

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

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

OP (KAT) .No. 287 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 982/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 28-07-2015

PETITIONER(S) :

1. SHAHITHA K.G., AGED 36 YEARS, W/O SANI P.G.
STAFF NURSE GRADE I, TALUK HOSPITAL,
PUTHENVELIKKARA, ERNAKULAM DISTRICT,
RESIDING AT PANIKKASSERY HOUSE,
PUTHENVELIKKARA, ERNAKULAM DISTRICT.
2. MARY GEEMA P.L, W/O MARSHAL A.C., AGED 37 YEARS
STAFF NURSE GRADE I, TALUK HEAD QUARTERS HOSPITAL,
FORT KOCHI, ERNAKULAM, RESIDING AT ARAKKAL HOUSE,
MOOLAMKUZHY, MUNDAMVELI P.O., ERNAKULAM.
3. SHEMI ABDUL JALEEL, W/O ABDUL JALEEL, AGED 36 YEARS,
STAFF NURSE GRADE I, TALUK HEAD QUARTERS HOSPITAL,
KOTHAMANGALAM, ERNAKULAM, RESIDING AT THANDIYECKAL HOUSE,
NELLIKUZHI P.O. KOTHAMANGALAM.
4. KHADEEJA V.M., W/O MOHAMMED ZAFFARULLAH, AGED 53 YEARS,
STAFF NURSE GRADE I, COMMUNITY HEALTH CENTRAL, PALLAIMANGALAM,
ADIVAD, ERNAKULAM, RESIDING AT AMEENA MANZIL,
PALLARIMANGALAM PO, ADIVAD, ERNAKULAM DISTRICT.

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

RESPONDENT(S) :

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 SERVICES (A & T).
DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL,
THIRUVANANTHAPURAM 695001

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:2:

4. THE DISTRICT MEDICAL OFFICER OF HEALTH ERNAKULAM,
GENERAL HOSPITAL, ERNAKULAM 682 035.

R BY SENIOR GOVERNMENT PLEADER PLEADER SRI. M. MOHAMMED SHAFI

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P (KAT) NO. 287 OF 2015

APPENDIX

PETITIONER'S EXHIBITS :

EXT. P1: TRUE COPY OF THE O.A. NO. 982/2015 WITH ANNEXURE A1
AND A2 AND MA FOR JOINING TOGETHER FILED BEFORE THE
HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXT. P2: TRUE COPY OF MA. NO. 1475/2015 IN O.A NO. 982/2015 ALONG
WITH ANNEXURES A3 TO A9 FILED BEFORE THE HON'BLE KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXT. P3: TRUE COPY OF THE MA NO. 1744/2015 N O.A. NO. 982/2015
ALONG WITH ANNEXURE A10 TO A13 FILED BEFORE THE HON'BLE
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXT. P4: TRUE COPY OF ORDER DATED 28.07.2015 IN O.A. NO. 982/2015
OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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O.P. (KAT) No. 287 of 2015

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Dated, this the 21st day of August, 2015

JUDGMENT

Ramachandra Menon, J.

Petitioners were applicants before the Tribunal in O.A. No. 982 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, which was a district wise selection and were holding the posts accordingly. Petitioners 1 to 3 were originally appointed in Kottayam District in the year 2006; from where they came to Ernakulam District, on inter-District transfer, in April 2010. The 4th petitioner joined service in Ernakulam district on 24.04.2006. 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 Ernakulam 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 A2. 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 Ernakulam District.
- (b) Direct the respondents 1 to 3 to permit the applicants to continue in Ernakulam 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 28.07.2015, directing the first respondent to consider and pass appropriate orders on Annexures A5 to A8, 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 coercive 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. Heard both the sides.

5. 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 A2. The learned counsel also points out that as many as 15 Staff Nurses Gr.I, working in Ernakulam 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 Ernakulam district itself. In other words, transfer ordered as per Ext. P1 before pursuing such exercise is highly unwarranted and hence the challenge.

7. 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 Ernakulam 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 Ernakulam district (as in the case of other districts as well) and their claim to be posted as Staff Nurse Grade I in the Ernakulam 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 A2 instructions/directions given by the Government. Reliance is sought to be placed on Annexure A9 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 A5 to A8 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