



2023:KER:32377

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

TUESDAY, THE 6TH DAY OF JUNE 2023 / 16TH JYAISHTA, 1945

OP (KAT) NO. 228 OF 2023

ORDER DATED 24.01.2023 IN O.A(EKM)163/2023 OF THE KERALA
ADMINISTRATIVE TRIBUNAL

PETITIONER/RESPONDENT NO.7:

KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM, PIN - 695004

BY ADV P.C.SASIDHARAN

RESPONDENTS/APPLICANT & RESPONDENT NOS.1 TO 6:

- 1 ANEERA KABEER C, AGED 36 YEARS, D/O SRAJU C.,
RESIDING AT CHORAMPADATH (H), PAVUKKONAM
P.O., VANIYAMKULAM, OTTAPALAM, PALAKKAD, MOB
NO.9847409932, PIN - 679551
- 2 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 THE SECRETARY, DEPARTMENT OF SOCIAL JUSTICE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 4 THE SECRETARY, DEPARTMENT OF HEALTH AND FAMILY
WELFARE, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 5 THE SECRETARY,
DEPARTMENT OF COLLEGIATE EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 6 SECRETARY TO GOVERNMENT
DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001



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7 THE DIRECTOR OF MEDICAL EDUCATION (HOMEO)
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
KALEESWARAM RAJ
THULASI K. RAJ(K/000814/2015)
APARNA NARAYAN MENON(K/385/2021)

OTHER PRESENT :

SRI. UNNIKRISHNS KAIMAL - SR GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR ADMISSION ON 06.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



ALEXANDER THOMAS & C.JAYACHANDRAN, JJ.

O.P(KAT).No.228 of 2023

[arising out of the order dated 24.01.2023 in O.A.(Ekm)163/2023 of the Kerala Administrative Tribunal]

Dated this the 6th day of June, 2023

JUDGMENT

Alexander Thomas, J.

The prayers in the instant O.P(KAT) filed under Article 226 and Article 227 of the Constitution reads as follows:

- (i) *To set aside Ext.P2 order of the Hon'ble Tribunal dated 24.01.2023 in O.A(Ekm).No.163/2023 and thereby allow the O.P(KAT).*
- (ii) *To issue such other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

2. Petitioner herein is R7 in the O.A before the Tribunal, R1 herein is the sole original applicant and R2 to R7 herein are R1 to R6 in the O.A.

3. Heard Sri.P.C.Sasidharan, learned Standing Counsel for the Kerala Public Service Commission appearing for the petitioner, Sri.Kaleeswaram Raj, learned Advocate instructed by Smt.Thulasi K. Raj, learned counsel appearing for R1 herein (original applicant) and Sri.B.Unnikrishna Kaimal, learned Senior Government Pleader appearing for official respondents 2 to 7 herein.



4. R1 herein has filed the instant Ext.P1 original application before the Kerala Administrative Tribunal, Ernakulam Bench. The interim prayer sought for in the above O.A. is as follows:

(i) To declare that the applicant as a trans-woman is eligible to apply under Annexure-A2 notification due to her female identity;

(ii) To direct the respondents to issue a separate notification for transgender persons to various posts, including the post covered by Annexure A2 notification, enabling them to apply under them;

(iii) To direct the respondent to consider the candidature of the applicant for the post notified in Annexure A2 and to include her in the rank list for the said post, after allowing her to participate in all stages in the process of selection.

(iv) To direct the respondents to advise and appoint the applicant as House Keeper (Female) based on her position in the ranked list

(v) To grant such other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

5. The Tribunal has now passed the impugned Ext.P2 interim order dated 24.01.2023 in the above O.A, which reads as follows:

'Admit. Learned Government Pleader takes notice on behalf of respondents 1 to 6. Learned Standing Counsel takes notice for the 7th respondent.

There shall be a direction to the 7th respondent-Public Service Commission to allow the applicant to submit physical application and in the event of submitting such an application, the Public Service Commission shall process the application provisionally and subject to further orders.'



6. Being aggrieved by the aforesaid interim order, R7 in the O.A/Kerala Public Service Commission has filed the above O.P, by taking recourse to the provisions contained in Articles 226 and 227 of the Constitution of India

7. A brief recital of the facts would be pertinent. The original applicant herein states that, she is a trans-woman and that, she has secured Annexure-A1 transgender identity card issued under the provisions of the Transgender Persons (Protection of Rights) Act, 2019 ['the TGP Act', for short] and that the applicant had applied for House Keeper (Female) in the Homeopathic Medical College, as category No.730/2022, notified by the PSC as per Annexure-A2 selection notification dated 31.12.2022, as per which the last date for submission of the application was upto 01.02.2023. It appears to be common ground that, it is stipulated not only in both Annexure-A2 selection notification as well as the rules of recruitment that the appointment to the post of House Keeper (Female) in Homeopathic Medical College will be confined exclusively to women candidates. Note (i) under clause 7 of Annexure-A2 selection notification would stipulate that the candidate concerned should be prepared to stay in a Hostel or Institution to which she is appointed etc,. It is the case of



the respondents in the O.A. that the main responsibilities and duties attached to the post of House Keeper (Female) in Homeopathic Medical College is for the safe upkeep of women students in women's hostels under the Government Homeopathic Medical Colleges in the State of Kerala.

8. Further, the PSC has devised the requisite software for accepting online applications. As per Annexure-A2, applications are invited from candidates, who are women and only if the claim in the application is that the candidate concerned is a woman, the software will accept the online application. That since the original applicant could legally claim only to be a trans-woman, her online application was not accepted by the software system of the PSC. Further, it is contended that, by virtue of the provisions contained in the TGP Act, 2019, Section 3 of the above said Act deals with the prohibition against discrimination and that, clause (b) thereof *inter alia* stipulates that, there shall not be any unfair treatment in or in relation to, employment or occupation etc,. Since the application was not accepted by the online system, the original applicant has approached the Tribunal by filing the instant Ext.P1 O.A on 23.01.2023 and the Tribunal has thereafter passed Ext.P2 interim order dated 24.01.2023



directing that her application is submitted in paper form or physical form, will be accepted for the time being by the PSC etc.,. As mentioned above, PSC being aggrieved by the above said Ext.P2 interim order has approached this court by filing the above O.P.

9. One of the main contentions urged by Sri.P.C.Sasidharan, learned Standing Counsel for the PSC is that the contention of the applicant as if the stipulation in Annexure-A2 selection notification that the post is exclusively reserved for women candidates, would be a discrimination, solely on the basis of sex, is completely untenable that the provisions contained in the Special Rules, have not been challenged by the applicant. Further that, in a case of this nature, differentiation is only because of the nature of the duties or responsibilities attached to the post in as much as one of the prime duties to be discharged by the incumbent in the post is to take care of the safety and other needs of women students who stay in women's hostel of Government Homeopathic Medical Colleges and the incumbent should also be prepared for night stay in the women's hostel concerned, and that, there will be serious issues of safety etc, of women's hostel inmate if the incumbent concerned is not a woman. It is further pointed out that, even going by the case set up by the



original applicant, it is stated that the applicant was originally having a male gender and had then undergone certain surgery and has now become a trans-woman but, Annexure-A1 certificate said to have been issued under the TGP Act does not classify or certify the applicant to be trans-woman and it is only stated therein that the applicant is a transgender person. Further, it is also argued strongly on behalf of the petitioner that, in a case of this nature, the Tribunal should have given reasonable opportunity to the PSC to file their written response and then, both sides should have been heard and the prima facie nature of the case and the balance of convenience should have been assessed and due decision could have been taken on the interlocutory plea, after hearing both sides and after giving cogent reasons that the above said elementary principles have not been followed by the Tribunal in the above interlocutory order.

10. The said above pleas are opposed by the other sides. After hearing both sides, we are of the view that, as at present, we are not justified in interfering with the discretion exercised by the Tribunal in rendering the above said Ext.P2 interim order, which we would essentially see as an ad interim interlocutory order only to preserve the subject matter of the lis. Annexure-A2 selection notification was



issued on 31.12.2022 and the last date for submission of application was on 01.02.2023 since the online application was not accepted on account of the software restrictions, the applicant has approached the Tribunal on 23.01.2023 and the ad interim order as per Ext.P2 has been rendered on 24.01.2023 which appears to be before the prescribed last date for submission of the application, namely 01.02.2023. Therefore essentially, the said ad interim order has been issued only to preserve the subject matter of the lis so as to keep the litigating claims of the petitioner in the above lis alive. We fully appreciate the submission made on behalf of the petitioner that, in a matter of this nature, they should have been given opportunity to present their case to defend at the interlocutory stage and the Tribunal could have assessed as to whether a strong prima facie case is made out in the O.A and also as to whether the balance of convenience is also in favour of the applicant and then after assessing the rival contentions, should have passed a reasoned order. However, we need not interfere with the present interim order as we see it essentially fully as an ad interim order. The learned counsel for the applicant submits that the applicant is fully prepared for the early disposal of the main matter in the O.A. Learned Standing Counsel for



the PSC submitted that, they require atleast 3 to 4 weeks time for filing the reply statement in the matter. Applicant may file rejoinder, if any thereto within one week thereafter. Having regard to the nature of the facts and circumstances of the case, we would request the Tribunal to facilitate early hearing and disposal of the main matter in the O.A. within 3 months. It is also made clear that, further beneficial orders that may be claimed by the applicant, could be considered by Tribunal at the time of the final verdict, instead of passing piecemeal interim orders. No other directions and orders are called for.

With these observations and directions, the above Original Petition (KAT) will stand disposed of.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C.JAYACHANDRAN, JUDGE

Sbna/



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O.P(KAT)228/2023

**APPENDIX OF OP (KAT) 228/2023**

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE TRANSGENDER IDENTITY CARD OF THE APPLICANT
Annexure A2	TRUE COPY OF THE NOTIFICATION DATED 31.12.2022 ISSUED BY THE PSC
Annexure A3	TRUE COPY OF THE SCREENSHOT OF THE APPLICANT SHOWING THAT SHE IS INELIGIBLE TO APPLY
Annexure A4	TRUE COPY OF THE JUDGMENT DATED 03.11.2015 IN K PRATHIKA YASHINI V. THE CHAIRMAN, TAMILNADU UNIFORMED SERVICES RECRUITMENT BOARD
Annexure A5	TRUE COPY OF THE JUDGMENT DATED 05.06.2006 IN SHEEBA KUTTIYATAN AND ORS V. STATE OF KERALA AND ORS
Annexure A6	TRUE COPY OF THE JUDGMENT DATED 13.12.2016 IN SANUJA AND ORS V. STATE OF KERALA
Exhibit P1	THE TRUE COPY OF THE OA(EKM) NO.163/2023 FILED BEFORE THE TRIBUNAL
Exhibit P2	TRUE COPY OF THE INTERIM ORDER IN OA(EKM) NO.163/2023 DATED 24/01/2023