

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 15<sup>TH</sup> DAY OF JULY 2021 / 24TH ASHADHA, 1943

WP(C) NO. 15824 OF 2014

PETITIONER:

REKHA M.

AGED 27 YEARS

W/O.JENURAJ, RESIDING AT INDULEKHA, PANIKKAVEETIL, PARUDUR,  
PALLIPPURAM P.O., VIA PATTAMBI, PALAKKAD DISTRICT-679 305.

BY ADVS.

SRI.P.T.DINESH

SRI.C.N.SAMEER

RESPONDENTS:

1 SREE CHITHRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCES &  
TECHNOLOGY  
REPRESENTED BY ITS DIRECTOR, SREE CHITHRA TIRUNAL INSTITUTE FOR  
MEDICAL SCIENCES & TECHNOLOGY, THIRUVANANTHAPURAM-695 011.

2 THE DIRECTOR  
SREE CHITHRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCES &  
TECHNOLOGY, THIRUVANANTHAPURAM-695 011.

BY ADVS.

SRI.M.R.HARIRAJ

SHRI.V.SAJITH KUMAR, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.07.2021,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J U D G M E N T**

The petitioner, who is presently working as a Receptionist - Social worker in the services of the 1<sup>st</sup> respondent - 'Sree Chithra Tirunal Institute of Medical Sciences & Technology' ('Institute' for short), had initially approached this Court in the year 2014 seeking a direction to the respondents that she be so appointed.

2. The petitioner's specific case is that she was included as Rank No.3 in the Rank List prepared by the 1<sup>st</sup> respondent for appointment to the post in question and that 1<sup>st</sup> and 2<sup>nd</sup> ranked candidates were appointed. She says that there was one vacancy available, but when she staked claim to the same, it was rejected through Ext.P3 saying that said vacancy was reserved to be filled up by a candidate belonging to the Other Backward Class (OBC) and therefore, that it is only when a turn for appointment against an open/unreserved category arises, within the validity of the Rank List, can she be appointed.

3. The petitioner asserts that Ext.P3 is illegal and that the proper course for the 1<sup>st</sup> respondent was to have converted the available vacancy to an unreserved one and to have appointed her

and she relies on the judgment of the Hon'ble Supreme Court in **K.N.Sreenivasan v. Flag Officer Cammanding-in-chief headquarters, Kochi and others [1996 (7) SCC 73]** in support.

4. Interestingly, when this matter was considered on 23.06.2014, a learned Judge of this Court evaluated the contentions of the rival parties in great detail and issued a very comprehensive order in the following manner:

“Admit. Sri.T.R.Ravi, learned Standing Counsel takes notice for the respondents.

Heard Sri.P.T.Dinesh, learned counsel appearing for the petitioner and Sri. T.R.Ravi, learned Standing Counsel appearing for the respondents on the interim relief prayed for. The petitioner herein applied pursuant to Ext.P1 notification dated 21.11.2011 for appointment to the category of Receptionist - cum – Social worker-A. It was also stipulated in the notification inviting applications that a panel valid for two years will be prepared for filling future vacancies based on the reservation roster. She was selected and ranked third. Ext.P2 rank list published on 25.06.2012 evidences the said fact. The rank list will cease to be force in tomorrow. It is stated that rank numbers 1 and 2 have appointed, that the next person eligible to be appointed is the petitioner, but notwithstanding the said fact her request in the representation dated 16.05.2014 to appoint her was rejected on the ground

that the vacancy which will arise on 31.05.2014 is reserved to be filled up by candidates belonging to other backward communities. The petitioner was also informed that as and when her turn for appointment against an open/unreserved category turn arises within the validity period of the rank list, she will be informed.

2. Ext.P2 rank list discloses that all the four candidates ranked therein are in the unreserved category. Though Ext.P1 notification discloses that the then existing vacancy which was notified was unreserved, as stated earlier, it was stipulated that a panel valid for two years will be prepared for filling up future vacancies based on the reservation roster. The main ground raised in the instant writ petition is that in the absence of a provision in the service rules which permits the unfilled vacancies to be carried forward and in view of the fact that no candidate is available in Ext.P2 rank list to be appointed against the turn of other backward community candidates, the petitioner who is the third rank holder is entitled to be appointed in the vacancy which arose on 31.05.2014.

3. Sri.T.R.Ravi, the learned standing counsel appearing for the respondents submitted that the 13 point roster is followed in respect of the post of Receptionist -cum – Social Worker, that for the present selection rotations 2 and 3 are turns for unreserved candidates and the fourth rotation is for other backward community candidates and that was the reason why after the appointment of the first and second rank holders, when the petitioner sought appointment she was informed that the vacancy will arise on 31.05.2014 has to be filled up by a candidate belonging to other backward communities.

4. It is evident from Ext.P1 notification that the candidates selected will have a right to be considered for appointment against future vacancies, notwithstanding the fact that only one vacancy was notified. It is evident from Ext.P2 rank list that only four candidates belonging to the unreserved category were selected and no candidate belonging to the other backward communities was selected. The respondents knew the day the interview was held and the select list was prepared that no candidate belonging to other backward communities is available to be appointed. They should also be deemed to be aware of the fact that a vacancy will arise on 31.05.2014. In such circumstances, the respondents should have followed the procedure to covert the third vacancy which would have arisen during the currency of the rank list into a non-reserved post and offered it to the candidate in the non-reserved category and carried forward the vacancy for the reserved category to the future years. I am therefore of the considered opinion that the respondent should provisionally appoint the petitioner against the post of Receptionist – cum – Social Worker in the vacancy that arose on 31.05.2014 subject to the outcome of the writ petition, before the rank list expires.

There will accordingly be an interim order directing the respondents to appoint the petitioner as Receptionist – cum – Social Worker provisionally and subject to the outcome of the writ petition. The order of appointment shall be issued positively and without fail on 24.06.2014. Needless to say, in the event of the writ petition being dismissed, the appointment of the petitioner shall stand cancelled.”

5. It is based on the afore order that the petitioner was appointed and has been continuing in service until now.

6. The question, therefore, now before me is whether the position of the petitioner requires to be altered in any manner, particularly in the contest of the fact that there is no allegation that she had not been qualified or that her work until today has not been satisfactory.

7. On the contrary, it is virtually admitted that she is fully qualified and that she has been serving satisfactorily.

8. As said above, the only thing that stood as a hurdle to the petitioner's initial appointment was that the vacancy in question was one earmarked for the candidates from OBC. The petitioner was, admittedly No.3 in the Rank List and had an unreserved vacancy arisen, she certainly would have been appointed. It is only because the available vacancy was so reserved, that the 1<sup>st</sup> respondent issued Ext.P3 proceedings denying her the said benefit.

9. However, now that she has already been appointed pursuant to the interim order afore extracted and since she has been continuing for the last more than eight years, I do not think

that said status should be now disturbed especially because it is acceded before me by the learned Standing Counsel for the respondents that, with respect to the vacancies arose subsequently, there were fresh notifications, leading to other candidates being appointed, but that none of them were special recruitment ones for OBC candidates.

10. Before I conclude I must also address one other contention of the learned Standing Counsel for the respondents that this writ petition cannot be entertained by this Court, since the service conditions of the 1<sup>st</sup> respondent has been now notified to be one within the jurisdictional umbra of the Central Administrative Tribunal. I am sure that this would not deter this Court from granting reliefs as afore because: for one, this writ petition was admitted as early as in the year 2014 and has remained on the files of this case for the last more than seven years on the strength of the aforementioned interim order; and for the second, even accepting that the matter has to be transferred to the CAT, it would not be now necessary in view of the fact that the petitioner is already appointed and since there is no contest against her appointment, except for the reason that the vacancy to

which she had been directed to be appointed by this Court, through the afore extracted interim order, was one reserved for the OBC category. This is more so because there is nothing on record to show that there was any candidate who had staked a claim to the vacancy in preference to the petitioner.

11. Therefore, this writ petition is ordered, confirming the interim order dated 23.06.2014 afore extracted and declaring that petitioner will be entitled to continue in service *de hors* Ext.P2.

Needless to say, the petitioner will be fully entitled to all service benefits consequent to her appointment in terms of the afore extracted interim order, which has now been made absolute; and if any arrears are eligible to her, same shall be honoured by the respondents as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

Sd/-

**DEVAN RAMACHANDRAN**  
**JUDGE**

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APPENDIX OF WP(C) 15824/2014

PETITIONER EXHIBITS

EXT.P1 TRUE COPY OF THE RELEVANT PART OF NOTIFICATION  
ADV.NO.P&A.II/34/JSSC/SCTIMST/2011 DATED 21/11/201  
BY THE 2ND RESPONDENT

EXT.P2 TRUE COPY OF THE RANK LIST  
NO.P&A.II/308/SCIMST/2012 DATED 25/6/2012.

EXT.P3 TRUE COPY OF THE LETTER NO.P&A.II/308/SCTIMST/2012  
DATED 31/5/2014 BY A.G.DEPUTY DIRECTOR (ADMN) FOR  
THE DIRECTOR.