
(2015) 10 KL CK 0092
In the High Court Of Kerala
Case No : OP(KAT) No. 290 of 2015 (Z)

Vinodkumar K. and Others	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 20-10-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20

Citation : (2015) 10 KL CK 0092

Hon'ble Judges : K. Surendra Mohan and S.P. Chaly, JJ.

Bench : Division Bench

Advocate : Elvin Peter P.J., T.G. Sunil and K.R. Ganesh, Advocates, for the Appellant; Rekha Vasudevan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.P. Chaly, J.—This Original Petition is filed by the applicants challenging the order of the Kerala Administrative Tribunal, Thiruvananthapuram in O.A.(EKM) No. 794 of 2015 dated 07.08.2015. By the said order, Tribunal has relegated petitioners to approach the 1st respondent to redress their grievances pursuant to rejection of their request for transfer to the districts of their choice.

2. Brief facts for the disposal of the Original Petition are as follows:

3. Petitioners were recruited as Junior Health Inspector Grade II (hereinafter referred to as "JHI Grade II" for short) by the District Recruitment Board of the Kerala Public Service Commission in the districts of Palakkad, Kasaragod, Kannur, Idukki, Malappuram and Wynad, 13 years back in the year 2002. Petitioners were appointed to various districts other than their home districts. Petitioners were not entitled to seek transfer to their home districts while they were continuing in the category of JHI Grade II since the said post is a district level post.

4. While continuing so, after declaration of probation, petitioners were promoted as JHI Grade I as per Annexures A3 and A11 orders dated 22.7.2013 and

5.3.2014 respectively. JHI Grade I is a State cadre post. Promotion to the post of JHI Grade I is made on the basis of combined seniority list of incumbents working as JHI Grade - II in the different districts throughout the State of Kerala since JHI Grade I is a State cadre post. The incumbents holding JHI Grade I are entitled to seek transfer anywhere in the State of Kerala in accordance with the norms for transfer issued by the 1st respondent as per Annexure A18 order. In accordance with clauses 7 and 8 of Annexure A18 order, service in both the cadres in the same district has to be considered as a whole against request for transfer of an employee to his home district/opted district. Even prior to Annexure A18 order dated 10.09.2004, 1st respondent has laid down as per Annexure A19 order dated 22.04.1974, that the entire service rendered in all the cadres in a district has to be taken together for considering the eligibility for transfer to the station of his choice or home station.

5. Though the petitioners have submitted their applications for transfer, during general transfer for the transfer to home districts, same have not been considered by the 2nd respondent consequent to an illegal stand taken by the respondents that the service rendered by the incumbents in the post of JHI Grade I alone will be counted for the purpose of considering the eligibility for transfer to their home district/district of their choice. Thereupon respondents have denied claim of the petitioners for transfer to their home district on that account. That apart respondents have also issued an order laying down that a person holding the post of JHI Grade I cannot be transferred to a district outside the district of his recruitment, and thereby denied the right of incumbents like the petitioners who have been continuing for the past 13 years in various districts, outside their home districts without securing a transfer to their home district/opted district.

6. Matters being so, the said order issued by the 1st respondent was challenged before the Tribunal by petitioners 1, 21 and 24 herein by filing O.A.(EKM) No. 606/2014. The Tribunal in view of the order passed in the cases of similarly situated applicants, passed Annexure A23 interim order directing the 1st respondent to follow Annexure A24 interim order passed by the Tribunal in O.A. (EKM) Nos. 563 and 578 of 2014. In Annexures A23 and A24, the Tribunal has declared that the post of JHI Grade I is a State cadre post and therefore, the incumbents who were holding the post of JHI Grade I are entitled to be considered for transfer to their opted districts.

7. While O.A. No. 606 of 2014 was pending consideration 1st respondent has passed an order pursuant to Annexure A23 direction, following a detailed order passed in O.A. No. 480 of 2014 relating to Staff Nurse Gr.I. The said order of the Tribunal was affirmed by this Court in Annexure A25 judgment in O.P.(KAT) No. 396/2014. Thereafter Tribunal passed orders similar to the order passed in O.A. No. 480/2014, as per Annexures A26 and A27. In the light of the law laid down by the Tribunal and affirmed by this Court, petitioners withdrew O.P. (EKM) No. 606/2014.

8. In fact, before passing Annexures A23 and A24 interim orders petitioners were included in Annexures A28, A29, A30, A31 and A32 lists prepared by 2nd respondent proposing to transfer them to their home districts. It was thereafter that the 1st respondent issued an order declaring that persons holding the post of JHI Grade I are not entitled to be transferred to other districts. Thereupon 2nd respondent removed the petitioners from the provisional list prepared.

9. Confronted with such a situation petitioners 1, 21 and 24 again approached the Tribunal by filing O.A. No. 1703/2014 requesting for a transfer to their respective home districts. Though the issue raised in the said application was covered by the orders of the Tribunal mentioned earlier, the Tribunal again remanded the matter back to the 2nd respondent with a direction to consider and pass orders on the representation filed by the petitioners. A similarly situated person has also filed O.A. No. 2768/2013 challenging the action of removing him from Annexure A34 list before the Tribunal. The said application was also disposed of directing the 2nd respondent to consider and pass orders in the representation filed by the said person.

10. Thereafter 2nd respondent passed Annexures A36 and A37 orders dated 27.01.2015 on 30.01.2015 in the aforesaid two applications and rejected the claim of the petitioners and the other person assigning a new reason that the service rendered by the petitioners and others in the category of JHI Grade I de hors the service rendered in the category of JHI Grade II alone can be taken into account for transfer to their home districts. Yet again, the Tribunal has disposed of O.A. No. 1262/2013 filed by one Babu M. challenging the action of his removal from Annexure A34 list directing second respondent to take a decision in the representation filed by him. Thereafter 2nd respondent has declined the claim of the said person also by Annexure A38 order. All these orders were passed by the Government assigning the very same reason and the petitioners contend that Annexures A36, A37 and A38 are mere cyclostyle copies so far as the reason for rejection is concerned. Any how, said Babu has filed O.A (EKM) No. 131/2015 which was disposed of by the Tribunal in the admission stage itself directing the applicant to approach the Government by filing a representation for redressal of his grievance. The said order of the Tribunal was challenged in O.P (KAT) No. 50/2015, before this Court. This Court as per Annexure A39 judgment dated 10.06.2015 allowed the Original Petition and directed the 2nd respondent to provide transfer to aforesaid Babu M. to the district of his choice. Accordingly, as per Ext. P2 order dated 24.7.2015 said Babu was transferred to Ernakulam District along with another person who has secured order in O.A. No. 226/2015 dated 7.7.2015 as per Ext. P3. Ext. P3 order also revealed that Tribunal has allowed application of another JHI Grade I working in Idukki district and situated similarly, following Annexure A39 judgment of this Court.

11. It is in this background that petitioners have challenged Annexures A36 and A37 orders before the Tribunal by filing O.A.(EKM) No. 694/2015. It is the contention of the petitioners that again and again, petitioners were driven to the

task of approaching the Government by making representations. It is thus aggrieved by the said order this Original Petition is preferred.

12. Respondents have filed a counter affidavit reiterating the stand it has taken before the Tribunal to contend that the arguments advanced by the petitioners are against the District-wise Recruitment Board Rules for transfer. It is further contended that the petitioners can claim inter-district transfer only by relinquishing their past seniority unless they are promoted to the cadre of Health Inspector. Relying on Rule 27.1(a) 2 it is contended that the seniority of a person on Inter-unit transfer with the same department on request shall be determined with reference to the date of joining duty in the new unit. So also it is contended that transfer application of the applicants can be considered only if they are willing to forego their seniority as stipulated in paragraph 3(ii) of G.O.P No. 37/96/P & ARD dated 07.11.1996. It was also contended that it was only appropriate on the part of the Tribunal to relegate the petitioners to the statutory remedy in view of Section 20 of the Administrative Tribunals Act.

13. We heard learned counsel for the petitioners Sri. Elvin Peter and learned Senior Government Pleader Smt. Rekha Vasudevan for the respondents in extenso.

14. Learned counsel for the petitioners reiterating the contentions raised in the Original Petition canvassed the proposition that going by Annexure A39 judgment referred by this Court the whole issue raised in the Original Petition is covered. Pursuant to the direction contained in the said judgment, Tribunal has passed orders allowing the applications of similarly situated persons and they all secured transfer to the district of their choice. Learned counsel also invited our attention to paragraphs 8, 9 and 10 of Annexure A39 judgment and contends that similar situation occurs in this Original Petition also and therefore, the stand taken by the respondents cannot be sustained under law and facts. It was further contended by the counsel that merely because Section 20 of the Administrative Tribunals Act stipulates filing of applications before the Tribunal only on exhausting alternative remedy will not apply in a case like this, wherein some of the petitioners were relegated to the Government for the third time. Therefore, learned counsel contended that the Tribunal was not justified under the totality of the circumstances to relegate the petitioners to invoke the statutory remedy.

15. Learned Senior Government Pleader on the other hand reiterated the stand taken by the Government in the counter affidavit filed and contends that the petitioners cannot maintain their seniority at the district of their choice since they were recruited district-wise. It was further contended that it is as per Exts.R1(a) and R1(d) Government Orders the transfer of Junior Health Inspectors are governed and therefore, in the nature of the case advanced by the petitioners they are not entitled to get transfer to the district of their choice without relinquishing their past seniority.

16. Having considered the rival submissions advanced by the learned counsel

and perusing the records, we are of the considered opinion that paragraphs 8 to 10 of Annexure A39 judgment of the Division Bench of this Court in O.P.(KAT) 50/2015 resolves the issue raised in this Original Petition. For the sake of brevity, we are extracting the said paragraphs:

"8. After hearing both 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."

17. In Annexure A39, this Court was considering the very same circumstance and has held that the petitioners are entitled to succeed without being relegated to the statutory remedy as done by the Tribunal in this case. Further it was held in the said judgment that the seniority for effecting transfer is to be taken into account by reckoning the seniority of the incumbents in both the cadres together. We do not find any reason to differ from the findings and conclusions arrived at by the Division Bench of this Court in Annexure - A39. In that view of the matter, petitioners in this Original Petition are entitled to succeed. Therefore the Original Petition is allowed, Ext. P4 impugned order of the Tribunal in O.A(EKM) No. 694/2015 dated 07.08.2015 and the respective impugned orders of the 1st respondent are quashed and the following directions are issued:

"The 2nd respondent is directed to provide suitable posting as requested by the petitioners against the available vacancies within a period of one month from the date of receipt of a copy of this judgment. If at all vacancies are not available in considering the request, the next arising vacancy shall be provided to the petitioners to the districts of their choice. The petitioners shall produce a certified copy of this judgment before the 2nd respondent in order to proceed immediately for complying with the directions in this judgment."

Original Petition is allowed accordingly.