

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 29TH JULY 2011 / 7TH SRAVANA 1933

WP(C).No. 20229 of 2011(C)

PETITIONER(S):

1. BABURAJ.K.P.,
S/O.KARUNAKARAN, AGED 43 YEARS,
HEALTH INSPECTOR GRADE-II, PRIMARY HEALTH CENTRE,
KARUVATTOOR, KOZHIKODE DISTRICT.
2. RAVEENDRAN.K, HEALTH INSPECTOR GRADE-II,
PRIMARY HEALTH CENTRE,
THIRUVANGOOR, KOZHIKODE DISTRICT.
3. GANGADHAR GOPALAN NAIR, HEALTH INSPECTOR GRADE-II,
PRIMARY HEALTH CENTRE, KODARANHI,
KOZHIKODE DISTRICT.
4. UNNIKRISHNAN.P., S/O.GOVINDAN, AGED 46 YEARS,
HEALTH INSPECTOR GRADE-II, C.H.C., KODUVALLY,
KOZHIKODE DISTRICT.

BY ADV. SRI.GEORGE MATHEWS
SMT.CELINE JOSEPH

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED
BY THE SECRETARY, DEPARTMENT OF HEALTH &
FAMILY WELFARE, SECRETARIAT, TRIVANDRUM. 695 001.
2. THE ADDITIONAL DIRECTOR OF HEALTH
SERVICES (PH), DIRECTORATE OF HEALTH SERVICE,
TRIVANDRUM. 695 001.

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**3. THE DISTRICT MEDICAL OFFICER,
KOZHIKODE.**

***ADDL. R4 IMPEADED.**

**4. VIJAYAN CHAKKALAKKAL
HEALTH INSPECTOR GRADE II,
PRIMARY HEALTH CENTRE,
KUNNAMANGALAM, KOZHIKODE DISTRICT.**

***ADDL. R4 IS IMPEADED AS PER ORDER DTD.29.07.2011 IN IA. 12344/2011**

**R1 TO R3 BY GOVT. PLEADER SMT.SMITHA SUKUMAR
ADDL. R4 BY SRI.KRB.KAIMAL, SENIOR ADVOCATE
ADDL. R4 BY ADV. SRI.B.UNNIKRISHNA KAIMAL**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/07/2011, ALONG WITH WPC. NO.20240 OF 2011 AND CONNECTED CASES
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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W.P.(C) NO.20229/2011

APPENDIX

PETITIONER'S EXHIBITS

P1:- COPY OF THE ORDER DTD. 17.5.2011 ISSUED BY 2ND RESPONDENT.

P2:- COPY OF THE APPEAL FILED BY THE 4TH RESPONDENT.

P3:- COPY OF THE RELEVANT PORTION OF THE ORDER DTD. 21.7.2011 ISSUED BY 2ND RESPONDENT.

P4:- COPY OF THE APPEAL DTD. 23.7.2011 FILED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

P4(a):- COPY OF THE APPEAL DTD. 23.7.2011 FILED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT.

P4(b):- COPY OF THE APPEAL DTD. 23.7.2011 FILED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT.

P4(c):- COPY OF THE APPEAL DTD. 23.7.2011 FILED BY THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS

NIL:-

TRUE COPY

P.A. TO JUDGE

tss

C.T. RAVIKUMAR, J.

= = = = =
WP(C).Nos.20229, 20240, 20245,
20247, 20264 & 20301 of 2011.
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Dated this the 29th July, 2011.

J U D G M E N T

Admit. The petitioners in all these writ petitions are working as Health Inspector Grade-II under the Health Services Department. Their challenge is against the transfer and postings made by the Additional Director of Health Services as per Order No.EG4-13892/11/DHS, dated 21.7.2011. Therefore, all these writ petitions were jointly heard and are being disposed of by this common judgment.

2. As per the above order of transfer dated 21.7.2011 all the transferees including the petitioners, were transferred and allotted to different districts as specifically mentioned against the name of each of the transferees for suitable postings. It is contended by the petitioners that the present order dated 21.7.2011 was

preceded by a provisional list for general transfer issued by the Additional Director of Health Services bearing order No.EG4-13892/2011/DHS date on 17.5.2011. The said order has been produced as Ext.P1 in WP(C). No.20245/2011. In Ext.P1 it is stated thus:

“Appeals if any, should be forwarded to this office within 15 days.”

Evidently, the employees whose names were included in the said list dated 17.5.2011 were offered an opportunity to prefer appeals against the proposed transfer and posting prior to its finalisation. Admittedly, it is after consideration of such appeals preferred that it was finalised as per the impugned order dated 21.7.2011. The specific contentions of the petitioners in these writ petitions, except the 4th petitioner in WP(C).No.20229/2011, is that in their case, their names were not at all included in the said provisional list for general transfer issued by the Additional Director of Health Services on 17.5.2011. However, to their dismay and dejection their names

figured in the impugned order dated 21.7.2011. It is contended that there is absolutely no reason or justification for the Addl.Director of Health Services to treat them in an arbitrary and discriminatory manner. The opportunity to raise grievance against the proposal, as has been afforded to the persons whose names were included in the provisional list, was admittedly denied to the petitioners. It is in this context the petitioners submit that they were treated in an arbitrary and discriminatory manner and in other words, the power of transfer was arbitrarily exercised in their case. Therefore it is liable to be interfered to the extent it orders their transfer, it is contended.

3. Obviously, in all these writ petitions the persons who are likely to be affected are not made parties. However, learned counsel for the petitioners submitted that the petitioners were not in a position to identify the person/persons likely to be affected since as per the

impugned order and the transferees were only allotted to a particular district and further orders of posting were not issued along with the impugned order. As already noticed, the grievance of the petitioners is with respect to the failure on the part of the Additional Director of Health Services to afford them an opportunity to prefer appeals as has been given in the case of other employees whose names were included in the provisional list dated 17.5.2011. Had such an opportunity been afforded to them they could have brought their objections, claims and contentions to the notice of the transferring authority to dissuade him from confirming the proposal. That apart, no reason is forthcoming from the transferring authority for adopting such a method. Whether the objections, claims and contentions, if raised before the transferring authority would have been accepted or not, is not a matter to be perceived by this court. At the same, scanning of the contentions in these writ petitions suggest that it requires

consideration. In the said circumstance this court can only come to the conclusion that there is absolutely no reason for treating them in a different and discriminatory manner. The learned Government Pleader submitted that pursuant to the order of transfer and allotment some persons were already relieved and thereafter, they were issued with orders of posting and at the same time by virtue of the interim order passed by this court the petitioners were not relieved. In fact, the additional 4th respondent in WP(C).No.20229/2011 was subsequently given a posting pursuant impugned transfer order. But, the person who was relieved consequent to his joining duty was not given a posting. I am of the view that all such contingencies occur solely on account of the failure to adopt similar treatment to the transferees. Therefore, such reasons cannot be accepted for turning down the prayers of the petitioners for opportunity to raise their genuine grievances especially, when they were not meted

out the same treatment as has been afforded to the persons included in the provisional list. I am of the view that in the case of the petitioners as well, they should have been afforded an opportunity to raise their objections. The petitioners are yet to be relieved on account of the interim order issued by this court. In the circumstances, interest of justice, demands a direction to afford them opportunities to prefer objections/representations against the order of transfer dated 21.7.2011 whereby they were allotted to the respective districts. Considering the fact that they are yet to be relieved, in their case the present order has to be treated as a proposal. Taking into account the fact that the impugned orders are passed by the Additional Director of Health Services it will only be appropriate to direct the Director of Health Services to bestow serious consideration on their grievances and objections. It is ordered accordingly. To enable the said authority to consider the issues it will be open to the

petitioners to prefer such objections/representations within two weeks from today to the Director of Health Services. In case of receipt of such objections/representations the Director of Health Services shall consider them and pass appropriate orders thereon, within one month from the date of receipt of such objections/representations. Till orders are passed and communicated to the petitioners they shall be permitted to continue in their respective stations. In the case of those transferees who are already transferred and allotted to any particular district and failed to obtain orders of posting on account of the passing of the interim orders, they shall be treated as on duty till such orders are passed. It will be open to the Director to issue alternative postings to such persons, provisionally and subject to the decisions on the objections/representations. Needless to say that before considering the objections/representations from the petitioners, if received, persons likely to be

**WP(C).No.20229/2011 and
other connected cases.**

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affected shall also be put on notice. It is made clear that it will open to the Director to issue further orders of posting subject to the decisions on the objections/representations.

Writ petitions are disposed of accordingly.

C.T. RAVIKUMAR,
(Judge)

Kvs/-