

The State of Kerala vs Unnikrishnan K.a.

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Court : Kerala

Decided On : Aug-09-2021

Judge : Honourable Mr. Justice Alexander Thomas, Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(KAT)/196/2021

Appellant : The State of Kerala

Respondent : Unnikrishnan K.a.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR. JUSTICE A. BADHARUDEEN MONDAY, THE 9TH DAY OF AUGUST 2021 / 18TH SRAVANA, 1943 ARISING OUT OF THE ORDER DATED 18.06.2021 IN OA 1844/2020 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM, THIRUVANANTHAPURAM PETITIONERS/RESPONDENTS IN O.A.:

1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001. 2 THE

COMMISSIONER OF EXCISE COMMISSIONERATE OF EXCISE,
NANDAVANAM, THIRUVANANTHAPURAM, KERALA, PIN - 695 033. 3
THE ADDITIONAL EXCISE COMMISSIONER (ADMN).
COMMISSIONERATE OF EXCISE, NANDAVANAM,
THIRUVANANTHAPURAM, KERALA, PIN - 695 033. 4 THE DEPUTY
COMMISSIONER OF EXCISE WAYANAD EXCISE DIVISION OFFICE,
MEENANGADI P.O., WAYANAD, KERALA, PIN - 673 591. BY ADV
GOVERNMENT PLEADER SRI.B.UNNIKRISHNA KAIMAL,
SR.GOV.T.PLEADER,

RESPONDENT/APPLICANT IN OA: UNNIKRISHNAN K.A. AGED 44
YEARS S/O.LATE ACHUTHAN, CIVIL EXECUTIVE OFFICER, EXCISE
RANGE OFFICE, PERAVOOR, KANNUR, RESIDING AT KOLLIKKAL
HOUSE, POOTHADI P.O., WAYANAD, KERALA, PIN - 673 596.
BY.ADV SRI.SAJU JOHN THIS OP KERALA ADMINISTRATIVE
TRIBUNAL HAVING COME UP FOR ADMISSION ON 09.08.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
ALEXANDER THOMAS & A. BADHARUDEEN, JJ.
===== OP(KAT) No.196 of 2021
[arising out of the order dated 18.06.2021 in O.A.No.1844/2020 of the
Kerala Administrative Tribunal, Thiruvananthapuram]
===== Dated this the 9th day of
August, 2021

JUDGMENT

ALEXANDER THOMAS, J.

Aggrieved by the inaction on the part of the departmental authorities concerned in considering claim for inter-district transfer as Civil Excise officer, the applicant herein had approached the Tribunal by filing the instant Ext.P1 O.A.No.1844 of 2020 seeking reliefs in that regard. Now the Tribunal has issued the impugned Ext.P9 interim

order dated 18.06.2021 directing that the applicant shall be

provisionally given the benefit of inter district transfer as Civil Excise Officer in the vacancy, which has now arisen in FL-9 Warehouse of the Kerala State Beverages Corporation at Kalpetta, Wayanad district. Aggrieved by the said impugned Ext.P9 interim order dated 18.06.2021, the respondents in the O.A. (petitioners herein) have preferred the instant O.P.

2. Heard Sri.B.Unnikrishna Kaimal, learned Senior Government Pleader appearing for the petitioners in the O.P./respondents in the O.A. and Sri.Saju John, learned counsel appearing for the sole respondent in the O.P./sole applicant in the O.A. before the Tribunal.

3. The original applicant is regularly holding the post of Civil Excise Officer in Kannur district. He seeks the benefit of inter-district

transfer. It is common ground that the norms in that regard are contained in para No.6 of G.O(P) No.36/1991/P&ARD dated 02.12.1991, which stipulates that the claims of inter-district transfer would be considered as against 10% of the vacancies arising in a year. In other words, norms are broadly to the effect that as and when 10 substantive vacancies arise in the post concerned, then one incumbent could be considered for the benefit of inter-district transfer in a case where the unit of appointment is district-wise.

4. As indicated hereinabove, since the respondents in the O.A. were not considering his claim for inter-district transfer, he was constrained to approach the Tribunal by filing the instant O.A.

5. Earlier, by Ext.P5 interim order dated 11.02.2021, the

Tribunal had directed that one unfilled vacancy that arose in the circle office at Kalpetta shall be kept unfilled to consider the claims of the petitioner for inter-district transfer. Later, after hearing both sides, the Tribunal has passed Ext.P6 interim order dated 01.03.2021 in the

instant O.A. directing that the original applicant may be given inter- district transfer from his parent district (Kannur district) to Wayanad district as against the vacancy covered by Ext.P5. It appears that after the passing of Ext.P5 interim order dated 11.02.2021, the departmental authorities had taken steps to report the said vacancy referred to in Ext.P5 to the P.S.C for effectuating direct recruitment. Hence, the departmental authorities expressed their inability to comply with Ext.P6 interim order dated 01.03.2021 inasmuch as the vacancy mentioned therein, has already been utilized for being reported to the P.S.C. Thereupon, the original applicant has constrained to file Ext.P8 Miscellaneous Application pointing out another vacancy, which is a vacancy of Excise Civil Officer in Wayanad district, which has arisen in the FL-9 Warehouse of the Kerala State Beverages Corporation at Kalpetta, Wayanad district. After hearing both sides, the Tribunal has subsequently passed the instant impugned Ext.P9 order dated 18.06.2021 ordering that the applicant shall be given the benefit of inter-district transfer as against the said vacancy, which has arisen in FL-9 Warehouse of the Beverages Corporation at Kalpetta. Now the respondents in the O.A. are taking the stand that the said vacancy referred to in Exts.P8 and P9 has also been subsequently reported by them on 21.06.2021 to the Public Service Commission for effectuating direct recruitment in the post of Civil Excise Officer, Wayanad district and that hence they are legally disabled from complying with Ext.P9

order.

6. We have heard both parties in extenso. The stand of the

respondents in the O.A., as can be seen from para No.7 of Ext.P7 reply statement dated 12.04.2021 filed in the instant O.A. is to the effect that though the vacancies to be set apart for the inter-district transfer is to be considered as against 10% of the vacancies arising in a year, and such vacancies which have not been actually filled up in a calendar year, will not be carried forward to the next calendar year for the purpose of inter-district transfer and that there was no vacancy for inter-district transfer in Wayanad district at the relevant time for considering the grant of inter-district transfer. In other words, the stand of the respondents in the O.A. is to the effect that even if 10 vacancies have arisen in a given year in the posts concerned,

and one vacancy is thus to be apportioned for inter-district transfer. But that so long as the said vacancy apportioned for inter-district transfer for that year is not actually filled up in that calendar year itself, there is no question of carrying forward such unfilled vacancies in inter-district

transfer to the next calendar year. It is on this basis that the

respondents in the O.A. would justify the non-availability of vacancies to be considered for inter-district transfer. After hearing both sides and after going through the norms pointed out by both sides, more particularly, G.O(P) No.36/1991/P&ARD dated 02.12.1991, the respondents in the O.A. have not been able to point out to us any provision therein or in any other norm which would stipulate that even if vacancies of 10% have arisen in a given year, still if the said vacancies to be apportioned for the inter-district transfer is not filled up in that calendar year, the same cannot be utilized for inter-district transfer in the next calendar year, etc.. The said stand reflected in Ext.P7 reply statement by R2 in the O.A. appears to be an understanding of the respondents in the O.A. and not appears to be a mandate of the Government Orders and the norms.

7. It is pointed out by Sri.Saju John, learned counsel appearing for the respondent in the O.P. that the pleadings in Ext.P2 reply statement dated 16.12.2020 filed by R4 in the O.A., more particularly, para No.4 on pages 2 and 3 thereof would indicate

following aspects:- Therein it is seen that 38 NJD vacancies in the next higher category post of Preventive Officers were reported by the appointing authority to the P.S.C. and selection notification No.503/2012 dated 29.09.2012 was issued by the P.S.C. for effectuating direct recruitment to the post of Preventive Officers. O.A.

(Ekm) No.171/2016 was filed by Civil Excise Officers on the ground

that direct recruitment to the next higher category post of Preventive Officers has been legally abolished and discontinued as per amendment of the special rules made effective as per G.O.(P) NO.113/ 2008/TD dated 04.06.2008 and that no

direct recruitment to the post of Preventive Officers can be legally made on or after 04.06.2008 and that the steps for direct recruitment to the higher category post of Preventive Officers are thus illegal. It appears that the Tribunal has granted interim stay in O.A(EKM) No.171 of 2016. It is pointed out that final verdict in O.A.(EKM) No.171 of 2016 was rendered, which has now led to O.P.(KAT) No.92/2017 before the Division Bench of

this Court. Sri.Saju John, learned counsel appearing for the respondent in the O.P. would submit that this Court has granted interim stay of selection by way of direct recruitment to the post of Preventive Officers covered by the said selection notification in that O.P., which is still pending. Further it appears that five incumbents in the post of Civil Excise Officers in Wayanad district were provisionally promoted to the post of Preventive Officer, in view of the long

pendency of the stay in the other litigative proceedings, which is in connection with the legality or otherwise of direct recruitment to the post of Preventive Officers.

8. The stand of the respondents in O.A. is to the effect that if

direct recruitment to the post of Preventive Officers is ultimately legally upheld, then the five incumbents in the post of Civil Excise Officers in Wayanad district, who were provisionally promoted as against five such vacancies in the post of Preventive Officer will have to be reverted to the post of Civil Excise Officer and that hence it is the stand of the respondents that five vacancies, which had arisen on account of the provisional promotion of Civil Excise Officer to the next higher category post of Preventive Officer, are purely provisional in nature and cannot be treated as substantive vacancies. It is conceded by the respondents that eight other vacancies have regularly occurred

in the post of Civil Excise Officers. Hence, the stand of the respondents in the O.A. appears to be that since only eight regular vacancies have arisen in the post of Civil Excise Officers and the balance five vacancies are only provisional, it is clear that 10 substantive vacancies have not actually arisen in that calendar year and therefore, there were no vacancies that could be apportioned for

inter-district transfer. Whereas, the contra case of the original applicant is to the effect that the appointing authority, while holding that the said five vacancies are provisional, has reported the said five provisional vacancies as well as the eight regular vacancies to the Public Service Commission for effectuating direct recruitment to the post of Civil Excise Officer. Hence, 13 vacancies have been treated by the department as substantive vacancies inasmuch as they have taken a voluntary decision to report altogether 13 vacancies (5+8=13) to the P.S.C and that in view of Rule 5 of KS&SSR, Part II, such vacancies so reported have to be treated as substantive vacancies, even going by the stand of the respondents in the O.A. Hence, it is urged by Sri.Saju John, learned Advocate appearing for the original applicant that since 13 vacancies had actually arisen in the calendar year concerned, one as against 10 of the 13 vacancies should have been apportioned for inter- district transfer and the mere fact that inter-district transfer was not actually effected in that calendar year, is no bar for filling up that apportioned inter-district vacancies for the subsequent period. Hence, the issue is as to whether the five vacancies out of the 13 vacancies reported by the appointing authority of P.S.C. is provisional or not. That is matter which can await final determination in the O.A.

It is pointed out by Sri.B.Unnikrishna Kaimal, learned Senior

Government Pleader appearing for the petitioners in the O.P./respondents in the O.A. that the said five vacancies have already been reported to the P.S.C. and even the vacancy covered by Ext.P9 has also been subsequently reported to the P.S.C. In the light of these aspects, it is also to be borne in mind that on both occasions the appointing authority has chosen to report vacancies to the P.S.C. after the rendering of the interim order, firstly, after rendering of Ext.P5 interim order on 11.02.2021 and secondly, after the rendering of the instant Ext.P9 interim order on 18.06.2021. Since, in view of the specific directions issued by the Tribunal at Exts.P5 and P9 if the appointing authority had any doubt in that regard, then the said authority should have sought for the clarification and permission of the Tribunal, before taking further steps in the matter, instead of acting unilaterally. Of course, learned Senior Government Pleader has got a case that Exts.P5 and P9 interim orders were served on the appointing authority belatedly. As of now, we

need not get into those

issues as to whether there is any deliberate non-compliance of the

directions of the Tribunal. The applicant appears to have made out a strong prima facie case in the matter inasmuch as even going by the

stand of the respondents in the O.A. they have chosen to voluntarily report 13 vacancies previously in the post of Civil Excise Officers to the P.S.C. for direct recruitment and therefore, ordinarily going by the impact of Rule 5 of KS&SSR Part II, only substantive vacancies could have been reported for direct recruitment.

9. Moreover, the Tribunal has only now issued interim order

to grant the benefit of inter-district transfer to the original applicant

purely on a provisional basis. Moreover, we would hold that the order

of the Tribunal at Ext.P9 need be construed only as an order directing grant of the benefit of inter-district transfer to the original applicant purely on a provisional basis and the matter could be agitated at the time of final determination in the O.A. Hence, we are of the view that the respondents in the O.A. should comply with the interim direction of the Tribunal at Ext.P9 at least on a provisional basis and subject to the result of the O.A. Hence, it is for the petitioners to immediately comply with the directions of the Tribunal at Ext.P9 and thereafter the Tribunal may ensure that the main matter in the O.A. may be finally disposed of after hearing both sides, without much delay, preferably well before the end of September, 2021 if that is feasible or within any time limit that is found reasonable and appropriate by the Tribunal in

the manner it deems fit and proper and taking note of the interests of administration of justice. Hence, as of now no grounds for interference are made out. However, we would make it clear that the interim order at Ext.P9 shall be

provisional and will be subject to the final result of the O.A.

With these observations and directions, the above Original Petition will stand disposed of. Sd/- ALEXANDER THOMAS, JUDGE Sd/- A. BADHARUDEEN A, JUDGE SCS APPENDIX OF OP(KAT) 196/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE O.A.NO.1844/2020 ALONG WITH ANNEXURES BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL. Annexure A1 TRUE COPY OF THE LETTER DATED 20/06/2020 OF THE 2ND RESPONDENT. Annexure A2 TRUE COPY OF THE APPLICATION DATED INTER DISTRICT TRANSFER TO WAYANAD DIVISION, IN THE PRESCRIBED PROFORMA. Annexure A3 THE TRUE COPY OF THE REPRESENTATION DATED BEFORE THE 2ND RESPONDENT. Annexure A4 TRUE COPY OF THE LETTER DATED 16/07/2020 OF THE DEPUTY EXCISE COMMISSIONER, KANNUR FORWARDING ANNEXURE A2 AND A3 TO THE 2ND RESPONDENT. Annexure A5 TRUE COPY OF ORDER NO.EXC/2660/2020-XEB DATED 28/10/2020 OF THE 3RD RESPONDENT. Annexure A6 TRUE COPY OF THE APPLICATION DATED

KOLLICKAL, THE MOTHER OF THE APPLICANT TO THE STATE PUBLIC INFORMATION OFFICER UNDER RIGHT TO INFORMATION ACT. Annexure A7 TRUE COPY OF LETTER NO.W1-2800/2017 DATED KOLLICKAL IN REPLY TO HER ANNEXURE A6 APPLICATION. Exhibit P2 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 4TH RESPONDENT ON 08/01/2021. Exhibit P3 TRUE COPY OF THE MISCELLANEOUS APPLICATION NO.378/2021.

Exhibit P4 TRUE COPY OF THE REJOINDER. Exhibit P5

THE 2ND RESPONDENT ON 21/04/2021. Exhibit P8 TRUE COPY OF THE MISCELLANEOUS APPLICATION NO.1087/2021 ON 15/06/2021. Exhibit P9 TRUE COPY OF THE INTERIM ORDER OF THE KERALA ADMINISTRATIVE TRIBUNAL DATED

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