



GOVERNMENT OF KERALA

Abstract

Health & Family Welfare Department - Order dated 29/11/2024 of the Hon'ble Kerala Administrative Tribunal in O.A 869/2024 filed by Smt.Sheeja Beevi.S, Public Health Nursing Supervisor and & 13 others - Complied with - Orders issued.

HEALTH & FAMILY WELFARE (C) DEPARTMENT

G.O.(Rt)No.873/2025/H&FWD Dated,Thiruvananthapuram, 25-03-2025

- Read: 1. Order dated 29/11/2024 of the Hon'ble Kerala Administrative Tribunal in O.A 869/2024 filed by Smt.Sheeja Beevi.S, Public Health Nursing Supervisor and & 13 others
2. Representation submitted by the applicants (Annexure-A14)
3. Representation dated 20/12/2024 submitted by Smt.Sherly Paul.
4. G.O (Ms) No. 48/2025/H&FWD dated 05.02.2025.

ORDER

The applicants in O.A No. 869/2024, who are the members of the Kerala Public Health Nursing Subordinate Service have approached the Hon'ble Kerala Administrative Tribunal, aggrieved by the non-consideration of their claim for reckoning the provisional service rendered by them, prior to their regular appointment through the Kerala Public Service Commission.

2. The Hon'ble Kerala Administrative Tribunal vide Order read as 1st paper above has disposed of the Original Application directing the Government to consider and pass appropriate orders on Annexure-A14 representation of the applicants within a period of 3 months.

3. All the applicants have entered regular service in Health Service Department as Junior Public Health Nurse after 01.10.1994. Before that, they have a short span of provisional service at their credit. The applicants prays to direct the respondents to reckon the provisional service together with regular service for service benefits and refix their

seniority in the cadre of Junior Public Health Nurse Grade-II and Grade-I. Following are their contentions:

i. By virtue of the Order dated 22.04.2003 of the Honourable Supreme Court in Civil Appeal No. 1904/2000, some of their colleagues, who were not successful in getting regular appointment through Kerala Public Service Commission, have got their temporary service regularized and got the privilege of continuing in service without interruption. The applicants' claim that being selected through Public Service Commission, they are meritorious than those who were not successful in getting regular appointment through Kerala Public Service Commission and their service should be regularized with effect from a date preceding 09.05.1995.

ii. In the light of the judgment dated 28.05.2010 of the Hon'ble H.C.K in W.P (C) 5666/2006, they are entitled for regularizing their provisional service rendered prior to their regular appointment through the PSC.

4. Contention stated at para 3 (i) is wrong because of the following facts:

A) In the light of the Order dated 09.05.1995 of the Hon'ble Supreme Court in Writ Petition (Civil) No. 493/1991, Junior Public Health Nurses, who were working as on 09.05.1995 have been allowed to continue in service and their service was regularized w.e.f 09.05.1995. Hon'ble Court has not ordered a date, from which the regularization would come to effect. Instead, it is the Government, that chose the date of effecting regularization of the Junior Public Health Nurses, who were the petitioners in the aforesaid W.P (C). The date was chosen taking into account of the fact that the recruitment through the PSC rank list then existed has become completed before 09.05.1995. Choosing 09.05.1995 as the date of regularization has not affected the rights of meritorious hands selected through PSC since the PSC hands were regularized prior to 09.05.1995 based on PSC advice date.

B) In the Order dated 11.07.2001 of the Hon'ble Supreme Court in Civil Appeal Nos. 4127 to 4128/2001, benefits ordered as per Order dated 09.05.1995 in Writ Petition (Civil) No. 493/1991 has been extended on the ground that both the cases are identical. Here also, Hon'ble Court has not ordered a date from which the regularization would come to effect.

C) In the Order dated 22.04.2003 of the Honourable Supreme Court in

Civil Appeal No. 1904/2000, Hon'ble Apex Court extended the benefit of Order dated 11.07.2001 in Civil Appeal Nos. 4127 to 4128/2001 to the Appellants/petitioners, whose service were terminated after filing the Civil Appeal.

D) The case of the appellants/petitioners in Writ Petition (Civil) No. 493/1991, Civil Appeal Nos. 4127 to 4128/2001 and Civil Appeal No. 1904/2000 are identical. Beneficiaries of regularization are those appellants/petitioners, who failed to secure appointment through the KPSC rank list, tenure of which ended in 1995.

5. The case of the applicants in this O.A No. 869/2024 is different to the case of the appellants/petitioners in the aforementioned Supreme Court cases since the applicants herein were recruited through the PSC via another rank list, which came to existence after 1995. Had they failed to secure a place in the PSC rank list, tenure of which ended in 1995, they could have moved the Court like the Appellants/petitioners in Writ Petition (Civil) No. 493/1991, Civil Appeal Nos. 4127 to 4128/2001 and Civil Appeal No. 1904/2000. Benefit of the said Orders are limited to the Appellants/petitioners therein. Applicants herein are not entitled to get the benefit of regularization since the Hon'ble Apex Court made it clear that the Orders shall not be treated as precedent to be applicable to others.

6. Here, the applicants, who were recruited into regular service in 1997 onwards through a different rank list claim that JPHNs, who have not won the PSC test have been regularized w.e.f 09.05.1995. The claim is not true since none of the JPHNs, whose service were regularized in the light of the Order dated 09.05.1995 in Writ Petition (Civil) No. 493/1991, have not appeared for the second PSC selection examination. 19 JPHNs, whose service were regularized pursuant to the Order dated 09.05.1995 of the Hon'ble Supreme Court in Writ Petition (Civil) No. 493/1991, have been given the benefit of continuation in service only after accommodating all the PSC hands. Right of the PSC hands to have a higher seniority over the non PSC hands have been protected and therefore, the claim of the PSC hands, who were recruited through a different rank list is not worthy and they are absolutely misinterpreting the facts for material benefits.

7. With regard to the contention at 3 (ii), the petitioners in W.P (C) 5666/2006 were also parties in Civil Appeal Nos. 4127 to 4128/2001. During the pendency of the Hon'ble Apex Court proceedings in the said

Civil Appeal, petitioners in W.P (C) 5666/2006 had got regular appointment through the Kerala Public Service Commission. Since the petitioners in W.P (C) 5666/2006 have got regular appointment through KPSC, they have been excluded from the purview of G.O (Ms) No. 246/2005/H&FWD dated 30.09.2005, as per which the other appaellants were regularized. In the judgment dated 28.05.2010, Hon'ble Court observed that the petitioners' colleagues, who were unsuccessful in getting regular appointment have got the benefit of reckoning provisional service w.e.f 09.05.1995. Without going to the merit of the case, Hon'ble Court disposed of the W.P (C) with direction to the Government to consider and pass appropriate orders on their representation. In compliance with the judgment, Government issued G.O (Rt) No. 5000/2010/H&FWD dated 22.12.2010, whereby the relief granted to other petitioners in the aforementioned Civil Appeal have been extended to the petitioners in W.P (C) No.5666/2006 also, by regularizing their service with effect from 09.05.1995, taking note of the fact that they were also parties in Civil Appeal Nos. 4127 to 4128/2001.

8. Provisional appointment of Junior Public Health Nurses referred herein have never been selected in terms of the relevant recruitment rules. Due to the scarcity of Junior Public Health Nurses, students who have successfully completed the Auxiliary Nursing and Midwifery course from government institutions were provisionally appointed for a period of one year or till the candidates recruited by the Kerala Public Service Commission join duty, whichever is earlier. Since the provisionally appointed Junior Public Health Nurses have never undergone a proper selection procedure, they cannot claim regularization of provisional service. As per G.O. (P) No. 540/94/Fin. dated 30.09.1994, it was clarified that the provisional hands, temporarily appointed under rule 9 (a) (1) of part II, Kerala State and Subordinate service Rules, 1958, who got regular appointment with or without break on or after 01.10.1994 or whose provisional service gets regularized with effect from 01.10.1994 or thereafter will not be eligible for increments reckoning their provisional service. Also, the claim of those Junior Public Health Nurses, who came to regular service on or after 01.10.1994, to reckon the provisional service rendered by them in the cadre of Junior Public Health Nurse Grade II for the purpose of service benefits including pensionary benefits does not deserve

consideration in view of G.O (P) No. 543/89/Fin dated 20.11.1989, G.O. (P) No. 540/94/Fin dated 30.09.1994, G.O (P) No. 2357/99/Fin dated 25.11.1999 and G.O (P) No.3116/1998/Fin dated 15.12.1998. The validity of G.O. (P) No. 540/94/Fin dated 30.09.1994 has been well considered and explained by a Full Bench of the Hon'ble High Court of Kerala in State of Kerala Vs. Ponnamma reported in 2005 (4) KLT 987. Claim for reckoning provisional service in respect of employees, who have entered service on or after 01.10.1994 is covered by the judgment of the Hon'ble High Court of Kerala in State of Kerala Vs. Ponnamma reported in 2005 (4) KLT 987. Special Leave Petition (Civil) No. 18603/2021 filed against the said judgment has not been allowed by the Hon'ble Supreme Court.

9. With regard to the claim of the applicants and the similarly situated, Government have issued G.O read as 4th paper above, covering all the issues agitated by them, the Family Planning /Community Health Programme launched by the Government of India and the events happened with regard to the regularization of provisional service. In the G.O, it was underlined that no employee, who entered into regular service on or after 01.10.1994, shall be given the benefit of regularization of provisional service. Therefore, in the light of the facts mentioned at pre paragraphs and based on the G.O read as 4th paper above, Annexure A14 representation of the applicants are rejected. Order of the Hon'ble Tribunal read as 1st paper above is complied with accordingly.

(By order of the Governor)
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UNDER SECRETARY

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Section Officer