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GOVERNMENT OF KERALA

Abstract

Social Justice Department-The representation on the basis of judgment dated 18.2.2015 in OA.1425/14 and OA.2350/14 filed by Sri. Ansarudeen.M and 9 others and Smt.A.Rehmat respectively-Rejected-Orders issued.

SOCIAL JUSTICE (D) DEPARTMENT

G.O(Rt)No. 247/2015/SJD. Dated, Thiruvananthapuram 28.04.2015

- Read:-
1. G.O(P)No.40/2013/SJD. Dated 18.5.2013
 2. G.O(P)No.63/2013/SJD. Dated 7.8.2013
 3. G.O(P)No.03/2014/SJD. Dated 17.1.2014
 4. G.O(Rt)No.403/2014/SJD. Dated 16.6.2014
 5. Order of the Kerala Administrative Tribunal dated 18.2.2015 in OA 1425/14 and OA.2350/14 filed by Sri.Ansarudeen.M and 9 others and Smt.A.Rehmat respectively.
 6. The representation dated 07.03.2015 submitted by Sri.Ansarudeen.M

ORDER

As per the G.O read as 1st paper above, Government issued orders for creating 2677 supernumerary posts for reappointing / regularizing the physically handicapped provisional hands who were engaged in Government service through the Employment Exchange during the period from 16.08.1999 to 31.12.2003 and had completed 179 days of service. Government have taken such a decision on a humanitarian consideration by overruling the objections raised by the Kerala Public Service Commission. As per the G.O read as 2nd paper above, Government have issued detailed instructions for the regularization along with the list of eligible candidates.

Later representations were received by Government requesting to consider the claims of temporary hands who have not completed the required period of 179 days of service due to the fact that the relieving date is a holiday/holidays. Government, after considering the claims put forth by the candidates, decided to extend the benefit of the above orders to these category of persons as per the G.O read as 3rd paper above. Meanwhile, persons who had served during the above period but not completed the required period of 179 days of service due to the fact that the PSC hands substituted them and they had been working for varying periods ranging one day to 178 days, approached the Hon`ble Kerala Administrative Tribunal with a similar request to regularise them by filing OAs. The Hon`ble Kerala Administrative Tribunal vide its order in OA No.549/14, OA.570/14 dated 31.3.2014 disposed of the said OAs and directed the Government to take a decision in the representations filed by these category of people after affording them an opportunity of being heard. Accordingly Government, after examining the matter in detail and after hearing the stake holders decided to reject their requests vide G.O read as 4th paper above pointing out that the completion of 179 days except to the extent provided in as per the G.O read as 3rd paper above is a pre-requisite for granting the benefit and no further relaxation/exemption can be given in the matter.



Against this decision of Government, a few persons again approached the Hon'ble Kerala Administrative Tribunal. The Hon'ble Kerala Administrative Tribunal as per the judgement read as 5th paper above, quashed the G.O read as 4th paper above by which Government rejected the claims of persons who had not completed required 179 days of service due to substituting them by PSC hands. It also remitted the matter to Government for taking fresh decision, taking into account Annexures A7 to A10 and also in the light of the observation made by the Hon'ble Administrative Tribunal, within two months from the date of receipt of a copy of the order.

The observation of the Hon'ble KAT is that the Provisionally appointed physically challenged candidates during a particular period form a homogeneous class. Some of them were relieved before the completion of the normal period of appointment because the Public Service Commission hands joined duty. Such persons have no control whatsoever on the said contingency. They have not chosen the department in which they were appointed in the post. By sheer chance, they were appointed in certain posts which were filled up by regular hands advised by the Public Service Commission. So, based on this disability suffered by some of the applicants, they are discriminated and the benefit of Annexure A6 (G.O(P)No.40/2013/SJD. Dated 18.5.2013) is denied to them and the the Hon'ble Court considers that this approach is irrational and no logic in insisting that for extending the benefit of regularisation in service, they should have completed 179 days. There is no significance for this magic number of 179 days. Some candidates were able to complete the said days not because of any particular merit of them and others could not complete the said period, not because of any demerits of them. Therefore the Hon'ble Court think the benefits extended by the Government to physically challenged persons should not be denied to some persons based on such an irrational criteria as rightly pointed out by the learned counsel for the applicants. When the Government issued orders earlier like Annexures A7 to A9, the Government saved the persons who happened to be relieved on joining duty of PSC hands and there is no reason why the said benefit should not be extended to the applicants herein also.

Annexure A7 in the above mentioned order is the instructions issued by the Government in the year 1998 vide G.O(P) No. 32/98/P&ARD dated 28.09.1998 for reappointing the physically handicapped provisional hands who were in service during the period from 1.1.1997 to 31.12.1997 and Annexure A8 is the instructions issued by the Government in the year 1999 vide G.O(P) No. 18/99/P&ARD dated 13.10.1999 for reappointing the physically handicapped provisional hands who were in service during the period from 1.1.1997 to 14.08.1998. The Annexure A9 is a Government order in similar nature to that of A 7 and A 8 and the Annexure A10 is the G.O (P) No.3/2014 SJD dated 17.01.2014 issued by the Government to extend the benefit of regularization of provisional hands ordered in the year 2014 to those who had not completed required 179 days of service due to the fact that the relieving day is become holiday/holidays

The Hon'ble Kerala Administrative Tribunal in its order has failed to appreciate that as per rules provisional appointment through employment exchange is done as a stop gap arrangement until such time (not exceeding 180 days) that PSC recruits are able to join, any move to regularise such appointments amounts to usurping the



jurisdiction of the Kerala Public Service Commission and is against rules. Moreover the order is the intervention of the Hon'ble Kerala Administrative Tribunal in a matter of policy of the Government. As per the Persons With Disabilities Act, 1995, 3% reservation is being provided to the various categories of Physically challenged persons as provided in the Act. The said provision has been fully implemented in the State and the function of allocation of reservation is entrusted to the Kerala Public Service Commission. The back log vacancies found, if any, may also be filled up by conducting Special Recruitments. The order issued for reappointment/ regularization of the physically handicapped temporary hands appointed through the Employment Exchange during the period from 16.08.1999 to 31.12.2003 was in addition to the above statutory requirements. By this decision various categories of Physically challenged persons will be eligible for additional benefits. The decision was taken by the Government considering the conditions of the beneficial group on a humanitarian point of view. It is not a legal obligation, but only a policy decision of the Government. By extending an extra ordinary benefit to any particular Group as a matter of policy, the Government have the right to impose certain conditions for the same. In the instant case the Government imposed certain general conditions for extending the benefit. It is not arbitrary or unconstitutional. More over it is a matter of policy that purely comes under the purview of the State Government. It may also be considered that except from the previous years orders for regularization, the instant regularization / reappointment is ordered by creating supernumerary posts which burdens the state Exchequer with an additional financial commitment. Despite this, Government took such a decision to protect the interest of the beneficial group, while at the same time within certain limits that can be borne by Government. Hence the Government is competent to impose the conditions for such regularization. The regularization of positions mentioned in Annexure A7 to A9 was only in the sanctioned posts and only in the existing or arising vacancies. Hence no additional financial commitment has been incurred by the State. But as per the order of the Hon'ble Kerala Administrative Tribunal, regularisation has been ordered not against sanctioned posts but by creating supernumerary posts which would impose an additional financial burden on Government. As per the existing financial conditions, Government is not in a position to create large number of supernumerary posts for accommodating the additional persons as ordered by the Hon'ble Kerala Administrative Tribunal.

In the order, the Hon'ble Kerala Administrative Tribunal has made certain observations as to regard the number of 179 days and its relevance. As per the existing rules the provisional appointment made in a regular vacancy through the Employment Exchange shall not exceed 180 days. Normally the provisional appointment made in a regular vacancy through the Employment Exchange, a condition shall be imposed that the appointment is a period not exceeding six months or substituting the PSC hands whichever is earlier. Here Government only regularized those who had completed the required 179 days of service only. That means, Government have not intended to regularize those who have not completed the period of service because the PSC hands joined duty or commencement of vacation. It is only a matter of policy of Government and is a reasonable classification. If the direction of Hon'ble Kerala Administrative



Tribunal were to be accepted, it would lead to a situation where a PH person having provisional service of only a single day will also get the benefit, irrespective of the reason for not completing 179 days service, thereby diluting the spirit of the original order read as 1st paper above.

In the circumstances, the representation submitted by Shri.Ansarudeen.M and others who prayed for the reappointment/regularization of their service by extending the benefit of the G.O read as 1st paper above to those who had served during the period from 16.08.99 to 31.12.2003 but not completed the required period of 179 days of service due to the fact that PSC hands substituted them or at the commencement of vacation as the case may be, are hereby rejected. Thus the Hon'ble Kerala Administrative Tribunal judgment read as 4th paper above is complied with.

By order of the Governor,

Dr. K.M.ABRAHAM
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To

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