

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 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

OP(KAT).No. 256 of 2015 (Z)

**AGAINST THE JUDGMENT IN OP (EKM) 417/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 18-06-2015**

PETITIONER(S)/APPLICANTS IN THE OA:

- 1. MANJUSHA GEORGE AGED 32 YEARS
W/O. BASIL VARGHESE, THOTTIYIL HOUSE, KUNNAKKAL P.O.
MOOVATTUPUZHA JUNIOR HEALTH INSPECTOR INSPECTOR
PRIMARY HEALTH CENTRE, PAYIPRA.**
- 2. SAMLAL S AGED 40 YEARS
S/O. SUBRAMANIAN, MANGATTU HOUSE, ERUMATHALA P.O
KEEZHMADU, ALUVA, ERNAKULAM DISTRICT
JUNIOR HEALTH INSPECTOR, PRIMARY HEALTH CENTRE, ELOOR.**
- 3. SEEMA KUNJAPPAN AGED 28 YEARS
W/O. VINOD, VATHIKKADAN HOUSE, PADAVAPURAM P.O.
EDAKKUNNU, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, KUNNUKARA.**
- 4. SAUMYA DAS AGED 37 YEARS
W/O. PRATHEEP S NAIR, PALLATH HOUSE, PERUMBAVOOR
ERNAKULAM DISTRICT, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, CHERVATTOOR.**
- 5. ABDUL ANISH C.A AGED 25 YEARS
S/O. C.P.ALIAR, CIRANGARA HOUSE, EDATHALA NORTH P.O.
ALUVA, JUNIOR HEALTH INSPECTOR, PRIMARY HEALTH CENTRE
KAKKANAD.**
- 6. VIMAL KUMAR C AGED 35 YEARS
S/O. KUMARANA, CHEMMAYATH HOUSE, NEDUNGAPRA P.O.
PANJAL, ERNAKULAM DISTRICT - 683 545
JUNIOR HEALTH INSPECTOR, PRIMARY HEALTH CENTRE
PUNNEKKAD.**
- 7. SOUMYA R AGED 27 YEARS
W/O. BINOY T.R., THACHARA HOUSE
CHANGAMPUZHA NAGAR P.O., KOCHI - 33
JUNIOR HEALTH INSPECTOR, PRIMARY HEALTH CENTRE
THRIKKAKARA.**
- 8. DILEEP ELDO PAUL AGED 35 YEARS**

**S/O. K.V.PAILY, KALAPPURAKKAL HOUSE, CHOOTTANIKKARA
ERNAKULAM, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, KEECHERI.**

- 9. SOORAJ XAVIER T.V AGED 38 YEARS
S/O. T.X.VAREED, THARAMMEL HOUSE, OCHANTHURUTH P.O
KOCHI - 682 508, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, MUAMBAM, PH NO. 9895719371.**
- 10. PRATHEESHA P.R AGED 34 YEARS
W/O. LEJU P, PARAKKATTIL HOUSE, AMBALLOOR P.O.
ERNAKULAM DISTRICT - 682 315
JUNIOR HEALTH INSPECTOR, PRIMARY HEALTH CENTRE
UDAYAMPEROOR.**
- 11. REMA P.V AGED 45 YEARS
W/O. VINEESH, MADATHIVELLIYIL HOUSE, S. PARUR P.O.
ERNAKULAM DISTRICT - 682 307
JUNIOR HEALTH INSPECTOR, PRIMARY HEALTH CENTRE
KEECHERI.**
- 12. THRESSIA K.T AGED 32 YEARS
W/O. SATHEESH ANTONY, MANAPARAMBIL HOUSE
ASOKAPURAM P.O., ALUVA, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, CHENGAMANAD.**
- 13. MIRANDA FRANCIS AGED 28 YEARS
W/O. BIMAL BABU, ATHIPOZHI HOUSE, THOPPUMPADY
MAVELI ROAD, KOCHI - 5, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, MALIPPURAM.**
- 14. MEREENA MENDEZ
W/O. PAUL MEBDEZ, THRIVENI HOUSE, PALARIVATTOM
KOCHI - 680 025, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, MALAYATTOOR.**
- 15. MINI AJITH AGED 41 YEARS
W/O. AJITH, ROHINI HOUSE, CHENGAMMANAD P.O.
ALUVA - 682 578, JUNIOR HEALTH INSPECTOR
PRIMARY HEALTH CENTRE, MALAYATTOOR.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SRI.H.PRAVEEN (KOTTARAKARA)**

RESPONDENT(S)/RESPONDENT IN THE OA:

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
THIRUVANANTHAPURAM - 695 001**
- 2. THE DIRECTOR OF HEALTH SERVICES
GENERAL HOSPITAL JUNCTION
THIRUVANANTHAPURAM - 695 001.**

**3. DISTRICT MEDICAL OFFICER
GENERAL HOSPITAL COMPOUND, MARINE DRIVE
ERNAKULAM - 682 030.**

R BY GOVERNMENT PLEADER SRI. JOSEPH GEORGE

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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OP(KAT).No. 256 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE OA(EKM) 417/2015 WITH ANNEXURES DT. 20.5.2015.

P2 - TRUE COPY OF THE ORDER DT. 22.5.2015 IN OA 417/2015.

P3 - TRUE COPY OF THE MA 278/2015 WITH ANNEXURES A10 AND 11.

P4 - TRUE COPY OF THE ORDER DT. 18.6.2015 IN OA(EKN) 417/2015.

P5 - TRUE COPY OF THE GO(MS) NO. 1993/2015/H&FWD DT. 29.6.2015.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

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

O.P.(KAT) No.256 of 2015

Dated this the 13th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

The petitioners herein, were given employment under Rule 9 (a)(1) of the Kerala State Subordinate Service Rules, for a period of 179 days as Junior Health Inspector Grade II and they joined duty accordingly. Grievance is mainly with regard to the steps being taken by the concerned respondents for terminating their service without any regard to the actual facts and figures and the subsequent developments.

2. The pleadings and proceedings reveal that the petitioners, acquired Diploma in Sanitary Inspectors Course from All India Institute of Local Self Government in Mumbai, and the said qualification was accepted as equivalent to the qualification which was stipulated as per the relevant rules. Based on the said qualification, persons similarly situated like the petitioners herein, came to be included in the rank list prepared by the PSC and many of them have already obtained permanent appointment. But subsequently, the rules have undergone a change and the qualification stipulated by the Government for appointment to the post in question came to be changed as 'Diploma in Health Inspectors Course' as per Annexure A7, Pointing out that several ill-

qualified candidates, who are having only the Diploma in Sanitary Inspectors Course (as possessed by the petitioners herein) were permitted to continue in service, particularly by way of temporary engagement, it was sought to be intercepted by some persons having Diploma in Health Inspectors Course by filing O.A.(EKM). No.35/2015. The Tribunal observed that the term of appointment of the party respondents mentioned in that case, had expired on '16.10.2013' and as such, it was unnecessary to go into the validity of the appointment of the said respondents. Accordingly, the said O.A. was closed as per Annexure A3 order dated 14.1.2015.

3. The applicants in the said O.A approached this Court by filing O.P.(KAT).No.66/2015 pointing out that the submission made before the Tribunal as to the expiry of the term of engagement on 16.10.2013 was quite wrong and that the Government had been granting further exemptions, passing orders in a repeated fashion, facilitating extension of temporary engagement. Copies of the relevant orders were also produced before this Court. After taking note of the factual sequence, the said O.P.(KAT)No.66/2015 was allowed by this Court as per judgment dated 8.6.2015. The verdict passed by the Kerala Administrative Tribunal was set aside and the matter was remanded for fresh consideration.

4. In the meanwhile, the petitioners herein had approached the Kerala Administrative Tribunal by filing O.A.No.417/2015. The challenge raised was mainly apprehending the termination from

service. The matter was disposed of by the Tribunal as per Ext.P4 order dated 18.6.2015 whereby, the interim order already passed by the Tribunal was made absolute and the applicants were permitted to continue till 30.6.2015, based on the extension already passed by the State Government. It was also made clear in paragraph 8 of the said order, that no opinion was expressed with regard to whether the applicants were entitled to get further extension of appointment in the light of Annexure A12 or not.

5. It is revealed from the proceedings that, after finalizing the O.A., the Government considered the matter and passed Ext.P5 order dated 29.6.2015, whereby the persons like the petitioners have been permitted to continue till 30.9.2015. The petitioners have approached before this Court, as the merit of the case was not considered by the Tribunal.

6. Heard the learned counsel for the petitioner as well as the learned Senior Government Pleader appearing for the respondents.

7. The interim order which was made absolute by the Tribunal reads as follows:-

"Admit. Learned Government Pleader took notice for the respondents. The applicants submit pursuant to Annexure A2 order of the Government, their term of appointment was extended by three months from 1.4.2015. the Director by Annexure A5 order, ordered that the persons who do not have the qualification of Diploma in Health Inspector Course need not be given extension of appointment. It means, they can continue till their

present tenure is over. So, prima facie, we are satisfied that the applicants are entitled to continue in service up to 30.6.2015. so, Annexure A5 which ordered termination of the applicants from service is stayed and the applicants shall be allowed to continue up to 30.6.2015".

8. Paragraph 8 of the P4 order is very much relevant and hence the same is also reproduced as given below:

"It is clarified that we have not expressed any opinion whether the applicants are entitled to get further extension of appointment in the light of Annexure A12. The term of appointment as per Annexure A2 G.O. expires on 30.6.2015. Whether the applicants or similarly placed persons should be engaged further, is a matter of policy for the Government to decide. We express no opinion on that."

9. As evident from the proceedings, it is seen that the interim order passed by this Court when O.P.No.66/2015 was pending before this Court, giving a positive direction, holding that no unqualified candidate could be permitted to continue in service has already been subjected to challenge by filing an SLP before the Supreme Court, where the matter is still pending, also granting an interim order of stay. Annexure A11 is the interim order passed by the Supreme Court as above. The factum of existence of such order was taken note of by this Court while passing judgment in O.P.(KAT) No.66/2015. Existence of said order has also been taken note of by the Tribunal while passing Ext.P4 order. It was in view of the subsequent developments as above, that the matter was disposed by the KAT, without expressing any opinion with regard to the right

of the applicants if any, to get further extension of time.

10. After hearing both the sides, this Court finds that, the question whether the petitioners were entitled to continue by way of temporary appointment or not, was left to be considered by the Government and the Government in turn has passed Ext.P5 order dated 29.6.2015. Whether such a course is correct or not is not intended to be probed by this Court, as it for the Tribunal to have such exercise at the first instance, more so when the matter is pending consideration before the Tribunal by virtue of the remand ordered by this Court in O.P.(KAT).No.66/2015. In view of the orders passed by the Government, which now stands in favour of the petitioners herein enabling them to continue till 30.9.2015, no further orders are called for, for the time being, and the matter is closed accordingly. It is for the petitioners, if they find it appropriate, to get impleaded in O.A.No.35/2015 which is pending consideration before the KAT pursuant to the remand ordered by this Court in O.P.(KAT).No.66/2015.

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

**Sd/-
BABU MATHEW P.JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

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