



GOVERNMENT OF KERALA



Abstract

Health & Family Welfare Department - Final Order dated 02.08.2022 of the Honourable Kerala Administrative Tribunal in O.A No. 1138/2022 filed by Smt. Babitha V.P. and Shameer A. M – Complied with - orders issued.

HEALTH & FAMILY WELFARE (C) DEPARTMENT

G.O.(Rt)No.2058/2023/H&FWD Dated,Thiruvananthapuram, 11-08-2023

- Read 1 Circular No. 96493/Rules-1/80/GAD Dated 23.03.1981
2 G.O (Rt) No. 1897/2017/H&FWD Dated 07.07.2017
3 Government letter No.C3/185/2020/H&FWD Dated 01.11.2020
4. Government letter No. C3/226/2020/H&FWD Dated 24.11.2020
5 Order No. J1/687/2020/DME Dated 21.01.2021 of the Director of Medical Education, Thiruvananthapuram.
6. Representation Dated 25.05.2022 from Babitha V.P.
7. Representation Dated 25.05.2022 from Shameer A. M.
Final order Dated 02.08.2022 of the Hon'ble Kerala
8. Administrative Tribunal in OA No. 1138/2022 filed by Smt. Babitha V.P. and Shameer A. M
9. Letter No. J2/3395/2022/DME Dated 03.03.2023 from the Director of Medical Education, Thiruvananthapuram

ORDER

Smt. Babitha V. P. and Sri. Shameer A.M. who are working as Nursing Officers under the Director of Medical Education have filed O.A. No. 1138/2022 before the Honourable Kerala Administrative Tribunal aggrieved by the lose of seniority in the cadre of Staff Nurse Grade II (Now Nursing officer) and consequent denial of promotion to the cadre of Staff Nurse Grade I (Nursing officer Grade 1).

2. As per order read as 8th paper above, Honourable Tribunal have disposed of the case directing the 1st respondent to consider and pass appropriate orders on Annexure A12 and A13 representations read as 6th and 7th above, in accordance with law and after affording an opportunity of hearing to the 1st applicant within a period of 3 months from the date of receipt of a copy of the order.

3. Smt. Babitha entered service as Staff Nurse Grade II w.e.f 09.11.2015. During her probation period, she was relieved of her duties on 05.05.2016 and permitted to join AIIMS, New Delhi. On

31.07.2017, she rejoined duty in MCH, Thiruvananthapuram. As per the direction contained in Government letter No.C3/99/2019/H&FWD dated 31.12.2019, period of service rendered in AIIMS i.e. from 05.05.2016 to 30.07.2017 (451 days) was treated as non duty without losing her previous service. But, as per the rules of probation, she had to undergo probation afresh w.e.f. 31.07.2017, the date of rejoining service from AIIMS. She had completed two years of service as on 30.07.2019 and she was declared to have satisfactorily completed probation as on 31.07.2019 as per order dated 20.01.2021 of Joint Director of Nursing Education.

4. Sri. Shameer A. M. entered service as Staff Nurse Grade II w.e.f. 28.12.2015. During his probation period, he was relieved of his duties on 11.05.2016 and permitted to join RCC, Thiruvananthapuram. On 26.10.2017, he rejoined duty in MCH, Thiruvananthapuram. As per the direction contained in Government letter No. C3/99/2019/H&FWD dated 31.12.2019, period of service rendered in RCC i.e. from 11.05.2016 to 25.10.2017 (532 days) was treated as non duty without losing his previous service. But, as per the rules of probation, he had to undergo probation afresh w.e.f. 26.10.2017, the date of rejoining service from RCC. He had completed two years of service as on 25.10.2019 and he was declared to have satisfactorily completed probation as on 26.10.2019 as per order dated 19.01.2021 of Joint Director of Nursing Education.

5. As per order dated 24.05.2022 of Director of Medical Education, final seniority list as on 31.12.2018 in the cadre of Staff Nurse Grade II was published. Applicant No.1 & 2 were placed at SI No. 32 & SI No. 138 respectively. On the same date, DME issued orders promoting persons up to serial No. 735 of the seniority list. But, the applicants were excluded. Immediate junior to the first applicant (SI No.33) was given promotion with retrospective effect from 21.05.2018. Immediate junior to the second applicant (SI No.139) was also given promotion with retrospective effect from 21.05.2018. Applicants claim that they should also have been given promotion w.e.f. the date on which their juniors were promoted.

6. The applicants were superseded because their probation was declared after the normal period prescribed for probation declaration i.e; the persons promoted on 24.05.2022 have completed probation on an earlier date compared to the applicants. Smt. Babitha's probation was declared on 31.07.2019 and Sri. Shameer's on 26.10.2019.

7. In compliance with the direction of the Honourable Tribunal, first applicant, Smt.Babitha V. P. was heard on 08.02.2023.

8. As per Annexure A5 of the O.A, seniority of Shri Shameer A.M. and Smt.Babitha V.P. is protected and their out of service period was treated as non duty without forfeiture of past service. The probation in the post of Staff Nurse Grade II is two year duty in a continuous period of three years. Since their out of service period is more than one year, as per clarification issued as per circular read as 1st paper above, they have to start their probation afresh, with effect from the date of their rejoining in the said post and complete it within a period of continuous

three years from that date. Government had given direction in this regard as per letters read as 3rd and 4th paper above, and their probation was declared accordingly. As they didn't complete their duty for probation during the normal period of probation starting from their initial date of joining in the post and have to start probation afresh and complete accordingly, they are not eligible for the protection envisaged under first proviso to rule 28 (a) (i) of Part II Kerala State and Subordinate Service Rules. As such, they are not eligible for promotion along with their juniors who got promoted to the post of Staff Nurse Grade I (Nursing officer Grade I) with effect from 21.05.2018. The applicants can claim for promotion to the post of Staff Nurse Grade I (Nursing officer Grade I) against a vacancy which arose on or after their date of completion of probation in the post of Staff Nurse Grade II (Nursing officer), if they are otherwise eligible.

9. Thus, as described above, Annexure A12 & A13 (Representations read as 6th and 7th paper above respectively) are rejected and the order dated 02.08.2022 of the Hon'ble Kerala Administrative Tribunal in O.A. 1138/2022 filed by Smt. Babitha V. P. and Sri. Shameer A.M. is complied with accordingly.

(By order of the Governor)
SREEJITH V P
JOINT SECRETARY

The Advocate General, Kerala (With C/L)

The Director of Medical Education, Thiruvananthapuram.

Smt. Babitha V. P; Nursing officer, Medical College Hospital, Thiruvananthapuram (Through the Director of Medical Education, Thiruvananthapuram)

Shri Shameer A.M; Nursing officer, Medical College Hospital, Thiruvananthapuram (Through the Director of Medical Education, Thiruvananthapuram)

Personnel and Administrative Reforms Department (ADV-A3/74/2023-P and ARD)

The Principal Accountant General (A&E/Audit), Thiruvananthapuram

Stock File / Office Copy

Forwarded /By order

Section Officer