO.1476/2015 IN O.A.NO.981/2015 ALONG WITH ANNEXURES A4 TO A24 FILE BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXHIBIT-P3: TRUE COPY OF THE M.A.NO.1679/2015 IN O.A.NO.981/2015 ALONG WITH ANNEXURES A25 TO A32.

EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 10.07.2015 IN OA.981/2015 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

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. 248 of 2015

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Dated, this the 19th day of August, 2015

JUDGMENT

Ramachandra Menon, J.

Petitioners were applicants before the Tribunal in O.A. No. 981 of 2015. The grievance is mainly with regard to the transfer ordered, as per Annexure A1 order dated 28.05.2015, while giving promotion to them in the ratio of 1 : 1 to be maintained between Staff Nurse Grade I and Staff Nurse Grade II respectively.

2. Petitioners were recruited pursuant to the selection conducted by the PSC, to the post of Staff Nurse Grade II in Kottayam district, which was a district wise selection and were holding the posts accordingly. By virtue of implementation of ratio promotion, they came to be promoted as per Annexure A1 order dated 28.05.2015. However, they have been simultaneously ordered to be transferred out from Kottayam district, to the places noted, which is stated as detrimental to their rights and interests. According to the petitioners, transfer was ordered without any regard to the

instructions/orders issued by the Government, at different points of time, including as per Annexure A3. This made the petitioners to approach the Tribunal by filing O.A. with the following prayers :

- (a) Call for the records leading Annexure A1 and set aside the same to the extent it transfers the applicants out of Kottayam District.
- (b) Direct the respondents 1 to 3 to permit the applicants to continue in Kottayam District.
- (c) Issue such other and further reliefs as this Hon'ble Tribunal may deem just and proper.

3. After hearing, the Tribunal relegated the applicants to move the first respondent/Government by way of 'appeal'. It was accordingly, that the O.A. was disposed of as per Ext. P4 verdict dated 10.07.2015, directing the first respondent to consider and pass appropriate orders on Annexures A4 to A23, in accordance with law, after affording an opportunity of being heard, within the time as stipulated therein. It is stated that orders are still to be passed by the first respondent. In the meanwhile, apprehending further steps in furtherance to Annexure A1, causing displacement of the applicants/petitioners, they have moved this Court by way of the present Original Petition.

4. A counter affidavit has been filed by the second respondent to the effect that petitioners are having absolutely no right to sustain the relief sought for. Petitioners have filed their reply affidavit as well.

5. Heard both the sides.

6. The main case projected before this Court is that, in spite of the promotion ordered in the case of the petitioners, they are entitled to continue in the very same district, if there are vacancies, by virtue of the instructions given by the Government as per Annexure A3. The learned counsel also points out that as many as 29 Staff Nurses Gr.I, working in Kottayam district, are due for promotion to the next post of Head Nurse and once this promotion is ordered, the relevant slots will be vacated and that the petitioners could be permitted to continue in Kottayam district itself. In other words, transfer ordered as per Ext. P1 before pursuing such exercise is highly unwarranted and hence the challenge.

7. The version of the second respondent, as given in paragraph 2 of the counter affidavit, is in the following terms :

"2. It is respectfully submitted that the petitioners were promoted as per Annexure - A1 order issued by

the 3rd respondent. The petitioners are included in 'C' category of Annexure A1. A seniority list of Staff Nurse Grade II for the period from 2003-2010 was prepared and Staff Nurses Grade II with seniority numbers ranging from 1 to 2000 were promoted to the cadre of Staff Nurse Grade I vide Order No. EE1-33000/2013/DHS dated 21.08.2013. At that time, there were no vacancies of Staff Nurse Grade I in Kottayam district to accommodate the promotees and they were transferred to other district for suitable postings. A seniority list was also prepared among the promotees consequent to Order No. DD-1/33000/2013/DHS dated 21.08.2013 for transfer to Kottayam district. 30 candidates (Staff Nurse Grade I) with seniority numbers ranging from 52 to 1900 are waiting for a transfer and posting in Kottayam district. The petitioners herein are included in the seniority list with the rank numbers ranging from 2001-2300. The claim of the petitioners for a posting in Kottayam district can be considered only after accommodating the above mentioned 30 numbers of Staff Nurse Grade I in Kottayam district.

8. The learned Government Pleader submits that there are several other persons, who are seniors in the post of Staff Nurse

Grade I, working in other districts; who could not be accommodated in Kottayam district for want of vacancies. As a matter of fact, a separate seniority list has already been prepared in respect of such persons who are desirous of getting transfer order to Kottayam district (as in the case of other districts as well) and their standing claim to be posted as Staff Nurse Grade I in the Kottayam district has to be considered, giving preference to them, whereas the petitioners have obtained promotion to the post of Staff Nurse Grade I only now. The said version is sought to be rebutted by the learned counsel for the petitioners, stating that, unlike the case of Staff Nurse Grade II, the post of Staff Nurse Grade I is having 'State wise seniority'. If at all anybody, who joined service as Staff Nurse Grade II in a district, based on the district wise selection, subsequently gets promotion to the post of Staff Nurse Grade I; they can be accommodated to the extent as specified vide Annexure A3 instructions/directions given by the Government. Reliance is sought to be placed on Annexure A24 verdict passed by the Tribunal in O.A. No. 480 of 2014 as well, in support of the various contentions raised by the petitioners.

9. After hearing both the sides, this Court finds that since the issue is pending consideration before the first respondent/Government by way of Annexure A4 to A23 representations, which have already been directed to be considered by the Tribunal, as per Ext. P4 order, this Court does not find it necessary to go into the merits of the case. No interference is warranted in respect of the order passed by Tribunal, except to make it clear that 'status quo' as on today with regard to transfer of the petitioners shall be maintained, till the matter is finalized by the 1st respondent, as ordered by the Tribunal.

The Original Petition is disposed of accordingly.

sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd