

CENTRAL ADMINISTRATIVE TRIBUNAL**ERNAKULAM BENCH**

Original Application No.181/00318/2020

Tuesday, this the 1st day of June, 2021

C O R A M :

HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER

HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

Dr.K.P.Hamsakoya, aged 60 years

S/o.Mohammed Koya Kakkailam (Late)

Chief Medical Officer (NFSG) and Medical Officer in Charge

Government Hospital, Minicoy Island

Union Territory of Lakshadweep – 682 559

Permanently residing at Kunhipappada House, Kalpeni Island,

Union Territory of Lakshadweep – 682 557

...Applicant

(By Advocate Mr.S.Radhakrishnan and Mr.AjithG.Anjarlekar)

v e r s u s

1. The Union Territory of Lakshadweep represented by the Administrator
Kavaratti Island, Union Territory of Lakshadweep – 682 555
2. The Administrator, Union Territory of Lakshadweep
Kavaratti Island, Union Territory of Lakshadweep- 682 555

3. Lakshadweep District Panchayat, represented by the President-cum-Chief Counsellor, Kavaratti Island, Union Territory of Lakshadweep – 682 555
4. The Director of Health Services, Directorate of Health Services Administration of Lakshadweep, Kavaratti Island Union Territory of Lakshadweep – 682 555
5. The Chief Executive Officer, Lakshadweep District Panchayat Kavaratti Island, Union Territory of Lakshadweep – 682 555
6. The Administration and Establishment Committee Represented by its Chairman, Lakshadweep District Panchayat Kavaratti Island, Union Territory of Lakshadweep – 682 555
7. The Secretary (Panchayats) Lakshadweep Administration, Kavaratti Island Union Territory of Lakshadweep – 682 555Respondents

(By Advocate :Mr.S.Manu)

This application having been heard on 24.03.2021, this Tribunal on 1.6.2021 delivered the following :

ORDER

HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER

This is an Original Application filed seeking the following reliefs:

“1. Call for the records connected with Annexures A8, A10 and order dated 6.3.2015 issued by the Directorate of Health Services vide F.No.53/2/2014-DHS/227 and quash the same;

2. Declare that the Lakshadweep Administration and the officers functioning under it is not vested with the power to transfer the staff/functionaries that have been transferred to the District Panchayat under Annexure A4 and that only the Administration and Establishment Committee constituted by the District Panchayat under the Lakshadweep Panchayats (Staff) Rules, 2012 has the power to effect transfers and posting with regard to the “Transferred Staff”, as defined under the rules, unless such staff are transferred back to the Lakshadweep Administration.

3. Direct the 2nd and 4th respondents, in the event of this Honourable Tribunal entering upon a finding that the 4th respondent is competent to issue transfer orders pertaining to the applicant, to permit the applicant to continue as Chief Medical Officer (NFSG) and Medical Officer in Charge, Government Hospital, Minicoy Island, Union Territory of Lakshadweep and complete his normal tenure of 3 years, as contemplated under Annexure A9.

4. Grant such other reliefs as this Honourable Tribunal may deem fit, just and proper in the facts and circumstances of the case. ”

2. In short, the case of the applicant is that he is working as the Chief Medical Officer in the Government Hospital, Minicoy and he was relieved as he was transferred to the Primary Health Centre at Chetlat as per the order of the Administrator dated 2.7.2020. According to the applicant, the said order of the Administrator is issued without any legal backing and hence it is arbitrary. He is challenging Annexure A-10 Transfer Order. He is also challenging Annexure A-8 order of the Administrator dated 3.3.2018 taking back the power of transfer of

Gazetted Officers from the District Panchayat stating that it will be the sole prerogative of the concerned Secretaries of the Department to transfer Gazetted Officers with the approval of the Administrator. According to the applicant, the transfer order was made by the Department on the basis of Annexure A-8 order passed by the Administrator, which is against the Lakshadweep Panchayat (Staff) Rules 2012.

3. The applicant is a Doctor, appointed by the UPSC as per the orders issued by the Central Government and his services were allocated to the Lakshadweep Administration. The applicant while working as the Chief Medical Officer (NFSG), Indira Gandhi Hospital, Kavaratti, was transferred and posted to Rajeev Gandhi Speciality Hospital, Agati as the Administrative Officer on 15.5.2014. Thereafter, the applicant was transferred to the Government Hospital, Minicoy as per the order dated 4.10.2018 issued by the 4th respondent. As per the Devolution of Powers issued by the Lakshadweep Administration, five departments namely, Agriculture, Animal Husbandry, Fisheries, Education and Medical were transferred from the Lakshadweep Administration to the District Panchayat of Lakshadweep and all schemes of Health and Sanitation including Hospitals, Primary Health Centres and Dispensaries, Family Welfare and Public Health activities were transferred to the District Panchayat. According to him, the Indira Gandhi Hospital, Kavaratti and Rajeev Gandhi Speciality Hospital, Agati were retained under the control of the Lakshadweep Administration. The said order of Devolution of Powers to the District Panchayat was

produced as Annexure A-4. Annexure A-4 was published in the Extra-ordinary Gazette of Union Territory of Lakshadweep and it was brought into force from 7.3.2012 onwards. Respondent no.2 in pursuance of the powers conferred under Section 39(2), 40(1), 41(1) (2) and (3) and 44(2) and 81 (g) of Lakshadweep Panchayats Regulation, 1994 and all other enabling powers, framed the Lakshadweep Panchayats (Staff) Rules, 2012 for governing the control and functioning of staff transferred from the Lakshadweep Administration to the Panchayats. The said Rules were produced as Annexure A-5. The said rule applies to 'transferred employees', i.e, the employees of the Union Territory of Lakshadweep Administration transferred to the Panchayats under or in accordance with various devolution orders issued by the Union Territory of Lakshadweep Administration. The entire establishment of Medical, Para-Medical staff including the Chief Medical Officers is governed by the said Rules. As per Rule 7 of the Lakshadweep Panchayats (Staff) Rules,2012, the transfer and posting of such transferred employees shall be made in accordance with the transfer policy and directions issued by the Union Territory of Lakshadweep Administration from time to time and with the approval of the 'Administration and Establishment Committee' of District Panchayat. The District Panchayat shall have an 'Administration and Establishment Committee' under the chairmanship of President-cum-Chief Counsellor and consisting of Chief Executive Officer or his representative, Officer in charge of the concerned sector in the District Panchayat and not less than 5 and not more than 7 members of District Panchayat ensuring representation from all political parties from among the elected members. According to the applicant, the order of transfer issued against him is against the Rules and it is

arbitrary and cannot be sustained. The order of taking away the power of transfer of the Gazetted Officers issued by the Administrator as Annexure A-8 is against the Rules and it also cannot stand in the eyes of law. So the applicant wants to set aside two orders produced as Annexure A-8 and Annexure A-10.

4. The applicant, in this case, had approached the Hon'ble High Court of Kerala in WP© No.14101 of 2020. But the Hon'ble High Court has ordered that the matter has to be filed before the Central Administrative Tribunal and it was rejected. The order of the Hon'ble High Court is produced as Annexure A-15. Thereupon, he filed this Original Application.

5. The respondents appeared through their Standing Counsel and filed a detailed reply statement admitting the issuance of Annexure A-10 and Annexure A-8 as stated in the O.A. According to them, Annexure A-8 is the order of the Administrator whereby the power to transfer Gazetted Officers was taken back from the District Panchayats and was given to the Secretaries of the Department concerned, subject to the approval of the Administrator. They also admitted that as per the provisions under Sections 39, 40 and 41 of the Lakshadweep Panchayat Regulations, 1994, the Administrator had transferred the entire establishments except those specifically exempted to the District Panchayat as per Annexure A-4. But according to them, the Administrator has the power to review the said transfer of staff once in four years and accordingly the Administrator has reviewed the functions of

the Medical Department and take back the power for inter-island transfer and posting of all CHS Doctors (All India transferable) from District Panchayat and brought it back under the direct control of the Medical Department. The order dated 6.3.2015 is produced as Annexure R1(a). According to them, only the Department of Health is competent to transfer CHS Doctors. They admitted that the Annexure A-10 order was issued by the 4th respondent with the approval of the 2nd respondent. According to them, earlier in the year 2016, the applicant was transferred from Agati PHC to G.H Minicoy following the same procedure. There was no objection on the side of the applicant. So there are no bonafide in the challenge raised in this Original Application. The applicant was transferred and relieved from the post and directed to take charge of the Primary Health Centre, Chetlat due to administrative exigency as there is no Doctor in the PHC Chetlat. Moreover, the general public, people's representatives in Local bodies, and Youth Associations had held a mass protest strike before the Sub Divisional Officer and Executive Magistrate, Chetlat, demanding to post a regular Medical Officer at PHC, Chetlat. When the transfer order is made, there were four permanent Doctors at Minicoy including the applicant. In addition to that, there are five specialist doctors engaged through PPP mode. So Minicoy had a sufficient number of Doctors. This is the reason for transferring the applicant to Chetlat. Owing to the shortage of Specialist Doctors in Lakshadweep, the Administration decided to enter into agreement with Private Hospitals in mainland to provide Specialist Doctors in four Islands i.e, Kavaratti, Minicoy, Androth and Amini. Under this agreement, five Specialist Doctors are working at GH Minicoy for the benefit of the people.

6. Instead of joining at the new place, the applicant had overstayed the joining time and at first, he filed a Writ Petition before the Hon'ble High Court which was dismissed with liberty to the applicant to move this Tribunal. Since the applicant has not joined the transferred place even after availing the joining time, *prima facie* he has committed misconduct. The applicant is also in the habit of a scathing attack on the Senior Officers of the Medical Department in the social media which include 'Facebook and Whatsapp' alleging that the Officers have been paid by the IQRAA, a private hospital with whom, the Administration is having an agreement for providing Specialist Doctors. A Show Cause Notice was also issued against the applicant by the Secretary (Health), UT of Lakshadweep on 4.7.2020 directing him to show cause within 5 working days as to why disciplinary action should not be initiated against him. The applicant has not replied to the show-cause notice even after completion of stipulated time period and he had asked for extension of time for replying to the same. Even now, the applicant is making scandalous messages against the superior officers. There is absolutely no merit in the Original Application.

7. We have heard the Senior Counsel Mr.S.Radhakrishnan with Adv.Mr.AjitG.Anjarlekar appearing on the side of the applicant and the Standing Counsel Adv.Mr.S.Manu appearing for the respondents.

8. The main contention put forward by the applicant in this case is that Annexure A-8, i.e, the order dated 3.3.2018 withdrawing the power of District

Panchayat to transfer/posting of Gazetted Officers, is against the rules governing transfer of employees. According to the counsel for the applicant, the transfer order issued as Annexure A-10 by the Administrator is against the Rules and is arbitrary and illegal. The order issued as Annexure A-8 is contrary to Rule 7 of Annexure A-5 Lakshadweep Panchayats (Staff) Rules, 2012. So the transfer order made subsequent to Annexure A-8 is also illegal and cannot be sustainable.

9. The counsel for the respondents contends that the Administrator is having power to review the transfer of employees as per Annexure A-4 and the Administrator had reviewed the case of Doctors as per Annexure A-8 and there is no wrong in the act of the Administrator in doing the same. So there is nothing wrong or arbitrary or illegal in issuing Annexure A-10 order.

10. We have carefully gone through various rules and regulations regarding the Devolution of Powers to the District Panchayat and other local bodies. As per Article 243(G) and 243 (L), provisions are made for the Devolution of Powers to the local bodies and for the purpose to empower them independently for departmental works. Since the Lakshadweep Administration has no legislative assembly, the Administrator is the competent person to issue orders in this respect as per Article 243(L) of the Constitution. As per the said provision in the Constitution, the President had issued Lakshadweep Panchayat Regulations 1994 giving power to the Village (Dweep) Panchayat and District Panchayat in U.T of Lakshadweep. Section 39, 40 and 41

read as follows:

“ 39. (1) *The Administrator shall, by a general or special order, allocate to a Panchayat such officers employed in the Administrator as may be necessary to enable the Panchayats to discharge efficiently their functions and duties under this Regulation.*

(2) The officers allocated to a Panchayat under sub section (1) shall be taken over by such Panchayats in such cadre, on such tenure, remuneration and other conditions of service, as the Administrator may, by general or special order determine: Provided that the conditions of service of any such officer shall not be less favourable than those applicable to him immediately before such allocation: Provided further that nothing in the aforesaid proviso shall entitle an officer to claim the same cadre and designation, which he had before allocation.

40. (1) *Notwithstanding anything contained in section 38 the allocation to a Panchayat under section 38 of officers allocated to a Panchayat shall initially be provisional and it shall be lawful for the Administration to review their allocation within a period of four years from such allocation, and if necessary to re-allocate by an order made in that behalf any of such officer for the reasons prescribed by rules.*

(2) Any officer who is not re-allocated under sub-section (1) and continues in the service of a Panchayat immediately before the expiry of the aforesaid period of four years shall on such expiry, be deemed to be finally allocated to that Panchayat.

41. (1) *For the purpose of enabling the Panchayats to discharge their functions and duties under this Regulation, it shall be lawful for the Administration to direct by a general or special order that a number of officers of the Administration shall be posted under a Panchayat and for such period and subject to such conditions as may be specified in the order and accordingly the officers specified in the order shall be posted under such Panchayat: ”*

11. As per the said regulation, the Union Territory of Lakshadweep had framed Lakshadweep Panchayat (Staff) Rules 2012 which is produced as Annexure A-5. The said rule was notified on 20.10.2012. As per Annexure A-5, a transferred employee means employees of Union Territory of Lakshadweep Administration transferred to the Panchayats under or in accordance with various devolution orders, issued by the Union Territory of Lakshadweep Administration. As per Annexure A-4 Devolution order passed by the Administrator, all schemes of Health and Sanitation including Hospitals, Primary Health Centres and Dispensaries, Family Welfare and Public Health activities are transferred to the District Panchayat. The said order also provides for transferring the ministerial and multi-skilled employees/temporary status labourers to the District Panchayat, who will be placed at the disposal of District Panchayat for postings in various units of the departments and they will be posted and transferred by District Panchayat to various units/islands as per the transfer policy of UTL Administration. Thus the said Devolution of Powers also makes it clear that the entire establishment of Medical, Para Medical Staff including the Chief Medical Officers are transferred to the District Panchayat. So as per the order produced as Annexure A-4, the UTL had transferred all the Medical Officers along with Hospitals to the District Panchayat for administration. Subsequent to the Devolution of Powers, the UTL had framed Annexure A-5 Lakshadweep Panchayat (Staff) Rules 2012 for governing the staff transferred to the District Panchayats and Village (Dweep) Panchayats from the Administration. It is made clear that transferred employees mean all employees who are transferred from the Administration to the Dweep Panchayats. The Rule 7 and Rule 8 in the said Rules reads as follows:

“ 7. Transfer:- Transfer and posting of such transferred employees shall be made in accordance with the transfer policy and directions issued by the Union Territory of Lakshadweep Administration from time to time, and with the approval of the ‘Administration and Establishment Committee’ of District Panchayat.

For the purpose of this clause, the District Panchayat shall have an ‘Administration and Establishment Committee’ under the Chairmanship of President-cum-Chief Counsellor, and consisting of the Chief Executive Officer or his representative, Officer-in-charge of the concerned sector in the District Panchayat and not less than 5 and not more than 7 members of District Panchayat ensuring representation from all political parties among the elected members. This committee shall be re-constituted annually.

8. No. Order, direction or correspondence shall be made by the Department concerned directly to an employee transferred to the Panchayat, and whenever it is necessary, it should invariably be made through the Chief Executive Officer, District Panchayat and Executive Officer, Village (Dweep) Panchayat, as the case may be, with a copy to the Directorate of Panchayats. “

12. Rule 8 specifically provides that no order, direction or correspondence shall be made by the Department concerned directly to an employee transferred to the Panchayat. So on a reading of the above rules, produced as Annexure A5, it provides for transfer of transferred employees and it also clearly states the method by which transfer has to be effected. Transfer of a transferred employee can be made only with the approval of the ‘Administration and Establishment Committee’ of District Panchayat. But after the framing of said rules, it appears that the Administrator had issued an Executive Order as Annexure A-8 wherein it is made clear that transfer of Gazetted Orders shall be the sole prerogative of the concerned Secretaries with the

approval of the Administrator. The power of transfer of Gazetted Officers was taken back from the District Panchayat by the said order. If we go through the Devolution of Powers, which is produced as Annexure A-4, the entire Hospitals along with Chief Medical Officers were transferred to the District Panchayat by the Administration. Necessary Rules were also framed for the control and functioning of staff transferred from the Lakshadweep Administration to the District Panchayat. After framing the said rules, the UTL had taken back the power to transfer Gazetted Officers by Annexure A-8 order which against the rules framed under the Lakshadweep Panchayat Regulations, 1994. The Executive Order passed as Annexure A-8 and Annexure A-10 transfer order clearly goes against the provisions of the Lakshadweep Panchayat (Staff) Rules 2012 made for the purpose of control and functioning of transfer of staff from Lakshadweep Administration to the Panchayat. This is against the rules framed by the Administration. It is not proper or legal to pass Executive Orders against the rules framed for the control and functioning of staff transferred to District Panchayat. There is nothing on records to show that a review of the transfer of employees had taken place as claimed by the official respondents except the O.M issued as Annexure A-8.

13. We find merit in the contention put forward by the counsel for the applicant that Annexure A-8 order issued by the Administrator is against the Rules framed under the Lakshadweep Panchayat Regulations, 1994. If the Administration has a reason for taking back the power of transfer of Gazetted Officers transferred to the

Panchayat, they could have very well amended the Rules and the said orders can be processed instead of issuing executive orders. The Executive Authority has issued an order which is completely contradictory and against Rule 7 of Lakshadweep Panchayat (Staff) Rules 2012. Hence Annexure A-10 transfer order is against the rules and it cannot be sustained. We find merit in the contentions of the applicant in this case. The argument that these Doctors having All India Transfer liability and ACRs has to be prepared as per Union of India instructions, can be considered as a reason for taking back the control of transfer of gazetted officers. But instead of amending the rules, the Executive Authority has taken a shortcut method and sought to implement the same. This is against the rules and it is not sustainable in the eyes of law.

14. The counsel for the applicant had cited the judgment of the Hon'ble Supreme Court in Civil Appeal No.1361 of 1974 dated 10.8.1989 in the case of *Senior Superintendent of Post Offices, Allahabad and Ors. v. Izhar Hussain* reported in MANU/SC/0490/1989 wherein, the Hon'ble Supreme Court has observed that “a statutory rule cannot be modified or amended by executive instructions. A valid rule having some lacuna or gap can be supplemented by the executive instructions, but a statutory rule which is constitutionally invalid cannot be validated with the support of executive instructions. The instructions can only supplement and not supplant the rule.”

15. We find merit in the contention put forward by the counsel for the applicant.

The main point is whether Annexure A-10 transfer order issued by the Administrator can be sustained in the light of the above discussion. We find that Annexure A-8 Executive Order issued by the Lakshadweep Administration is against the rules and provisions and it is not valid. The counsel for the respondents would also contend that the applicant was earlier transferred by the administration and the applicant had not objected to it and so he is not a bonafide person. This is not a valid argument since Annexure A-8 is liable to be struck down as it is against the Rules framed by the Administration themselves.

16. In view of the above, we find that Annexure A-10 Transfer Order issued by the Administrator is also liable to be set aside as it has no backing of the law. **In the result, we find merit in the contentions raised by the applicant in this case. Accordingly, we hereby set aside Annexure A-8 and Annexure A-10 orders. The Original Application is disposed of as above.** No costs.

(K.V.EAPEN)

ADMINISTRATIVE MEMBER

(P.MADHAVAN)

JUDICIAL MEMBER

SV

List of Annexures

Annexure A1 - A true copy of the office order dated 15.5.2014 vide F.No.4/6/2005-DHS/575

Annexure A2 - A true copy of the order dated 4/10/2018 vide F.No.5/2/2012-DHS(2)

Annexure A3 - A true copy of the Last Pay Certificate issued by the Medical Superintendent, Indira Gandhi Hospital, Kavaratti

Annexure A4 - A true copy of the notification dated 7.3.2012 issued by the Secretary (Panchayats) vide F.No.2/1/2012-DOP

Annexure A5 - A true copy of the Lakshadweep Panchayats (Staff) Rules, 2012 gazette notification dated 20/10/2012 vide F.No.2/1/2012-DOPCol.I(I)

Annexure A6 - A true copy of the order dated 16/3/2018 issued by the Chief Executive Officer vide F.No.45/10/2013-LDP (CA)/329

Annexure A7 - A true copy of the order dated 25/1/2018 vide F.No.26/3/2018-Genl/342

Annexure A8 - A true copy of the order dated 3/3/2018 vide F.No.1/3/2017-CB/810

Annexure A9 - A true copy of the Circular dated 7/3/2012 issued by the Director (Services), Lakshadweep Administration vide F.No.12/03/Services-2012

Annexure A10 - A true copy of the order dated 2/7/2020 vide f.No.5/2/2012-DHS(2)

Annexure A11 - A true copy of the representation dated 3/7/2020 preferred by the Chairperson of Village (Dweep) Panchayat, Minicoy before the 2nd respondent

Annexure A12 - A true copy representation dated 3/7/2020 preferred by the applicant

Annexure A13 - A true copy of the memorandum of WPC No.14101 of 2020 (without exhibits)

Annexure A14 - A true copy of the statement dated 14.7.2020 filed by the respondents

Annexure A 15 - A true copy of the judgment dated 16/7/2020 by the Hon'ble High Court of Kerala in WPC No.14101 of 2020

Annexure A16 - A true copy of the weekly duty chart of casualty medical officers in Government Hospital, Minicoy

Annexure A17 - A true copy of the Office Order dated 16/6/2012 issued by the CMO (SAG) Joint Director, Department of Health Services, District Panchayat

Annexure A18 - A true copy of the order dated 16/6/2012 issued by the Joint Director (Health Services), District Panchayat

Annexure A19 - A true copy of F.No.6/3-10/2018-GHMCY dated 06/06/2020 issued by the applicant

Annexure A20 - A true copy of the provisional degree certificate dated 5/11/2019 issued by the Controller of Examinations, BLDE Karnataka to Dr.Shanaj Salim MBBS, DA

Annexure A21 - A true copy of F.no.6/3-10/2018-GHMCY dated 3/7/2020 issued by the applicant

Annexure A22 - A true copy of attendance particulars of specialist doctors appointed by IQRAA at Minicoy during the month of May 2020

Annexure A23 - A true copy of attendance particulars of specialist doctors appointed by IQRAA at Minicoy during the month of July 2020

Annexure A24 - A true copy of representation dated 10/7/2020 submitted by the applicant before the Administrator of Lakshadweep

Annexure A25 - A true copy of the Order dated 14/5/2020 issued by the 4th respondent vide f.No.5/2/2012-DHS/1540

Annexure R1(a) - The photocopy of the order F.No.53/2/2014-DHS/227 dated 6.3.2015 issued by the 4th respondent with the approval of the 2nd respondent.

Annexure R1(b) - Copy of the message dated 18.5.2020

Annexure R1(c) - The copy of the order F.No.5/2/2012-DHS(3) dated 2.7.2020 issued by the 4th respondent

Annexure R1(d) - Copy of the Show Cause Notice F.No.5/2/2020-DHS/496 dated 4.7.2020

Annexure R1(e) - True copy of the show cause notice dated 3.8.2020 issued to the miscellaneous respondent

Annexure R1(f) - True copy of the FIR in Crime No.10 of 2020 of Minicoy Police Station

Annexure R1(g) - True copy of the certificate of drunkenness issued by the Government Hospital Minicoy with respect to the applicant in the OA

Annexure R1(h) - A true copy of the report of the OIC, Minicoy Police Station to the DIG regarding registration of the case

Annexure R1(i) - True copy of the message through e mail sent to the Administrator by the Chairperson of the Panchayat on 27.8.2020

Annexure R1(j) - True copy of the letter dated 4.9.2020 issued by the Chairperson of the Panchayat to the Sub Divisional Officer

Annexure R1(k) - True copy of the letter dated 5.9.2020 issued by the SDO to the Administrator

Annexure R1(l) - True copy of the report of the SDO dated 8.9.2020

Annexure R1(m) - True copy of the order dated 8.9.2020 issued for posting Dr.K.Nishad Khan at Chetlat Island.

Annexure A26 - A true copy of the slip issued by the physician

Annexure A27 - A true copy of the slip issued by the Government Hospital, Minicoy.

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