



IN THE KERALA ADMINISTRATIVE TRIBUNAL AT  
THIRUVANANTHAPURAM

Present:

The Hon'ble Mr. Justice K. Balakrishnan Nair, Chairman

&

The Hon'ble Mr. Mathew C Kunnumkal, Member

Dated this the 28th of January 2015

OA-2193/2014

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**Applicant(s):**

- 1) Preetha P.R., W/o. Rajeev. D, aged 32 years, Residing at Karthika, Mandapanthinvila, Pazhakutty PO, Nedumangad, Thiruvananthapuram, Kerala -695561  
Mobile - 9495058310
- 2) Sheeba. B, ., W/o Sayyed J, aged 27 years, Residing at Vellarithottam Veedu, Pathumuri Lane, Pazhauakarakkamandapam, Nemom P.O, Thiruvananthapuram, Kerala -695020  
Mobile - 9037545529
- 3) Sreena S.R., W/o Radhakrishnan. M, aged 28 years, Residing at Mangalathu Veedu, Mangalathu Nada, Pothencode, Thiruvananthapuram, Kerala -695584  
Mobile - 9746816840
- 4) Nimmy T., W/o Biju V.S, aged 27 years, Residing at Melattingal, Alamcode P.O, Attingal, Thiruvananthapuram, Kerala -695012

By Advs. SAJU JOHN , AMMU PILLAI L. & ANNAPOORNA L

**Respondent(s):**

- 1) State of Kerala, represented by the Secretary to Government, Health and Family Welfare Department, Secretariat, Thiruvananthapuram., Kerala -695001
- 2) The Director of Health Services, Directorate of Health Services, General Hospital Junction, Thiruvananthapuram, Kerala -695035
- 3) District Medical Officer of Health, Office of the District Medical Officer of Health, General Hospital Junction, Thiruvananthapuram, Kerala -695035
- 4) The District Officer, Kerala Public Service Commission, District Office, Pattom, Thiruvananthapuram., Kerala -695004

( By learned Govt. Pleader Sri.Siju Rajan for R1 to R3, Adv.Sri.C.A.Majeed, Standing Counsel for R4. )

SC FOR KPSC

This Original Application having been finally heard on 28th of January 2015, the Tribunal on the same day passed the following:

K. BALAKRISHNAN NAIR, CHAIRMAN

AND

MATHEW C KUNNUMKAL, MEMBER

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OA. NO. 2193 OF 2014  
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DATED THIS THE 28TH DAY OF JANUARY 2015

ORDER

K.Balakrishnan Nair, Chairman:

The applicants are candidates included in Annexure A1 rank list published by the Kerala Public Service Commission for appointment to the post of Laboratory Technician Grade II in the Health Services Department in Thiruvananthapuram district. The grievance of the applicants is that several vacancies in the cadre strength of Laboratory Technician Grade II in the said district are being occupied by Laboratory Technicians Grade I transferred from other districts. They point out that the Director of Health Services has issued Annexure A3 order dated 17.10.2011 dividing the cadre strength of Laboratory Technicians into Grade I and Grade II posts. In Thiruvananthapuram district, the strength of Laboratory Technicians is 109. As per Annexure A3, out of them, 55 will be in Grade II and 54 in Grade I. The applicants point out that a few other posts of Laboratory Technicians were created

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and at present the strength of Laboratory Technician Grade II is 58. In support of that submission, they rely on Annexure A5 answer given by the Government in the Legislative Assembly on 2.7.2014.

2. The Government have already issued Annexure A2 GO dated 27.9.2010 providing that Laboratory Technician Grade I shall be treated as a State cadre. The said GO reads as follows:

“In categories like Staff Nurse, Junior Health Inspector, Junior Public Health Nurse, U.D.Clerk etc. the posts in the cadre of Grade I belong to State cadre and the incumbents are transferable to other districts. But in the case of Lab Technician and Pharmacist, inter-district transfer has not been made applicable for Grade I posts.

2) Government have examined the matter in detail and are pleased to order that the posts of Lab Technician Grade I and Pharmacist Grade I will be treated as State wise posts similar to other categories mentioned above and will be considered for inter-district transfer as per rules in force.

3) The Director of Health Services shall identify 50% posts in the entry

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cadre (Grade II) in each district in both these categories and redesignate them as Grade I posts. However the incumbents in Lab Technician Grade I & II posts will be interchangeable as in other similar categories.”

3. In paragraph 2 of the above GO, it is specifically provided that the post of Laboratory Technician Grade I will be treated as State wise post. In implementation of the direction contained in paragraph 3 of Annexure A2, the Director of Health Services has issued Annexure A3 order dated 17.10.2011. As per that order, the entire cadre strength of Laboratory Technicians in the State has been divided into Grade I and Grade II and they were allotted to the 14 districts as indicated therein. The Director of Health Services has further issued Annexure A4 order dated 13.1.2013 allotting the posts of Laboratory Technician Grade I and Grade II for various Primary Health Centres, Community Health Centres, Taluk Hospitals, District Hospitals, General Hospitals, etc. The Laboratory Technician Grade I will ordinarily be a senior hand. Having regard to the requirement of the institution concerned, it appears, Grade I posts have been distributed. For example, in Annexure A4, we find that in the Public Health Laboratory, there are 25 posts of Laboratory Technician. Out of them 19 are Grade I posts and 6 are Grade II posts.

4. Relying on Annexure A5, the applicants point out that in Thiruvananthapuram district, there are 21 Laboratory Technician Grade I accommodated in Grade II posts. Praying to transfer out the excess Laboratory

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Technician Grade II, the applicants had preferred Annexure A8 representation before the Director of Health Services. This Tribunal by Annexure A9 order dated 27.8.2014 directed the second respondent to consider the said representation. In obedience to the said direction, the second respondent has issued Annexure A10 order dated 18.10.2014. In Annexure A10, it was held that in view of Annexure A12 letter of the Government dated 30.9.2014 and also Annexure A11 judgment of the Hon'ble High Court in OP(KAT) No.325 of 2014, the second respondent is not able to transfer out the excess Laboratory Technicians Grade I from Thiruvananthapuram district. Challenging Annexures A10 and A12, this Original Application is filed.

5. The applicants point out that the Government does not have any consistent case regarding the status of Laboratory Technician Grade I. According to the exigencies of the situation, in some cases, the Government have taken the stand that it is a district level post and therefore, there cannot be any transfer of Laboratory Technician Grade I. In some other cases, the Government have taken the stand that it is a State level post and therefore, they can be transferred to any district without any restriction. The applicants point out that promotion to the post of Laboratory Technician Grade I was made based on a State level seniority list of Laboratory Technician Grade II. The entire vacancies in that cadre in the State were pooled and Grade II Laboratory Technicians irrespective of their home district were promoted strictly based on seniority. That means, persons from Thiruvananthapuram could be posted to the vacancies in Kannur or Kasargode and vice versa. If Laboratory Technician Grade I is a district level post, promotions could

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be ordered based on district level seniority list to the vacancies available in that cadre in the concerned district. No one can be promoted to a post outside the district. The applicants also point out that the Hon'ble High Court has not decided any legal question in Annexure A11 judgment. This Tribunal issued a direction to consider the representation filed by the applicants in the Original Application subject to certain conditions. The Hon'ble High Court vacated those conditions and made it as an open remand. The Hon'ble High Court never decided any legal issue in that judgment. So, it does not lay down any principle which is binding as a precedent. The applicants further point out that Annexure A12 letter of the Government runs counter to Annexure A2 and also goes against the State level promotions ordered in the cadre of Laboratory Technician Grade I. So, they prayed for quashing Annexures A10 and A12 and for transferring out Grade I Laboratory Technicians working in the post of Grade II Laboratory Technicians. They also pray that the resultant vacancies may be reported to the Public Service Commission.

6. Respondents 1 to 3 have filed a reply statement. The Government asserts that the post of Laboratory Technician Grade I is a district level post though seniority is maintained at the State level. According to the Government, the order Annexure A2 was issued wrongly without consulting the Personnel and Administrative Reforms Department. Therefore, the Government is proposing to recall that order. In view of the fact that Laboratory Technician Grade I is a district level post and in view of Annexure A11 judgment of the Hon'ble High Court, the Government seeks to sustain the stand taken by it in Annexure A12 and also

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supports the stand taken by the second respondent in Annexure A10.

7. Respondents 5 to 19 got themselves impleaded and filed a reply statement. According to the respondents, the post of Laboratory Technician Grade I was introduced based on the recommendations contained in the 8<sup>th</sup> Pay Commission Report. In fact, it is a district wise post. There was also a State level list of Laboratory Technicians for effecting promotion to the post of Chief Laboratory Technician. Though the post of Laboratory Technician Grade I was created for the first time as a temporary measure, promotions were ordered to that post from the State wise list of Laboratory Technicians maintained for ordering promotions to the post of Chief Laboratory Technician. Respondents 5 to 19 are either directly recruited as Laboratory Technician Grade II in Thiruvananthapuram district or who got inter district transfer as Laboratory Technician Grade II to the said district and on promotion, they are not liable to be transferred out, even if they are in excess of the strength of Laboratory Technician Grade I, it is submitted.

8. The applicants have filed a rejoinder to the reply statement of the official respondents and they have produced additional documents Annexures A13 to A24.

9. We heard the learned counsel on both sides and went through the pleadings and materials on record.

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10. Annexure A2 GO clubs together Staff Nurse, Junior Health Inspector, Junior Public Health Nurse, Laboratory Technician and Pharmacist and treats Grade I posts in those categories as State level posts. The point whether Staff Nurse Grade I is a district level post or a State level post and whether they can be transferred to other districts without loss of seniority was considered by this Tribunal in O.A.No.480 of 2014. This Tribunal held that the stand of the official respondents that Staff Nurse Grade I is a district level post is plainly perverse and it was further held that Staff Nurse Grade I can be transferred to other districts subject to usual transfer norms without loss of seniority. The said decision was rendered relying on an earlier decision of this Tribunal in O.A.No.3008 of 2013, which was affirmed by the Hon'ble High Court in OP(KAT) No.10 of 2014. The decision in O.A.No.480 of 2014 has been upheld by the Hon'ble High Court by the judgment dated 1.12.2014 in OP(KAT) No.396 of 2014. In the said decision, it was held as follows:

“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

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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.”

Following the decision in O.A.No.480 of 2014 and OP(KAT) No.396 of 2014, this Tribunal disposed of O.A.No.2087 of 2014 and connected cases on 23.1.2015. It was dealing with the case of Junior Public Health Nurse Grade I. Relying on Annexure A2 herein, in that case, this Tribunal held that Junior Public Health Nurse Grade I is a State level post and not a district wise post as contended by the Government and further held that they can be transferred to any district subject to usual transfer norms without loss of seniority. The reasons for arriving at that conclusion will apply on all fours to the case of Lab Technician Grade I also. The contentions to the contrary cannot be accepted. As rightly pointed out by the applicants, the Government is taking a stand in each case according to the exigencies of that case without a balanced approach. If the posts concerned are district level posts, there cannot be any State level promotion. Promotions hitherto ordered will have to be undone and there should be fresh promotions based on the seniority list of each district. If such an attempt is made, it is going to create more problems than solving it. Pandemonium will be the result.

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11. The Director of Health Services and the Government mainly relied on Annexure A11 judgment of the Hon'ble High Court and Annexure A12 letter of the Government to support their stand. As rightly pointed out by the learned counsel for the applicants, Annexure A12 does not lay down any principle which is binding as a precedent. It has only set aside the restricted remand made by this Tribunal and made it an open remand. We agree with the learned counsel for the applicants that the said decision does not lay down any principle, which binds as a precedent in other cases. Further, we notice that the very same Bench of the Hon'ble High Court which rendered Annexure A11 judgment has rendered the judgment in OP(KAT) No.396 of 2014 affirming the order of this Tribunal in O.A.No.480 of 2014. So, in any view of the matter, the judgment of the Hon'ble High Court, which is later in point of time will prevail.

12. The stand taken in Annexure A12 is that if Grade I posts are treated as State level posts, they can be transferred anywhere and the same will result in denial of rights of the PSC hands. According to the Government, Grade II posts can be filled up by transferring Grade I hands and thereby the appointment chances of rank holders in the PSC list to the posts of Grade II can be marred. We think, the said contention cannot be accepted because in relation to each district, the Director of Health Services has issued specific orders demarcating the total cadre strength of Laboratory Technicians, Staff Nurse, etc. and the said strength has been further

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bifurcated into Grade I and Grade II posts in the ratio of 1:1. If only, while ordering transfers, the said ratio is ignored, the rights of the PSC hands will be affected. So, to safeguard the interests of the PSC hands, the ratio between Grade I and Grade II in a district in the concerned post should be strictly observed. Instead of doing that, holding that the posts in Grade I are also district level posts for safeguarding the interests of PSC hands is an irrational way of solving the problem. If the competent authority has stuck to the relevant orders governing cadre strength, it is unnecessary to undo the steps hitherto taken and order that Grade I post is a district level post.

13. Even assuming that the post of Laboratory Technician Grade I is a district level post, still respondents 5 to 19 need not necessarily succeed. If it is a district level post, all the Laboratory Technicians Grade II who were initially advised/got inter district transfer to Thiruvananthapuram district and who later got promotion as Laboratory Technician Grade I and working elsewhere should be brought back to Thiruvananthapuram district. The excess persons in the post of Laboratory Technician Grade I shall be reverted and the cadre strength of Grade I and Grade II posts should be equalised. In Thiruvananthapuram district the sanctioned post of Laboratory Technician Grade I, as mentioned earlier, was 54 and Laboratory Technician Grade II was 55. Later, it was raised to 58 each. The Laboratory Technicians Grade I in excess of 58 would face reversion. Respondents 5 to 19 got promotion as Grade I not only based on the vacancies in the district, but based on the vacancies in other districts also.

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14. In the result, Annexures A10 and A12 to the extent they support retention of excess Grade I Laboratory Technicians in Thiruvananthapuram are quashed. It is ordered that the Laboratory Technicians Grade I retained in excess of their cadre strength in Thiruvananthapuram district shall be deployed elsewhere where there are vacancies in the cadre of Grade I and the resultant vacancies shall be reported to the Public Service Commission. If the stand of the official respondents is upheld, all the vacancies arising in the cadre of Laboratory Technician Grade II in Thiruvananthapuram can be filled up by the Director of Health Services by transferring the Laboratory Technicians Grade I from outside, provided they were advised/appointed in Thiruvananthapuram in Grade II post and the rights of the candidates in Annexure A1 rank list can be defeated. The same cannot be permitted. So, the second respondent shall report or cause to report all the vacancies of Laboratory Technician Grade II occupied presently by Laboratory Technician Grade I to the Public Service Commission within one month from the date of receipt of a copy of this order.

The Original Application is allowed as above with costs which shall be paid by the official respondents.

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K.Balakrishnan Nair, Chairman

Mathew

C.Kunnumkal, Member

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APPENDIX

OA-2193/2014





APPLICANT'S ANNEXURES:

- Annexure A1- True copy of the ranked list prepared and published by the Kerala Public Service Commission for selection to the post of Laboratory Technician Grade II in the Health Services Department in Thiruvananthapuram District. .
- Annexure A2- True copy of the G.O.(Rt) No.3844/2010/H and FWD dated 27-9-2010. .
- Annexure A3- True copy of the proceedings No.EF2-17796/2010/DHS dated 17-10-2011 of the 2nd respondent. .
- Annexure A4- True copy of the proceedings No.EF2-17796/2010/DHS dated 13-1-2013 .
- Annexure A5- True copy of the reply given to Sri.R.Selvaraj, M.L.A., at the floor of the Kerala Legislative Assembly by the Minister for Health, Family Welfare and Devaswom Department..
- Annexure A6- True copy of the reply given to Smt. Ayisha Potti, M.L.A., at the floor of the Kerala Legislative Assembly by the Minister for Health, Family Welfare and Devaswom Department..
- Annexure A7- True copy of the order dated 13-11-2013 of this Honble Tribunal in O.A.No.1001/2012. .
- Annexure A8- True copy of the representation dated 30-7-2014 submitted by the applicants before the 2nd respondent. .
- Annexure A9- True copy of the order dated 27-8-2014 in O.A.(EKM) 556/2014 of this Honble Tribunal .
- Annexure A10- True copy of the proceedings No.EF2-63046/2014/DHS, TVPM dated 18-10-2014 of the 2nd respondent. .
- Annexure A11- True copy of the judgment dated 1-10-2014 of the Honble High Court of Kerala in OP(KAT) No.325/2014. .
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Annexure A12- True copy of the Government letter No.44585/C2/2014/H and FWD dated TVM 30-9-2014. .

Annexure A12(a)- True English Translation of Annexure A12 .

RESPONDENT'S ANNEXURES:

Annexure R1(a)- A true copy of the G.O (P) No.1/91/P&ARD dated 7-1-1991. .

Annexure R1(b)- A true copy of the G.O (P) No.36/91/P&ARD dated 2-12-1991. .

Annexure R1(c)- A true copy of the G.O (P) No.37/96/P&ARD dated 7-11-1996. .

Annexure R1(d)- A true copy of the G.O (P) No.42/2012/P&ARD dated 23-8-2012. .

Annexure R1(e)- A true copy of the request made by one Sri.Jacob. .

Annexure R1(f)- A true copy of the file No.19157/C1/13/ H&FWD dated 14-10-2014. .

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