

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

OP(KAT).No. 346 of 2014 (Z)

AGAINST THE ORDER IN OA.1807/2014 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 24-09-2014

PETITIONERS/APPLICANTS:-:

1. ANISH M.C, AGED 35 YEARS
S/O.CHANDRASHEKARAN, SREENILAYAM, POIKKATTUSSERY
NEDUMBASSERY VILLAGE, CHANGAMANADU P.O., ALUVA TALUK
ERNAKULAM DISTRICT - 683 578.

2. NAZEER S.M., AGED 40 YEARS
S/O.MUHAMMED, SAMUDAYAPARAMBIL HOUSE, NELLIKUZHI P.O.
ERAMALLOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT - 686 691.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:-:

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
HOME DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. DIRECTOR GENERAL OF PROSECUTION(ADMINISTRATION),
MARKET ROAD, COMBARA JUNCTION, KOCHI - 682 018.

3. THE DISTRICT COLLECTOR,
CIVIL STATION, KANNUR - 670 001.

R1 BY GOVERNMENT PLEADER(Sr.) E.M.ABDUL KHADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN
FINALLY HEARD ON 24-07-2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

OP(KAT).No. 346 of 2014 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF O.A.NO.1807 OF 2014 DATED 24.09.2014 WITH ANNEXURES.

EXHIBIT P2. TRUE COPY OF ORDER DATED 24.09.2014 IN O.A.NO.1807 OF 2014 DATED 24.09.2014.

RESPONDENT(S) ' EXHIBITS

NIL.

/True copy/

P.S to Judge

P.R.RAMACHANDRA MENON & P.V ASHA, JJ.

O.P(KAT) No.346 of 2014-Z

Dated this the 24th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

The petitioners are before this Court, being aggrieved of Ext.P2 order passed by the Kerala Administrative Tribunal, whereby the Original Application preferred by the petitioners seeking to make appointments (regular or temporary), to the post of Assistant Public Prosecutors (Grade-II) from Annexure-A1 rank list was dismissed as devoid of any merit.

2. When the matter came up before this Court for consideration, on the last occasion, it was submitted by the learned counsel for the petitioners that there was absolutely no rhyme or reason for appointing temporary hands from outside, when persons like the petitioners, who have come successful in the process of selection, have been included in the rank list. Instead of reporting the vacancies to the Public Service Commission, so as to facilitate appointment, in respect of such vacancies, many of the vacancies are being permitted to be occupied by temporary hands. In the above circumstances, the

concerned respondent was directed to file an affidavit as to the factual particulars, also making it clear that renewal of the existing temporary arrangements to the post of Assistant Public Prosecutor Grade-II shall not be effected without getting further orders from this Court.

3. Pursuant to the above order, an additional affidavit has been filed on 7.7.2015 by the 1st respondent. Paragraphs 3 and 4 of the affidavit dated 7.7.2015 filed by the 1st respondent are relevant and are extracted below:

“3. It is submitted that Government have reported all the eligible vacancies of APPs to KPSC including the anticipatory vacancies for the year 2015. The candidates advised by the KPSC are appointed as APP Gr.II. They have to undergo a mandatory training for a period of six months. For the smooth functioning of the courts the vacancy thus arise is filled by permitting the provisional hands to continue as APP (Prov.) till the newly appointed APPs complete their training, as per G.O(MS) No.175/14/Home dtd.30.08.2014 (A6). They will be relieved as and when the APPs return from their training. Government is resorting to appointment of provisional hands only in accordance with the above Government Order. The details of APPs (Prov.) thus continuing are as follows:

	Name of APP (Provisional)	Name of the Court	How vacancy arise	Whether vacancy reported to KPSC
1	Shri. G.Anu	JFCM Court, Ramankari	Vacancy due to the mandatory training of APPs appointed through KPSC	Yes. Provisional APPs are continuing vide G.O(MS)175/14/Home dtd.30.8.2014
2	Shri. K.T.Abhilash Kumar	JFCM Court, Kattappana	"	"
3	Shri K.P.M.Anees	JFCM Court, Ponnani	"	"
4	Shri K.Siyamurashid	JFCM Court II, Manjeri	"	"
5	Shri. K.Lalumon	JFCM Court II, Perinthalmanna	"	"
6	Smt.A.Dhanya	JFCMC, Thaliparamba	"	"

4. It is also submitted that 4 other Provisional APPs are working in the JFCMCs in vacancies which arose due to the relieving of APPs as temporary Munsiff Magistrates. Among the 4 APPs relieved for the post of Munsiff Magistrate one retired and the vacancy was reported to KPSC along with the anticipatory vacancies for 2015. Among the other three vacancies one is filled up due to the repatriation of one APP from deputation and the other is to be filled up on 7/2015 on the return of one APP from LWA. Hence it can be seen that there is only one vacancy of APP to be reported to Kerala Public Service Commission.

Sl.No.	Name of APP (Provisional)	Name of the Court	How vacancy arise	Whether vacancy reported to KPSC
1	Shri. Wilson Thomas	JFCM Court, Muvattupuzha	Vacancy due to relieving of APPs as temp. Munsiff-Magistrate	All Anticipated vacancies for the year 2015 reported to KPSC on 26.11.2014
2	Shri. K.S.Muralikrishnan Nair	JFCM Court, Ettumanoor	"	"

3	Smt. T.P.Jelna	SDM Court, Thalasserry	“	One vacancy is reserved for posting of APP completing LWA
4	Shri M.Shemina	ACJM Court , Thalasserry	“	Not reported by DGPr as the duration of vacancy is not known. Will be reported to KPSC after ascertaining the duration of vacancy.

4. The learned counsel for the petitioners points out that the course sought to be pursued by facilitating appointment of temporary hands as per Annexure A6 issued by the Government and the consequential order like Annexure-A7 issued by the District Collector in respect of the interview, are not at all correct or proper and that the same is in contravention of the mandate of Annexure-A5 Circular dated 21.03.1997. The relevant portion of the above Circular reads as follows:

“.....

iii. The vacancies on account of leave and deputation with a duration of 6 months and above should invariably be reported to the Commission Vacancies of periods between 3 months and 6 months should also be reported to the Commission if the vacancies are likely to last long and new vacancies are likely to arise.

iv. When there is a ranked list, vacancies shall invariably be filled up from the candidates in that list.

.....”

5. Heard both the sides in detail.

6. The circumstances under which interference was declined by the Tribunal are discernible from paragraph 2 of Ext.P2 Order, which is extracted below:

“We find that Annexure A6 order has been issued in public interest to see that the functioning of the Criminal Courts are not affected for want of Assistant Public Prosecutors. The 24 vacancies which, arose on deputing PSC hands for training cannot be filled up by a second batch of the PSC hands who will also have to undergo mandatory training. So, the temporary hands are allowed to function as Assistant Public Prosecutors. So, the method adopted by the Government in Annexure A6, that is to allow the extension of the term of the existing temporary Public Prosecutors, cannot be said to be illegal or without jurisdiction. If in any of the courts there is no temporary Assistant Public Prosecutor, the same is being filled up from the open market temporarily by the District Collector. This Tribunal is not justified in interfering with what is being done in public interest. Administration of criminal justice is one of the prime duties of the State. Any lapses in that regard will lead to serious consequences to the public at large.”

After hearing both the sides, we find that the verdict passed by the Tribunal is perfectly within the four walls of law and it does not call for interference.

Accordingly, this Original Petition(KAT) stands dismissed.

Sd/-

P.R.RAMACHANDRA MENON
Judge

Sd/-

P.VASHA
Judge

rtr/