
(2014) 07 KL CK 0229
In the High Court Of Kerala
Case No : OP(KAT). No. 198 of 2014 (Z)

Joy M.S.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0229

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : Thomas Abraham, Merciamma Mathew, V. Renjith Kumar and Aswin P. John, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

K.M. Joseph, J.—The petitioners are the applicants before the Kerala Administrative Tribunal (hereinafter referred to as "the Tribunal" for short). They were working as hospital attendants Grade II in the various hospitals on daily wage basis. They approached the Tribunal seeking the following reliefs:

(i). direct the respondents to reappoint the petitioners as Hospital Attendants Grade II in the Kerala Last Grade Service in various Hospitals/Primary Health Centres under the Health Services Department in Pathanamthitta District in the vacancies existing in faithful obedience to the direction contained in Annexure A5 judgment.

ii). direct the respondents to favourably consider the case of the applicants for regularization.

In brief the petitioners' case is as follows:

2. The petitioners are working as Hospital Attendants Grade II in the Kerala Last Grade Service in various Hospitals/Primary Health Centres under the Health Services Department in Pathanamthitta District. In the year 2006, the DMO initiated steps for terminating their services. Aggrieved by the same, few of the

petitioners had approached this Court by filing the writ petition. Though this Court dismissed the writ petition, there was a direction to continue the petitioners in service till regular hands are appointed or for one month. It is their further case that this court modified the earlier judgment to the effect that the employees might be allowed to continue till a new set of daily wage employees join duty, even if their date of joining duty is beyond the period of one month. While so, the DMO, Pathanamthitta as per order dated 4/11/2011 appointed 14 part-time contingent employees from the seniority list. The petitioners were either thrown out of service or were threatened with termination even though regular hands had not been appointed. Feeling aggrieved by the same, the petitioners approached the Tribunal by filing O.A. No.17/2011, which came to be rejected vide Annexure A1. The petitioners filed O.P.(KAT) No.156/2012 against Annexure A1. The Division Bench of this Court passed Annexure A2 order. Paragraphs 7 and 8 of the said order reads as follows:

7. In the meantime, it has to be noted that we are handling a matter which is exceptionally important from the angle of the needs of the common man. The hospital attendants in the government hospitals and primary health centres are inexcusably needed. It is a continuous requirement for running a hospital or primary health centre. Taking that into consideration, it is further ordered that it would be open to the establishments to allow the persons, who are now continuing on daily wage basis to continue until the District Collector carries out the above exercise or appointments are made properly as against substantive vacancies.

8. It needs to be mentioned that the petitioners were being engaged as daily waged employees, on account of huge dearth of hospital attendants. Their engagement commenced by following a procedure of advertisement and carrying out a process of selection from among those willing to work on daily wages. Yet, we are of the view that they do not have the indefeasible right to claim continuance in office and this order does not confer any right on the petitioners to make any claim to be regularized in employment. It is further clarified that there is no direction herein to continue the present arrangement in relation to the petitioners, except to the aforesaid extent stated in paragraph 7 above.

3. Thereafter, it is stated that, when the matter came up for consideration again, this Court by Annexure A3 held that the respondents should carry out necessary steps for recruitment as regards 50% quota available for part-time contingency employees of the Health Department and the remaining 50% quota available to the part-time contingency employees of the other departments in the district and present lists before the court within a period of three months. By Annexure A4 order this Court observed that the persons presently working following Annexure A3 order should not be terminated until further orders. Annexures A2 to A4 are all interim orders. Finally, the Original Petition was disposed of vide Annexure A5 Judgment. In Annexure A5, what this Court observed is that, as stated by the 4th respondent-District Collector, if there is any opportunity and the petitioners

respond to it, the petitioners might be considered in preference to others. Immediately, thereafter about 20 persons were given appointment. It is stated that there were nearly 35 vacancies in Pathanamthitta District. Pointing out their further grievances, the petitioners submitted Annexure A6 representation to the respondents, but the same was not considered. The Tribunal dismissed the Original Application. As regards the first prayer, going by the pleadings in the original application, the Tribunal took the view that the applicants do not have a case that they applied pursuant to the notification issued by the District Medical Officer for selecting 60 cleaning staff on contractual basis and ignoring their preference, others have been selected. Thus the case based on violation of the direction in Annexure A5 was rejected. The Tribunal further made following observation in paragraph 4 of its order, which reads as follows:

4. We notice that when hundreds of persons are waiting in the queue in the Employment Exchange it is quite unfortunate that without filling up the vacancies on a regular basis, temporary engagements are made giving rise to unnecessary claims. Therefore, the third respondent is directed to fill up the vacancies in the cadre of Hospital Attendant Grade II in Pathanamthitta district on a regular basis as provided under Rule 5 of the Special Rules for Last Grade Servants, in the light of the direction of the Division Bench of the Hon"ble High Court quoted by us in para two of this order. Respondents 1 and 2 shall ensure that the third respondent does this without delay.

4. Feeling aggrieved by the order of the Tribunal, the petitioners preferred this original petition. In this original petition a statement was filed by the Government. In response to that the petitioners filed reply affidavit.

5. When the matter came up for consideration today, we heard the learned counsel for the petitioners as well as the learned Government Pleader. The Tribunal had proceeded on the basis that there is no violation of the directions in Annexure A5, which we have referred to.

6. The factual position submitted by the learned Government Pleader is as follows: Out of 60 vacancies, 20 were filled up on a regular basis. In regard to further 40 vacancies what has happened is that there was a list of daily wages workers from the year 2002. In view of the emergency encountered on the basis of monsoon, persons were selected urgently. As such there was no notification. The Government Pleader draws our attention to Ext.P3 which is an order dated 5/5/2014. Government Pleader would point out that under the said order the persons, who have been appointed on daily wages, have been vouchsafed a right to continue till 30/9/2014. He would further submit that after 30/9/2014, the position, as contemplated by the directions in the impugned order will be put in place i.e. there will be regular appointment. The Government Pleader would further submit that, at any rate, in case regular appointments are not immediately done after 30/9/2014, if any such daily wage workers are required, the seniority list of the daily wage workers will be prepared and employment will be offered on the basis of seniority. In the event of requirement of daily wage

workers continuing even after 30/9/2014, the respondents will issue notification and preference will be given to the petitioners and persons who have been working as daily wage workers, on the basis of the list to be prepared.

7. We record the above submissions. We do find force in the contention of the learned counsel for the petitioners that the Tribunal has not understood the factual position correctly. Even though there is no notification, it was held by the Tribunal that the petitioners did not respond to the notification. But, we notice that as per Ext.P3 order, persons are given right to continue till 30/9/2014. We see no reason to grant any relief to the petitioners other than recording what the learned Government Pleader has stated. We further reiterate the direction given by the Tribunal that regular employment shall be the regime which should be put in place after 30/9/2014.

The original petition is disposed of with the above observations.