

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

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

OP(KAT).No. 263 of 2015 (Z)

(AGAINST THE ORDER/JUDGMENT IN TA 81/2013 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 08.04.2015)

PETITIONERS:

1. PRASANTH KUMAR P.K.
LABORATORY TECHNICIAN GRADE-I, E.S.I., HOSPITAL
THOTTADA, KANNUR-7 RESIDING AT PRASANTHAM
P.O. CHOMBALA, KOZHIKODE DISTRICT-673308.

2. ASOKAN K
LABORATORY TECHNICIAN GRADE-I, E.S.I HOSPITAL
THOTTADA, KANNUR-7, RESIDING AT NELLİYOTIL HOSUE
P.O.PALLUR, MAHE, KERALA-673333.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS):

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT LABOUR AND REHABILITATION
DEPARTMENT , GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

2. DIRECTOR OF INSURANCE MEDICAL SERVICES
THIRUVANANTHAPURAM-695014.

3. REGIONAL DEPUTY DIRECTOR (NORTH ZONE) INSURANCE
MEDICAL SERVICES, KOZHIKODE, KERALA-673001.

BY SR. GOVERNMENT PLEADER SHRI M. MOHAMMED SHAFI.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 263 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A TRUE PHOTOCOPY OF THE APPOINTMENT ORDER DATED 17.8.2000 IN RESPECT OF THE PETITIONERS ISSUED BY THE THIRD RESPONDENT.

EXHIBIT P2: A TRUE PHOTOCOPY OF THE ORDER DATED 16.7.2001 REGULARISING THE APPOINTMENT OF THE FIRST PETITIONER ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P3: A TRUE PHOTOCOPY OF THE GOVT. ORDER DATED 1-11/89.

EXHIBIT P4: A TRUE PHOTOCOPY OF THE COMMUNICATION DATED 22.1.2002.

EXHIBIT P4: A TRUE PHOTOCOPY OF THE G.O.(P) 145/2006/FIN DATED 25.3.2006.

EXHIBIT P5: A TRUE COPY OF THE PROVISIONAL GRADATION LIST OF LAB TECHNICIAN GR-II ISSUED BY 2NE RESPONDENT.

EXHIBIT P6: A TRUE PHOTOCOPY OF THE JUDGMENT DATED 3.12.2007 IN WPC 32208/07 OF THIS HON'BLE COURT.

EXHIBIT P7: A TRUE PHOTOCOPY OF THE PROMOTION ORDER DATED 16.2.2008 ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P8: A TRUE PHOTOCOPY OF THE FINAL GRADATION LIST DATED 30.6.2003 ISSUED BY SECOND RESPONDENT.

EXHIBIT P9: A TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE SPECIAL RULES FOR THE KERALA INSURANCE MEDICAL SUBORDINATE SERVICE 1993 ISSUED AS PER G.O. DATED 29.3.93.

EXHIBIT P10: A TRUE PHOTOCOPY OF THE ORDER NO.E4/9217/2003/DIMS DATED 19.5.2003.

EXHIBIT P11: A TRUE PHOTOCOPY OF THE GOVT. LETTER DATED 14.10.2008.

/TRUE COPY/

P.S. TO JUDGE.

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

.....
O.P.(KAT)No. 263 OF 2015
.....

Dated this the 3rd August, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

The verdict passed by the KAT in T.A.No.81 of 2013 relegating the applicants to move the Government with regard to the pre-dating of ratio promotion given to them as per Exhibit A7, is sought to be intercepted by filing this Original Petition.

2. The learned Counsel appearing for the petitioners submits that the second applicant has already obtained the relief as observed by the Tribunal in paragraph '4' of Annexure A1 order and as such, the grievance remains only in respect of the first petitioner.

3. The case projected in the Original Petition is that because of non-finalisation of gradation list with regard to the post of Laboratory Technicians Gr.I, the ratio promotions were not being given and as such, the petitioners were being stagnated in the post of Laboratory Technician Gr.II. This made

O.P.(KAT)No. 263 OF 2015

2

them to approach this Court by filing a writ petition (W.P.(C) No.32208/07) wherein, Ext.P6 judgment was passed, directing the concerned respondents to effect ratio promotion (in the ratio of 1:1, by virtue of the change introduced as per Ext.P3). Pursuant to the above verdict, the matter was considered by the competent authority, who passed Ext.P7 order, whereby the ratio promotion was given to the petitioners ; however giving effect to the same only from 06.09.2000 in the case of the second petitioner and from 23.09.2000 in the case of the first petitioner . By virtue of the fact that there was no change in the nature of duties to be discharged, but for the change in the scale of pay, such ratio promotion had to be given w.e.f. the date of 'declaration of probation', in tune with the mandate of Rule 23(C) Part I, KSR. As per Ext.P8 gradation list, the first petitioner was ranked at Sl.No.16 and the second petitioner was ranked at Sl.No.15. As a matter of fact, 17 posts were available in the cadre of Laboratory Technician Gr.I and atleast 17 promotions were made as discernible from Ext.P7, wherein the last person was shown as 'Bijimole Joseph' (placed at Rank No.17 in Ext.P8

O.P.(KAT)No. 263 OF 2015

3

Gradation List). It was in the said circumstance, that interference of this Court was sought for by filing W.P.(C) No.10462 of 2008, which was subsequently transferred to the Tribunal , where it was re-numbered as T.A.81 of 2013

4. A counter affidavit has been filed by the first respondent /State referring to granting of benefit to the second petitioner herein and as to the change in the effective date from 16.02.2008 to 20.11.2007 in the case of the first petitioner. The reason for such change was also sought to be explained. The learned Counsel for the petitioners submits that since the stand of the first respondent has already been made clear by filing a counter affidavit, no effective purpose will be served by relegating the petitioners to move the Government as ordered in the T.A. by the Tribunal and hence this Original Petition. The learned Counsel further points out, that the reasoning given by the first respondent in their counter affidavit with reference to the inclusion of 'Blood Bank Technicians' in the concerned Branch and the change in the seniority list cannot be correct, as the posts of Laboratory Technician Gr.II and Blood Bank

Technician Gr.II are two different streams, which cannot be mixed up for fixing seniority by virtue of the Special Rules (The Special Rules for the Kerala Insurance Medical Subordinate Services, 1993), a copy of which was produced as Ext.P9 (Annexure- A4/10).

5. Heard the learned Government Pleader as well, who submits that the contention of the petitioners with reference to Ext.P9 Special Rules and the distinct nature of the post also can be considered by the Government along with all the relevant aspects to be pointed out by the petitioners at the time of hearing.

6. In the above circumstance, this Court does not find it necessary to call for any interference with the direction given by the Tribunal, but for making it clear that the stand already taken by the first respondent with reference to the circumstances under which 'Blood Bank Technicians' came to be included in the relevant Branch and as to the resultant change in the seniority list by itself shall not bar the way of the Government in considering the matter in accordance with law, especially with

reference to Annexure A4 (Ext.P9) Special Rules. This is more so, since appointment under Rule '3' of Ext.P9 Special Rules in respect to the post of Laboratory Technician Gr.I (under Sl.No.10) stipulates that promotion shall only be **by promotion from Category 18-Laboratory Technician Gr.II,** while similar promotions in the case of Blood Bank Technicians Gr.I shall be **by promotion from category 19 Blood Bank Technician Gr.II.** The proceedings as above shall be finalised by the Government, after hearing the petitioners as already ordered by the Tribunal, within three months from the date of receipt of representation ordered to be preferred vide Annexure A1.

The Original Petition is disposed of.

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

**BABU MATHEW P. JOSEPH,
JUDGE.**