

(2015) 06 KL CK 0014
In the High Court Of Kerala
Case No : OP(KAT) No. 50 of 2015 (Z)

Babu M.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Citation : (2015) 06 KL CK 0014

Hon'ble Judges : P.R. Ramachandra Menon and Babu Mathew P. Joseph, JJ.

Bench : Division Bench

Advocate : Elvin Peter P.J., T.G. Sunil and K.R. Ganesh, Advocates, for the Appellant; E.M. Abdul Khader Advocate Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

P.R. Ramachandra Menon, J.—Denial of transfer to the petitioner, who is working as Junior Health Inspector Grade-I, in the opted district of Idukki, to the home district at Ernakulam, raising the contention that he has not completed the minimum tenure of three years envisaged for the purpose of transfer in the particular cadre, also pointing out that the post of Junior Health Inspector Grade-I is a state-wise post, is sought to be challenged in this original petition. The attempt made by the petitioner by approaching the Kerala Administrative Tribunal was not fruitful.

2. The facts and figures reveal that the petitioner was appointed as Junior Health Inspector Grade-II as per Annexure A-1 dated 25.10.2002 and he joined duty in Idukki District. On completion of 12 years, the petitioner was given promotion as Junior Health Inspector Grade-I on 22.7.2013 as per Annexure-A2. While so, the existing ratio of 2:1 was changed by the Government making it as 1:1 between the Junior Health Inspector Grade-II and Junior Health Inspector Grade-I. This was done as per Annexure A-3 order dated 9.1.2012. Pursuant to the changed circumstances, the eligibility of the petitioner was reconsidered and it was accordingly, that the petitioner was ordered to be promoted as Junior Health Inspector Grade-I with effect from 1.2.2011 as per Annexure-A4 order dated

5.3.2014. It is stated that the petitioner was discharging the very same duties and that in the two different posts, namely Junior Health Inspector Grade-II and Junior Health Inspector Grade-I.

3. By virtue of the fact that the petitioner was given retrospective promotion as Grade-I with effect from 1.2.2011, the petitioner has completed the minimum tenure of three years in connection with the general transfer for the year 2014 and hence he preferred a representation to have a posting to the home district at Ernakulam. Initially, the name of the petitioner was included in the draft list, but the same was subsequently removed and hence, he filed O.A. No. 1262 of 2014 before the Tribunal. The Tribunal, as per Annexure A-6 order dated 19.8.2014, disposed of the said O.A., directing the concerned respondent to consider the eligibility of the petitioner for transfer to his home district. Pursuant to the said verdict, the matter was considered and Annexure-A7 order was passed by the second respondent on 16.12.2014 rejecting the claim, holding that the retrospective promotion ordered as per Annexure-A4 cannot be considered for the purpose of transfer as the same was likely to vary and the same would have been relevant only with regard to seniority and not with respect to transfer. This was sought to be challenged by the petitioner before the Tribunal by filing O.A. No. 131 of 2015 wherein interference was declined. The operative portion of the said order reads as follows:

"In view of the above position, this Original Application is not maintainable as it is filed without invoking the remedy of moving the Government. Accordingly, it is dismissed. But, this will not affect the contentions of the applicant and his right to move the Government and also approach this Tribunal again, if the Government does not decide or takes a wrongful decision on the claim of the applicant."

4. The finding of the Tribunal was sought to be challenged by the petitioner by filing this original petition pointing out that no remedy is available before the Government. It is stated that the Government has already delegated its power to the second respondent, who in turn has passed the impugned order and as such, no purpose will be served by approaching the Government again.

5. A statement has been filed by the first respondent seeking to reiterate the stand taken in Annexure A-7 and referring to the state-wise seniority for the post of Junior Health Inspector Grade-I. The petitioner has filed reply affidavit, also producing copies of some documents including some verdicts passed by the Tribunal and also by this Court, in support of the contentions raised.

6. Heard both the sides in detail. It is brought to the notice of this Court that Annexure-A9 circular was issued by the Government as early as on 22.4.1974. Clause 4 of the Circular is relevant to decide the issue involved in this case, which reads as follows:

"4. Preference will be given to those working outside their native District for the longest period and in reckoning the longest continuous service in a district, total service in all categories put together will be taken and not in the particular

category in which the person is continuing at the time of transfer."

The transfer norms were issued by the Government vide Annexure-A5 Government Order dated 10.9.2004. Clauses 7 and 8 of the said G.O. are relevant, which are extracted below:

"7. Service in all the cadres in the same district shall be considered for transfer to own district or opted district.

8. Service in more than one district shall be considered as a whole for transfer to home district/opted district (Service in different cadres also has to be considered as a whole)."

From the contents of the above Circular and the Government Order as above, it is explicitly clear that the service in all the cadres in the same district shall be considered for the purpose of transfer to the home district, from the opted district and that the stand taken by the respondents to deny the claim of transfer vide Ext. P7 is not correct or sustainable. That apart, similar issue had come up for consideration before the Tribunal, with respect to the case of Staff Nurses, who were working in Grade-I and Grade-II, wherein Ext. P7 judgment was passed on 29.10.2014. A positive finding was rendered to the effect that the said petitioners were entitled to have the benefit, holding that the stand taken by the Government/Department with reference to the status of the post as "state-wise" unit was not correct or sustainable. The finding of the Tribunal was affirmed by this Court as per Ext. P9 judgment dated 1.12.2014.

7. Reference is made to similar verdict passed by the Tribunal under similar circumstances as involved herein; with reference to the post of Junior Health Inspector Grade-I itself. Ext. P8 is the verdict passed on 19.1.2015 in O.A. No. 2239 of 2014. The contention raised from the part of the Government/Department was repelled and the rights and liberties of the applicant was declared in the positive. The first respondent was directed to reconsider the claim, also making a reference to the verdict passed by this Court in O.P.(KAT) No. 396 of 2014 on 1.12.2014. Relevant portion of the said verdict is extracted below:

"3. As we have already stated, the basic reason, which is adopted by the Tribunal to allow the Original Application, is that the Government have erroneously proceeded in Annexure-A9 that, for Staff Nurse Gr.I, district is the unit. This reasoning adopted by the Tribunal cannot be faulted for the reason that the Tribunal had already taken that view in its order in O.A. No. 3008 of 2013, a copy of which is Annexure-R90 (a) before the Tribunal. This order of the Tribunal has been upheld by this Court by dismissing O.P.(KAT) No. 10 of 2014 and connected cases, a copy of the judgment of which is Annexure-A5. It is also seen that the Government itself have reiterated that Staff Nurse Gr.I belongs to State Cadre in G.O.(Rt) No. 3844/2010/H & FWD dated 27.9.2010, which Government Order has been referred by the Tribunal in Ext. P1 order."

The direction given by the Tribunal vide Ext. P8 has been implemented by the Government by passing Ext. P10 order dated 17.3.2015.

8. After hearing both the sides, this Court finds that the stand taken by the Government/Department with reference to the state-wise seniority of the Junior Health Inspector Grade-I cannot be a bar for considering the claim of the petitioner for a posting to the home district, reckoning the tenure from 1.2.2011 pursuant to the retrospective promotion ordered as per Annexure-A2. This is more so in view of the enabling provision, particularly Clauses 7 & 8 of Annexure-5 and Clause 4 of Annexure A-9.

9. In the above circumstances, this Court finds that the petitioner is entitled to succeed. The impugned orders Annexure-A7 and A13 stand set aside. We also set aside the order passed by the Tribunal relegating the petitioner to move the concerned authorities for the relief sought for under such circumstances.

10. The O.P.(KAT) stands allowed to the said extent. The second respondent is directed to give effect to this verdict by giving appropriate posting against available vacancy to the home district at Ernakulam forthwith; at any rate, within one month from the date of receipt of a copy of this judgment. In case, no vacancies are available now, it is directed to give posting in the next arising vacancy in Ernakulam District. The petitioner shall produce a copy of this judgment, along with a copy of the Original Petition before the second respondent for further steps.

Original Petition is disposed of.