

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 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP(KAT).No. 257 of 2015 (Z)

**AGAINST THE JUDGMENT IN OA 723/2014 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED**

PETITIONER(S):

- 1. SHEEBA V.TOM AGED 47 YEARS
WIFE OF KRISHNAKUMAR A.K
JUNIOR PUBLIC HEALTH NURSE GRADE-II
PUBLIC HEALTH CENTRE, KUZHIMANNA, MALAPPURAM
R/AT CHITHIRA HOUSE, KIZHISSERI, KUZHIMANNA
MALAPPURAM DISTRICT 673 641**
- 2. PREMALATHA P AGED 47 YEARS
WIFE OF MOHANAN K.A
JUNIOR PUBLIC HEALTH NURSE GRADE-II
PUBLIC HEALTH CENTRE, OMANNUR
MALAPPURAM DISTRICT R/AT ARYANGATTU HOUSE
MUTHUVALLUR P.O, VIA KONDOTTY, MALAPPURAM 673 638**

BY ADV. SMT.R.PADMAKUMARI

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT , SECRETARIAT
THIRUVANANTHAPURAM, KERALA, P[IN 695 001**
- 2. THE DIRECTOR OF HEALTH SERVICES
GENERAL HOSPITAL JUNCTION
THIRUVANANTHAPURAM PIN 695 035**
- 3. THE DISTRICT MEDICAL OFFICER,
KUNNUMKAL P.O, MALAPPURAM PIN 673 418**

R BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

avk

OP(KAT).No. 257 of 2015 (Z)

APPENDIX

PETITIONER'S EXHIBITS

**EXT.P1: TRUE COPY OF ORIGINAL APPLICATION FILED BY THE
PETITIONER BEFORE THE HONOURABLE TRIBUNAL ALONG
WITH THE ANNEXURES.**

**EXT.P2: THE TRUE COPY OF THE ORDER DATED 5-11-2014 IN OA
(EKM) 723/2014 ON THE FILES OF KERALA ADMINISTRATIVE
TRIBUNAL.**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

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

O.P.(KAT)No.257 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

Challenge is against Ext.P2 order of the Tribunal, whereby the order passed by the Govt turning down the request made by the petitioners to count the service rendered by them as as provisional hands, by virtue of the employment given under Rule 9 (a) of the Part II KS & SSR as part of the regular service, was upheld.

2. The factual position narrated in the petition shows that, the petitioners herein, were given employment under Rule 9 (a) of Part II KS & SSR for a period of 179 days and despite expiry of tenure, they were continuing as Junior Public Health Nurse Grade II. While so, they participated in the process of selection notified by the PSC to the regular posts of Junior Public Health Nurse Grade II and came out successful, getting an entry in the rank list; based on which, advice memo was issued and they got appointed in the year 1996. The petitioners were continuing in service as above.

3. While so, the petitioners and othersimilarly situated persons, before getting selected to the regular posts, had approached this Court by filing cases like O.P.No.17204 of 2015

seeking for regularization of their service, wherein, the representation preferred by them was directed to be considered as per Annexure A7 judgment dated 3.11.1995. It was subsequently that they got regular appointment pursuant to the advice given by the PSC in the year 1996. In the said circumstance, no further steps were pursued by the petitioners with reference to Annexure A7 judgment.

4. Later, some of the similarly situated persons like the petitioners herein, who were having earlier provisional service under Rule 9(a)(i) before obtaining regular appointment, had approached this Court by filing cases for counting their provisional service as well and to grant seniority accordingly. Because the interference declined, the matter was ultimately taken up before the Apex Court wherein, Annexure A9 judgment was passed on 22.4.2003 directing to count the provisional service as well. Admittedly, the petitioners were not parties to the said proceeding and no further steps were taken by the petitioners even after the said verdict passed more than a decade ago. It was nearly 11 years thereafter, that the petitioners chose to file Annexure A12 and Annexure A13 representations before the 1st respondent, seeking for extending similar benefit and thereafter approached this Court by filing W.P.(C).No.21231/2009 seeking for a direction to have the representations to be considered. The said writ petition was disposed of as per Annexure A14 judgment dated 16.12.2009,

directing the competent authority to consider the matter and pass appropriate orders. Since the representations preferred by the petitioners vide Annexure A12 and A13 were not considered, the petitioners approached the Tribunal by filing O.A.No.723/2014 seeking for the benefits as sought for, in respect of the said representation. The matter was considered by the Tribunal and interference was declined as per Ext.P2 order dated 5.11.2014 which in turn is sought to be challenged by way of this original petition.

5. Heard the learned Counsel for the petitioners as well as the learned Government Pleader appearing on behalf of the respondents.

6. During the course of hearing, no provision of law in the Service Rules is brought to the notice of this Court, for reckoning the period of 'provisional service' also to be added along with the regular service, and to fix the seniority accordingly. This Court finds that the Tribunal is perfectly justified in holding that the Annexure A9 verdict passed by Supreme Court does not lay down any binding precedent so as to be followed by the Tribunal or this Court. The direction given by the Supreme Court was based on the facts and circumstance therein. That apart, it is also revealed from Annexure A9 order dated 22.4.2003 passed by the Apex Court that the said verdict was passed with reference to orders passed by the Apex Court 9.5.1995 and 11.7.2001 which are in the following terms ;

" 9.5.2015

On the basis of filing the writ petitions the petitioners were working as Junior Public Health Nurses. It is contended in the writ petitions that even on that date they had put in about 6 years of service. In case the petitioners are still working, they be treated to have been regularized in their respective posts. The writ petitions are disposed of"

"11.7.2001

Leave granted.

*In the special features of these cases we think it would be proper for the respondents to extent the benefit of the order given by this Court in W.P.(C). No.493/1981 in the order made on 9.9.1995 in as much as they are qualified for the post of Junior Public Health Nurse. **This order shall not be treated as precedent to be applicable to others.** In the event that services of any of the candidates/petitioners have been terminated during the pendency of the proceedings before this Court, though no salary need be paid to them for that period, they shall be given benefit of continuity of service in the matter of regularization. The Civil Appeals are allowed accordingly. There shall be not order as to costs".*

7. It is evident from the above order that the said order shall not be treated as a precedent to be applicable to the others. In so far as no provision of law is brought to the notice of this Court, to the effect that the 'provisional service' rendered by the petitioners is liable to be reckoned as part of the 'regular service', for counting the total number of service and also to assign seniority accordingly, and in the absence of any binding judicial precedents, this Court finds it difficult to accept the preposition mooted by the petitioners.

That apart, as mentioned already, the verdict passed by the Supreme Court vide Annexure A9 was more than a decade ago, on 22.04.2003. The petitioners having admittedly not pursued further steps pursuant to Annexure A7 judgment, it cannot be attempted to be re –opened at this distance of time. This Court does not find any tenable ground to call for interference with the verdict passed by the learned Tribunal. The original petition fails and the same is dismissed accordingly.

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

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

//TRUE COPY//

PA TO JUDGE

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