

(2025) 03 KL CK 1313

In the High Court Of Kerala

Case No : Original Petition (KAT) No. 420, 422 Of 2024

State Of Kerala, Represented By The Secretary

APPELLANT

Vs

Dr. Chitra. S, W/O. Dr Jyothish Hari

RESPONDENT

Date of Decision : 19-03-2025

Acts Referred:

Kerala Health Service (Medical Officers) Special Rules, 2010 — Rule 6, 38

Citation : (2025) 03 KL CK 1313

Hon'ble Judges : A. Muhamed Mustaque, J;P. Krishna Kumar, J

Bench : Division Bench

Advocate : Sunilkumar Kuriakose, Jelson J.Edampadam, M.Fathahudeen

Final Decision : Allowed

Judgement

P.Krishna Kumar, J.

1. The key issue in these cases is whether Assistant Surgeons appointed under the Kerala Health Service (Medical Officers) Special Rules, 2010 ('Special Rules, for short) who have exercised the option for placement in the Speciality Cadre can later relinquish their right to such an appointment under Rule 38 of Part II of Kerala State & Subordinate Service Rules ('KS&SSR').

2. The petitioners are Assistant Surgeons in the Kerala State Health Service. Both petitioners opted for placement in the Speciality Cadre in 2013. However, in 2024, they submitted a request to relinquish their right to such an appointment in the Speciality Cadre, citing personal inconveniences. The Government rejected their request for relinquishment (the request made by one of them was not acted upon by the Government) on the ground that Rule 6 of the Special Rules prohibits it. The Government further proceeded to post them in the Speciality Cadre. Aggrieved by this decision, the petitioners approached the Kerala Administrative Tribunal. Through the impugned common order, the Tribunal found that the petitioners are entitled to relinquish the option exercised by them as per the provisions of Rule 38 of KS&SSR, dehors the inhibition in Rule 6 of the

Special Rules.

3. The Government challenged this finding through these original petitions, contending that Rule 6 of the Special Rules overrides the provisions in Rule 38 of the KS&SSR. Since both cases involve common questions of law, they are being disposed of together, with O.P. (KAT) No. 420/2024 as the leading case.

4. We heard Sri.Sunilkumar Kuriakose, the learned Government Pleader appearing for the State and Sri.Fathahudeen M., the learned counsel appearing for the respondents.

5. The primary challenge raised against the findings of the Tribunal is that the impugned judgment fails to recognise the overriding effect of Rule 6 of the Special Rules on Rule 38 of Part II KS&SSR, in view of Rule 2 of Part II, KS&SSR. It is thus profitable to quote the relevant statutory provisions hereunder:

Rule 5, 6 and 7 of the Special Rules are as follows:

"5. Option for placement:- Option for placement in Administrative Cadre - Branch A and Speciality Cadre - Branch C and Public Health Lab. cadres - Branch D(a) and (b) shall be exercised by the Assistant Surgeons / Assistant Dental Surgeons of Branch B during the period of probation itself.

6. Option once exercised shall be final.

7. Those Assistant Surgeons who have not exercised their option to any of the cadres during probation period or later shall be deemed to have continued in the entry cadre Branch B - General Cadre."

Rule 38 of Part II KS&SSR reads as follows:

"38. Relinquishment of rights by members.- Any person may, in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules, if, in the opinion of the Appointing Authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

Provided that request for relinquishment of right for promotion/appointment by transfer to a post, under the above rule, shall not be allowed if such request for relinquishment is submitted by the employee on or after the date of order by which the person was promoted or appointed by transfer to the said post.

Explanation - The relinquishment of the right for promotion or appointment by transfer under this Rule shall entail loss of seniority and a relinquishment of the right for promotion or appointment by transfer shall not be permissible unless such relinquishment entails loss of seniority."

6. After considering the above provisions, it seems that there is substance in the contention of the learned Government Pleader that Rule 6 of the Special Rules prevails over the general provisions contained in Rule 38 of Part II KS&SSR. The

Tribunal proceeded to return the finding in favour of the respondents on an assumption that Rule 38 of the KS&SSR and Rule 6 of the Special Rules are working on different planes and hence there is no repugnancy between both the provisions.

7. Let us now closely consider the scope of Rule 2 of Part II KS&SSR. It reads as follows:

"2. Relation to the Special Rules.-If any provision in the general rules contained in the Part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the latter shall, in respect of that service, prevail over the provision in the general rules in this Part."

Rule 2 states that when any provision in Part II of KS&SSR is repugnant to the provisions in a Special Rule applicable to a particular service, the provisions of the Special Rule will prevail. When there is an inconsistency between two statutory provisions which occupy the same field of operation and both cannot co-exist together, it is said that they are repugnant to each other. In order to consider whether a provision in the Special Rules applicable to a particular service is repugnant to the general provisions contained in the KS&SSR, it is beneficial to apply a simple test viz., whether both provisions can co-exist without going into a collision course while applying them in a given situation.

8. Applying this test, we find ourselves unable to accept the conclusions of the Tribunal. While Rule 38 of the general rules permits officials to relinquish any right or privilege to which they are entitled (in the given instance, the right to appointment in the Speciality Cadre), Rule 6 of the Special Rules explicitly prohibits such relinquishment once the option for placement has been exercised. Thus, when applied to the option for placement of Assistant Surgeons, these provisions directly contradict each other—one allowing relinquishment and the other forbidding it—making them mutually inconsistent or repugnant. Hence, in view of the provisions contained in Rule 2 of Part II KS&SSR, the provisions in the Special Rules will prevail over the repugnant part of the general rules.

9. The learned counsel for the respondents attempted to distinguish the situation by referring to Rule 7 and Rule 9 of the Special Rules. As far as the explicit and precise nature of Rule 6 is concerned, we find it unnecessary to delve deeper into those provisions which deal with entirely different aspects. Rule 7 provides that if an Assistant Surgeon has not exercised his/her option to any of the cadres during the probation period, he/she will be deemed to have continued in the General Cadre. Rule 9 states that placement shall be given only after declaration of successful completion of probation and the Government is entitled to give relaxation of this Rule if there is a scarcity in the number of post-graduate candidates. As far as the respondents are concerned, they have admittedly exercised the option in the year 2013. Thus, even if they are not so far posted in the Speciality Cadre, they are not entitled to relinquish their rights or privileges, if any, by virtue of the express bar contained in Rule 6.

10. On going through the pleadings made by the respondents before the Tribunal, it is evident that both of them had submitted the option for appointment in Speciality Cadre in the year 2013, but furnished the respective relinquishment letter only in the year 2024, when the Government took steps for posting them in the Speciality Cadre, apprehending that they might be transferred to a faraway place from their hometown.

In view of the above findings, we allow the petitions and set aside the impugned order. However, as the respondents have raised concerns about being posted far from their hometown, on humanitarian grounds, the Government shall consider these grievances when assigning them to the Speciality Cadre.