

2025:KER:22856

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 19TH DAY OF MARCH 2025 / 28TH PHALGUNA, 1946

OP(KAT) NO. 420 OF 2024

AGAINST THE ORDER DATED 25.06.2024 IN OA NO.300 OF 2024 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/RESPONDENT IN O.A.:

1 THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT HEALTH AND FAMILY WELFARE DEPARTMENT GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM KERALA, PIN - 695035

2 THE DIRECTOR OF HEALTH SERVICES, DIRECTORATE OF HEALTH SERVICES GENERAL HOSPITAL JUNCTION THIRUVANANTHAPURAM KERALA, PIN - 695035

BY GOVERNMENT PLEADER SRI.SUNILKUMAR KURIAKOSE

RESPONDENT/APPLICANT IN O.A.:

DR. CHITRA. S, W/O. DR JYOTHISH HARI,
AGED 41 YEARS
ASSISTANT SURGEON PRESENTLY WORKING AT PRIMARY HEALTH CENTRE, UZHAMALAKKAL, THIRUVANATHAPURAM-695142
RESIDENT OF GREESHMAM,SREEMAMULA JUNCTION,

VATTAPPARA,THIRUVANANTHAPURAM, KERALA, PIN - 695028

BY ADVS.
JELSON J.EDAMPADAM
M.FATHAHUDEEN(K/1666/1999)

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR HEARING ON 28.02.2025, ALONG WITH OP(KAT).422/2024, THE COURT ON 19.03.2025 THE FOLLOWING:

2025:KER:22856

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 19TH DAY OF MARCH 2025 / 28TH PHALGUNA, 1946

OP(KAT) NO. 422 OF 2024

AGAINST THE ORDER DATED 25.06.2024 IN OA NO.392 OF 2024 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/RESPONDENT IN O.A.:

1 STATE OF KERALA , REPRESENTED BY THE SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695001

2 THE DIRECTOR OF HEALTH SERVICES, DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL JUNCTION,THIRUVANANTHAPURAM, KERALA, PIN - 695035

BY GOVERNMENT PLEADER SRI.SUNILKUMAR KURIAKOSE

RESPONDENTS/APPLICANT IN O.A.:

DR. CHITRA REVI, AGED 39 YEARS, W/O DINESH KRISHNAN, ASSISTANT SURGEON, PRESENTLY WORKING AT PRIMARY HEALTH CENTRE, OTTOOR, THIRUVANANTHAPURAM, RESIDENT OF CHAITHRAM, PNRA- A7,

**PANGAPPARA P.O, THIRUVANANTHAPURAM, KERALA,
PIN - 695581**

**BY ADVS.
JELSON J.EDAMPADAM
M.FATHAHUDEEN(K/1666/1999)**

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR HEARING 28.02.2025, ALONG WITH OP(KAT).420/2024, THE COURT ON 19.03.2025 DELIVERED THE FOLLOWING:

2025:KER:22856

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JUDGMENT

P.Krishna Kumar, J.

The key issue in these cases is whether Assistant Surgeons appointed under the Kerala Health Service (Medical Officers) Special Rules, 2010 ('Special Rules, for short) who have exercised the option for placement in the Speciality Cadre can later relinquish their right to such an appointment under Rule 38 of Part II of Kerala State & Subordinate Service Rules ('KS&SSR').

2. The petitioners are Assistant Surgeons in the Kerala State Health Service. Both petitioners opted for placement in the Speciality Cadre in 2013. However, in 2024, they submitted a request to

relinquish their right to such an appointment in the Speciality Cadre, citing personal inconveniences. The Government rejected their request for relinquishment (the request made by one of them was not acted upon by the Government) on the ground that Rule 6 of the Special Rules prohibits it. The Government further proceeded to post them in the Speciality Cadre. Aggrieved by this decision, the petitioners approached the Kerala Administrative Tribunal. Through the impugned common order, the Tribunal found that the petitioners are entitled to relinquish the option exercised by them as per the provisions of Rule 38 of KS&SSR, dehors the inhibition in Rule 6 of the Special Rules.

3. The Government challenged this finding through these original petitions, contending that Rule 6 of the Special Rules overrides the provisions in Rule 38 of the KS&SSR. Since both cases involve common

questions of law, they are being disposed of together, with O.P. (KAT) No. 420/2024 as the leading case.

4. We heard Sri.Sunilkumar Kuriakose, the learned Government Pleader appearing for the State and Sri.Fathahudeen M., the learned counsel appearing for the respondents.

5. The primary challenge raised against the findings of the Tribunal is that the impugned judgment fails to recognise the overriding effect of Rule 6 of the Special Rules on Rule 38 of Part II KS&SSR, in view of Rule 2 of Part II, KS&SSR. It is thus profitable to quote the relevant statutory provisions hereunder:

Rule 5, 6 and 7 of the Special Rules are as follows:

> "5. Option for placement:- Option for placement in Administrative Cadre - Branch A and Speciality Cadre - Branch C and Public Health Lab. cadres - Branch D(a) and (b)

shall be exercised by the Assistant Surgeons / Assistant Dental Surgeons of Branch B during the period of probation itself.

6. Option once exercised shall be final.

7. Those Assistant Surgeons who have not exercised their option to any of the cadres during probation period or later shall be deemed to have continued in the entry cadre Branch B - General Cadre."

Rule 38 of Part II KS&SSR reads as follows:

"38. **Relinquishment of rights by members**.- Any person may, in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules, if, in the opinion of the Appointing Authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

Provided that request for relinquishment of right for promotion/appointment by

> transfer to a post, under the above rule, shall not be allowed if such request for relinquishment is submitted by the employee on or after the date of order by which the person was promoted or appointed by transfer to the said post.
>
> Explanation - The relinquishment of the right for promotion or appointment by transfer under this Rule shall entail loss of seniority and a relinquishment of the right for promotion or appointment by transfer shall not be permissible unless such relinquishment entails loss of seniority."

6. After considering the above provisions, it seems that there is substance in the contention of the learned Government Pleader that Rule 6 of the Special Rules prevails over the general provisions contained in Rule 38 of Part II KS&SSR. The Tribunal proceeded to return the finding in favour of the respondents on an assumption that Rule 38 of the KS&SSR and Rule 6 of the Special Rules are working on different planes and

hence there is no repugnancy between both the provisions.

7. Let us now closely consider the scope of Rule 2 of Part II KS&SSR. It reads as follows:

> "2. **Relation to the Special Rules**.-If any provision in the general rules contained in the Part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the latter shall, in respect of that service, prevail over the provision in the general rules in this Part."

Rule 2 states that when any provision in Part II of KS&SSR is repugnant to the provisions in a Special Rule applicable to a particular service, the provisions of the Special Rule will prevail. When there is an inconsistency between two statutory provisions which occupy the same field of operation and both cannot co-exist together, it is said that

they are repugnant to each other. In order to consider whether a provision in the Special Rules applicable to a particular service is repugnant to the general provisions contained in the KS&SSR, it is beneficial to apply a simple test viz., whether both provisions can co-exist without going into a collision course while applying them in a given situation.

8. Applying this test, we find ourselves unable to accept the conclusions of the Tribunal. While Rule 38 of the general rules permits officials to relinquish any right or privilege to which they are entitled (in the given instance, the right to appointment in the Speciality Cadre), Rule 6 of the Special Rules explicitly prohibits such relinquishment once the option for placement has been exercised. Thus, when applied to the option for placement of Assistant Surgeons, these provisions directly contradict each other—one allowing relinquishment and the other

forbidding it—making them mutually inconsistent or repugnant. Hence, in view of the provisions contained in Rule 2 of Part II KS&SSR, the provisions in the Special Rules will prevail over the repugnant part of the general rules.

9. The learned counsel for the respondents attempted to distinguish the situation by referring to Rule 7 and Rule 9 of the Special Rules. As far as the explicit and precise nature of Rule 6 is concerned, we find it unnecessary to delve deeper into those provisions which deal with entirely different aspects. Rule 7 provides that if an Assistant Surgeon has not exercised his/her option to any of the cadres during the probation period, he/she will be deemed to have continued in the General Cadre. Rule 9 states that placement shall be given only after declaration of successful completion of probation and the Government is entitled to give relaxation of this Rule if there

is a scarcity in the number of post-graduate candidates. As far as the respondents are concerned, they have admittedly exercised the option in the year 2013. Thus, even if they are not so far posted in the Speciality Cadre, they are not entitled to relinquish their rights or privileges, if any, by virtue of the express bar contained in Rule 6.

10. On going through the pleadings made by the respondents before the Tribunal, it is evident that both of them had submitted the option for appointment in Speciality Cadre in the year 2013, but furnished the respective relinquishment letter only in the year 2024, when the Government took steps for posting them in the Speciality Cadre, apprehending that they might be transferred to a faraway place from their hometown.

In view of the above findings, we allow the petitions and set aside the impugned order. However, as the respondents have raised concerns about being

2025:KER:22856

posted far from their hometown, on humanitarian grounds, the Government shall consider these grievances when assigning them to the Speciality Cadre.

Sd/-

A.MUHAMED MUSTAQUE
JUDGE

Sd/-

P.KRISHNA KUMAR
JUDGE

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APPENDIX OF OP(KAT) 422/2024

PETITIONER'S ANNEXURES

Annexure A1	**TRUE COPY OF THE RELEVANT PAGES OF THE ORDER NO. EA2-151/2023/H&FWD DATED 22/01/2024 ISSUED BY THE SECOND RESPONDENT**
Annexure A2	**TRUE COPY OF G.O(P) NO.69/2010/H&FWD DATED 17.02.2010 OF GOVERNMENT OF KERALA**
Annexure A3	**TRUE COPY OF THE PROCEEDINGS NO.ES-7(HR CELL)-20523/2017/DHS DATED 29.01.2018 FINAL SENIORITY LIST OF MEDICAL OFFICERS WHO HAVE OPTED SPECIALTY CADRE UNDER ENT SPECIALTY DURING THE YEAR 2014 AND ACQUIRED PG UPTO 31.12.2013 OF THE 2ND RESPONDENT**
Annexure A4	**TRUE COPY OF THE ORDER NO.EA3(SPECIAL CELL)-50553/2011/DHS DATED 09.01.2015 ISSUED BY THE 2ND RESPONDENT**
Annexure A5	**TRUE COPY OF THE ORDER NO.EA5-3097/2018/DHS DATED 14.03.2018 OF THE 2ND RESPONDENT ALONG WITH THE TYPED COPY**
Annexure A6	**TRUE COPY OF THE NOTICE NO.EA1-157/2018/DHS DATED 12.05.2021 ALONG WITH REVISED LIST**
Annexure A7	**TRUE COPY OF THE REPRESENTATION DATED 27.01.2024 SUBMITTED BY THE APPLICANT BEFORE THE FIRST RESPONDENT**
Annexure A7(a)	**TRUE COPY OF THE LETTER NO.22/2024/PHCO DATED 29.01.2024 OF THE MEDICAL OFFICER IN CHARGE, FHC OTTOOR**
Annexure A7(b)	**TRUE COPY OF THE LETTER DATED 29.01.2024 SUBMITTED BY THE APPLICANT BEFORE THE 2ND RESPONDENT**

Annexure A8	**TRUE COPY OF THE NOTICE NO.ES-7/12689/2023 DATED 05.02.2024 OF THE 2ND RESPONDENT**
Annexure A9	**TRUE COPY OF THE OBJECTION DATED 09.02.2024 SUBMITTED BY THE APPLICANT BEFORE THE 2ND RESPONDENT THROUGH PROPER CHANNEL**
Annexure A10	**TRUE COPY OF THE ORDER NO.ES-7/12689/2023/DHS DATED 17.02.2024 OF THE 2ND RESPONDENT**
Annexure A11	**TRUE COPY OF THE CIRCULAR NO.EA2-7/2024/DHS DATED 19.02.2024 OF THE 2ND RESPONDENT**
Annexure A12	**TRUE COPY OF THE PROFORMA SUBMITTED BY THE APPLICANT DATED 20.02.2024 BEFORE THE 2ND RESPONDENT**
Annexure A13	**TRUE COPY OF THE REPRESENTATION DATED 27.02.2024 SUBMITTED BY THE APPLICANT BEFORE THE 2ND RESPONDENT**
Annexure A13(a)	**TRUE COPY OF THE LETTER NO.A1-400/24/DMOH DATED 27.02.2024 OF THE DMO**
Annexure A14	**TRUE COPY OF THE LETTER NO.EA1-25756/2023/H&FWD DATED 29.12.2023 OF THE 2ND RESPONDENT**
Annexure A15	**TRUE COPY OF THE LETTER NO.A3/2/2024/H&FWD DATED 22.01.2024**
Annexure A16	**TRUE COPY OF THE INTERIM ORDER DATED 20.02.2024 IN O.A NO.300/2024 OF THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM**
Exhibit P1	**A TRUE COPY OF THE OA NO. 392/2024 ALONG**

WITH ANNEXURES A1 TO 16

Exhibit P2	**TRUE COPY OF THE STATEMENT FILED BY THE SECOND RESPONDENT ON 04.04.2024**
Exhibit P3	**TRUE COPY OF THE IMPUGNED COMMON ORDER PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL ON 25.06.2024**

APPENDIX OF OP(KAT) 420/2024

PETITIONER'S ANNEXURES

Annexure A1	**TRUE COPY OF THE ORDER NO.EA2-151/2023/H&FWD DATED 09.01.2024 ISSUED BY THE 2ND RESPONDENT**
Annexure A2	**TRUE COPY OF G.O(P) NO.69/2010/H&FWD DATED 17.02.2010 OF GOVERNMENT OF KERALA**
Annexure A3	**TRUE COPY OF THE PROCEEDINGS NO.ES-7(HR CELL)-20523/2017/DHS DATED 29.01.2018 ALONG WITH FINAL SENIORITY LIST OF SUCH MEDICAL OFFICERS WHO HAVE OPTED SPECIALTY CADRE UNDER ENT SPECIALTY DURING THE YEAR 2014 AND ACQUIRED PG UPTO 31.12.2013 OF THE 2ND RESPONDENT**
Annexure A4	**TRUE COPY OF THE ORDER NO.EA5-103165/2017/DHS DATED 30.01.2018 OF THE 2ND RESPONDENT**
Annexure A5	**TRUE COPY OF THE NOTICE NO.EA1-157/2018/DHS DATED 12.05.2021 ALONG WITH REVISED LIST OF THE 2ND RESPONDENT**
Annexure A6	**TRUE COPY OF THE NOTICE NO.ES-7/12689/2023 DATED 22.12.2023 OF THE 2ND RESPONDENT**
Annexure A7	**TRUE COPY OF THE STATEMENT OF RELINQUISHMENT DATED 26.12.2023 SUBMITTED BY THE APPLICANT BEFORE THE 2ND RESPONDENT**
Annexure A8	**TRUE COPY OF THE LETTER NO.EA1-25756/2023/H&FWD DATED 20.12.2023 OF THE 2ND RESPONDENT**
Annexure A9	**TRUE COPY OF THE ORDER NO.ES-**

	7/12689/2023/DHS DATED 30.12.2023 OF THE 2ND RESPONDENT
Annexure A10	TRUE COPY OF THE APPEAL DATED 04.01.2024 SUBMITTED BY THE APPLICANT BEFORE THE 1ST RESPONDENT
Annexure A11	TRUE COPY OF THE LETTER NO.A3/21/2024/H&FWD DATED 22.01.2024 OF THE 2ND RESPONDENT
Annexure A12	TRUE COPY OF THE INTERIM ORDER DATED 20.12.2023 IN O.A NO.1866/2023 OF THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM
Annexure A13	TRUE COPY OF THE RELEVANT PAGES OF G.O(P) NO.27/2021/FIN DATED 10.02.2024 SHOWING THE PAY BAND IN THE JUNIOR CONSULTANT AND ASSISTANT SURGEON
Annexure 14	TRUE COPY OF THE SALARY SLIP OF THE APPLICANT IN THE CADRE OF ASSISTANT SURGEON
Annexure A14(a)	TRUE COPY OF THE SALARY SLIP OF THE APPLICANT'S HUSBAND MR. JYOTHISH HARI IN THE CADRE OF JUNIOR CONSULTANT
Exhibit P1	A TRUE COPY OF THE O.A NO.300/2024
Exhibit P2	TRUE COPY OF THE REPLY STATEMENT FILED BY THE SECOND PETITIONER ON 19.03.2024
Exhibit P3	TRUE COPY OF THE REPLY STATEMENT FILED BY THE FIRST PETITIONER ON 04.04.2024
Exhibit P4	TRUE COPY OF THE REJOINDER FILED BY THE RESPONDENT ON 20.06.2024 ALONG WITH ANNEXURES A13 TO A14(A)

Exhibit P5	**TRUE COPY OF THE IMPUGNED COMMON ORDER PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL ON 25.06.2024**