



IN THE KERALA ADMINISTRATIVE TRIBUNAL AT  
THIRUVANANTHAPURAM

Present:

The Hon'ble Justice P V Asha, Judicial Member

&

The Hon'ble Dr Pradeep Kumar, Administrative Member

Dated this the 30th of May 2024

OA-204/2023

**Applicant(s):**

- 1) Sethulakshmi M S, aged 37 years, W/o Dileep C T., Ayah, Old Age Home for Physically Handicapped, Muthalakkodam P O, Pazhukkakulam, Thodupuzha, Idukki-685605, Muringoor (H), Koottar P O, Koottar, Idukki, Kerala.- 685552
- 2) Sandhya O R, Ayah, Home for Mentally Deficient Children (HMDC), Vellimadukkunnu P O, Marikunnu, Kozhikode-673012, aged 48 years, W/o Giri K V, Kizhakkancheril (H), Moothakunnam P O, Ernakulam-683516.,.,.,Kerala
- 3) Sandhyamol K K, Ayah, Old Age Home for Physically Handicapped, Muthalakkodam P O, Pazhukkakulam, Thodupuzha, Idukki-685605, aged 40 years, W/o Vinay S V, Sankarasseril (H), Kattappana (S) P O, Mettukuzhi, Idukki-685515.,.,.,Kerala
- 4) Sheela T, Ayah, Pratheeksha Bhavan, (Custodial Care Home) Thrikkannapuram P O, Thavanur, Malappuram-679573, aged 43 years, W/o Velayudhan, Kumbiyalath (H), Ramanattukara P O, Kozhikkode-673633.,.,.,Kerala
- 5) Sulchi T S, Ayah, Asha Bhavan (Women), Ramavarmapuram P O, Thrissur-680631, aged 43 years, W/o Madhu M G, Mavungasseril (H), Pallipuram P O, Munembam, Ernakulam-683515.,.,.,Kerala

By Advs. ARUNA A

**Respondent(s):**

- 1) State of Kerala, Represented by Secretary to Government, Social Justice Department, Secretariat, Thiruvananthapuram - 695001,, Kerala
- 2) Director, Directorate of Social Justice, 5th Floor, Vikas Bhavan, Vikas Bhavan P O, Thiruvananthapuram-695033,, Kerala
- 3) District Social Justice Officer, District Social Justice Office, Mini Civil Station, Thodupuzha P O, Idukki-685544,, Kerala
- 4) District Social Justice Officer, District Social Justice Office, Civil Station, Kozhikode-673020,, Kerala
- 5) District Social Justice Officer, District Social Justice Office, Mini Civil Station, Chembukkavu P O, Thrissur-680020,, Kerala
- 6) District Social Justice Officer, District Social Justice Office, Civil Station, Malappuram-676505,, Kerala
- 7) Superintendent, Old Age Home for Physically Handicapped, Muthalakkodam P O, Pazhukkakulam, Thodupuzha, Idukki-685605,, Kerala
- 8) Superintendent, Home for Mentally Deficient Children (HMDC), Vellimadukkunu P O, Marikunnu, Kozhikode-673012,, Kerala
- 9) Superintendent, Asha Bhavan (Women) Ramavarmapuram P O, Thrissur-680631,, Kerala
- 10) Superintendent, Ayah, Pratheeksha Bhavan (Custodial Care Home), Thriikkannapuram P O, Thavanur, Malappuram-679573,, Kerala

Smt. Sreeja Thulasi, Senior Government Pleader for Respondents 1 to 10

This Original Application having been finally heard on 30th of May 2024, the Tribunal on the same day passed the following:

**JUSTICE P.V. ASHA, JUDICIAL MEMBER  
&  
Dr. PRADEEP KUMAR, ADMINISTRATIVE MEMBER**

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**O.A. No. 204 of 2023**  
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**Dated this the 30<sup>th</sup> day of May, 2024**

**ORDER**

**Justice, P.V. Asha, Judicial Member:**

The applicants are Ayahs working in the Old Age Home for Mentally Deficient Children, the Pratheeksha Bhavan and the Asha Bhavan respectively, which are run by the Department of Social Justice. Their grievance is over the action of the respondents in compelling them to work for 24 hours a day and six days a week.

2. The applicants have been working in the post of Ayahs since the year 2017, 2015, 2020 and 2012 respectively. According to them, the duties and the working hours attached to the post of Ayahs are determined by the Head of the respective institutions, where they are working. It is their complaint that they are compelled to perform the duties of all the posts higher and lower in the institutions, because of which they have to be on duty throughout the day and thus they are forced to work 24 hours daily and 6 days in a week. They will be able to avail one day weekly off only if they work for 6 days for 24 hours. It is also



their case that at times they have to work for 3 days continuously when the next 3 days would be treated as weekly off. But those days would be deducted from the available 15 compensatory leave per year. They are unable to avail leave for their personal requirements, to attend even to unavoidable family matters. The applicants have pointed out that even in cases where concession is given for working hours during night, for nursing the baby, they are denied the weekly off. It is their case in view of such irrational working conditions, as fixed by the respective heads of the institutions, they are unable to spend time with the members of their family, on account of which matrimonial issues also arise very often; apart from the health issues as well as personal issues, being faced by them. They point out that they have to take care of the inmates who are having various ailments, behavioral abnormalities, etc. The institutions in which the applicants have been working continues under the Social Justice Department, even after bifurcation of the said department to Social Justice Department and Women and Child Department. Applicants point out that, consequent to the bifurcation and resultant reduction of posts in their Department, they have lost the promotional avenues. Relying on various international covenants and Conventions in Annexures-A8 to A11, applicants



claim that they are entitled to get their duty hours rationalized in tune with those, as codified by them in Annexure-A7, in order to live a dignified life. They further claim that though shift system has already been introduced for the Para Medical Staff, Health Care Workers etc, in the Health Department, no steps are taken to introduce the same in the Social Justice Department and to fix their duty hours at 8 hours a day and 48 hours per week.

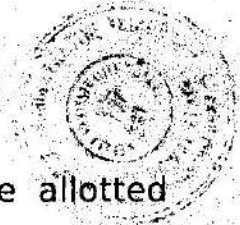
3. The respondent nos. 1 and 2 have filed separate reply statements. The 1<sup>st</sup> respondent has stated the following:

Appointment to the post of Ayahs are done in accordance with the provisions contained in Annexure-R1(a) the Special Rules for the Kerala Last Grade Servants. Government has as per G.O. (Rt) No. 501/2014/SJD dated 08/08/2014, issued the Management Manual of Welfare Institutions, which provide for the duties attached to the post of Ayahs. As per those provisions, the nature of the post of Ayahs in an institution is residential; however all the permissible leaves are applicable to them. The Superintendents of the institutions are empowered to fix the duty time of Ayahs. Directions are given by the Head of the Department on the basis of Government Orders. In the Old Age Home for Physically Handicapped, Idukki, the sanctioned strength of one of the institutions is 100 and present strength of inmates is 31. Three

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Ayahs are employed thereon shift basis; in addition to that there are two multitasking care providers and one Junior Public Health Nurse for the care and attention of inmates. The 1<sup>st</sup> applicant was exempted from the night duties, for taking care of her baby. The 2<sup>nd</sup> applicant, who is working in the Home for Mentally Deficient Children (HMDC), Kozhikode, is also given permissible leaves and her duties are regulated in accordance with the Management Manual. The 4<sup>th</sup> applicant who is working at Pratheeksha Bhavan (Custodial Care Home), Malappuram, is exempted from taking care of the male residents of the institution and the working hours has been fixed between 9 am and 5 pm. The Ayahs in the Asha Bhavan (Women), Thrissur, where the 5<sup>th</sup> applicant is working, need not work for 6 consecutive days; but when the Ayahs are coming from another district and stay in the institution for six consecutive days for their convenience, they avail off for 2 days. The Superintendents of the respective institutions issue periodical orders including the method of work to be done, as prescribed in the Management Manual. On bifurcation of the Social Justice Department, there is no post of Matron Gr. II in the Social Justice Department, as the said post has been allotted to the Women & Child Development Department. The Welfare institutions under the Social Justice Department are working for the protection of the





marginalized people in the society and the Ayahs are allotted duties in accordance with the Management Manual, for the smooth functioning of these institutions.

4. The contentions of the 1<sup>st</sup> respondent in the reply statement are more or less similar to that of the 2<sup>nd</sup> respondent. In addition to that, it is stated that appointments of Ayahs in the welfare institutions under the Social Justice Department are made from a separate District wise Ranked List prepared by Kerala Public Service Commission (KPSC) and not from the general Ranked List of Last Grade Servants prepared by the KPSC. It is further stated that Ayahs in the Welfare Institutions are not working for 24 hours a day. Like others in home, their presence is inevitable in spending time with the inmates; they can take rest and sleep after 9 pm.

5. We heard Smt. A. Aruna, learned Counsel for the applicant and Smt. Sreeja Thulasi, the learned Senior Government Pleader.

6. The duties attached to the post of Ayahs are as provided in the Management Manual released in 2014, which enumerates the various duties to be performed by the Ayahs, as follows:

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*"1. The main duty of Ayah is to provide the necessary care and attention to the residents and to perform this duty satisfactorily.*

*2. To Assist in distributing food to residents.*

*3. In the absence of the Matron or Nurse, distribute medicines to the residents as prescribed by the doctors.*

*4. Residents should be provided with treatment in case of emergency. Take care of hospitalized patients and ensure timely delivery of medicines and food to them.*

*5. Ensure the safety of residents at night.*

*6. In the absence of Superintendent or Matron supervise the activities of the institution.*

*7. Provide special care to indigent residents for bathing, feeding, dressing, laundry, and help them in their basic needs.*

*8. In the absence of Superintendent or Matron, perform all tasks of emergency nature related to the protection of residents.*

*9. Carry out cleaning operations in the institution. Ensure the personal hygiene should be followed by the residents.*

*10. To Assist the cook in cooking.*

*11. Be present and provide protection to residents during night hours.*

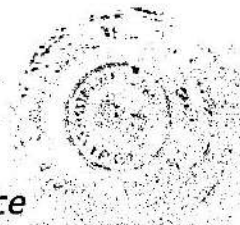
*12. Operate equipments like TV, pump set etc... in the institution.*

*13. Participate in the staff meetings.*

*14. Participate in the training programmes.*

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*15. Participate and collaborate with other service providers in the protection of residents and rehabilitation activities.*

*16. Follow the instructions given by the Superintendents on behalf of the institution and its residents."*

7. That would show that in addition the above duties enumerated in Clause 1 to 15, they are bound to perform any duty assigned to them by the Superintendent of the respective Institutions, as can be seen from Annexures-A4 and A5. In the absence of any post of Matron Gr II in the Department since the bifurcation in 2018, the Ayahs will have to perform the duties of the Matrons Gr II also. It would show that the Ayahs have to be attentive throughout the day and night, for performing all these duties. It would be factually incorrect to say that they can sleep after 9 PM, when they have to ensure due personal care and protection of the inmates, who are of different nature, behavior, etc. including those suffering from various ailments, mental and physical disabilities, abnormalities, etc.

8. The respondents do not have a case that they have taken any steps to adopt shift duties, while admitting that the Ayahs are to perform the duties as ordered in the Management Manual and by the Superintendents. They attempt to justify the

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further provides that where persons are employed in shifts shall be permissible to employ persons in excess of 8 hours in any one day and 48 hours in any one week, if the average number of hours over a period of 3 weeks or less does not exceed 8 per day and 48 per week. Article 4 of the Holidays with Pay Convention, 1970 provides that persons whose length of service in any year is less than that required, he shall be entitled to a holiday, proportionate to his length of service during a year. Article 6 of the Weekly Rest (Commerce and Offices) Convention, 1957 provides that all persons to whom the convention applies shall be entitled to an uninterrupted weekly rest period for not less than 24 hours in the course of 7 days. Under Articles 1 to 6 of the Workers with Family Responsibilities Convention, 1981, all measures compatible with national conditions and possibilities shall be taken to enable workers with family responsibilities shall be taken to take account of the needs of the workers with family responsibilities in community planning and to enable them to exercise their right to free choice of employment and to take account of their needs in terms and conditions of employment and in social security. Hours of Work (Commerce and Offices) Convention, 1930, under Article 3 thereof, provides that the hours of work of

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workload allotted to the Ayahs stating that they were recruited specifically for the post and since the nature of duties of the post itself is residential, they have to perform all those duties for the smooth functioning of the Institutions, which are run for the protection of marginalized people. The specific contention of the applicants that they are compelled to work throughout the day and night and for six days consecutively, cannot be disbelieved, going by the Management Manual coupled with Annexures-A2 to A5. The only answer is that the applicant chose to join as Ayahs; duties are already prescribed in the Management Manual and applicants are working in an institution run for marginalized people.

9. As rightly contended by Smt. Aruna, under Article 24 of the Universal Declaration of Human Rights (UDHR) [Annexure A7], everyone has the right to rest and leisure, including reasonable limitation of working hours and periodical holidays with pay, while Article 23 provides that everyone has the right to choice of employment as well as the right to just and favourable conditions of work. Under Article 2 of the Hours of Work (Industry) Convention, 1919, working hours of persons employed in any public or private industrial undertaking or in any branch thereof, shall not exceed 8 in a day and 48 in the week. It



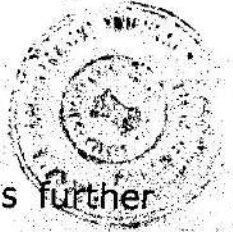
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persons shall not exceed 48 hours in the week and 8 hours in the day. As per the Forty-Hour Week Convention, 1935, the principle of forty hour week to classes of employment shall be implemented in accordance with the provisions to be prescribed by separate Conventions.

10. After considering the various provisions contained in the aforesaid and other international Conventions, Universal Declaration of Human Rights, the provisions in the Constitution of India, etc., the Hon'ble High Court of Kerala, rendered the judgment in ***Seenath Beevi v. State of Kerala: 2003(3) KLT 788***, directing the Health Services Department to fix the working hours of Nurses at 8 hours a day and not exceeding 48 hours a week. It was a case where a Head Nurse working in the Health Service Department approached the Hon'ble High Court with the grievance that she was compelled to work for 14 hours at a stretch and 6 days consecutively. The Hon'ble High Court, after analysis of various provisions contained in the Universal Declaration of Human Rights, 1948, international covenants, labour legislations, etc. held that rationalization of the working hours so as to make it humane and to bring it within just and reasonable limits is not only the need of the nursing staff but also the patients who are at the receiving end and that in a broader

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sense it is the concern of the society at large. It was further observed that though the power to prescribe the hours of employment is the prerogative of the employer there shall not be any unfettered power regardless of the problems of the employees. The State Government has to regulate the working hours in tune with the constitutional provisions and also in tune with the relevant articles under the Universal Declaration of Human Rights. Relying on the judgment in ***Samatha v. State of Andhra Pradesh & others [(1997) 8 SCC 191]***, ***Consumer Education and Research Centre & others v. Union of India [(1995) 3 SCC 42]***, etc, it was held that the "right to life" is a fundamental right as well as a human right and therefore the State has the duty to see that the right to live with human dignity enshrined in Article 21 of the Constitution of India is ensured to its citizens and it is duty bound to ensure just and humane conditions of work in order to enable a person to live human dignity. It was further held that, it is the constitutional obligation of the State to rationalize the working hours to make it just, reasonable and humane. It was further held that the rationalization of working hours has to be done taking into account the basic realities and other relevant aspects prevailing in each establishment. In the light of Constitutional mandate under Article 21; no employer

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Including the Government has got the unfettered freedom to prescribe conditions of work imposing duty hours exceeding certain limits. Referring to the provisions contained in various legislations and also the District Office Manual, Kerala Secretariat Manual, the Manual of Office Procedure, etc., the Hon'ble High Court observed that though there should not be absolute parity in the matter of working hours between different categories and classes of employees, the difference in the working hours from 6 hours to 14 hours is too wide as to cause agony and hardship to one section of the employees of the Government. Relying on the judgment of the Apex Court in **Municipal Council, Ratlam v. Vardhichand (AIR 1980 SC 1622)** etc., the Hon'ble High Court held that financial stringency pleaded by the State is no good ground to avoid implementation of shift duty system. Finally it was declared that the hours of employment thrust on the petitioner and similarly situated persons is an infringement of the fundamental right to life guaranteed under Article 21 of the Constitution of India. It was also declared that compelling the petitioner to be on duty continuously for 14 hours a day and for 6 days consecutively in a week is illegal and unconstitutional. The respondents were directed to introduce 3 shift duty system in the

Government Hospital, Thirroorangadi, immediately and redress forthwith the grievance of the petitioner.

11. In the present case, the details furnished by the applicants as well as the respondents would show that the applicants are compelled to work throughout the day on all the 6 days in a week. Just because there is management manual which enumerates the duties of Ayahs and authorizes the Superintendent of the respective institutions to fix the duties and duty hours, the respondent cannot deny the applicants just and humane working conditions. It cannot be said that the applicants can be compelled to work continuously, since the Department is running the institutions for the protection of marginalized people or because the applicants chose to accept the appointment as Ayahs. The respondents have to recognize the fact that they are also human beings having every right as declared under Article 23 of Universal Declaration of Human Rights (UDHR), to free choice of employment and they are having the right to rest and leisure as well as reasonable limitation of working hours as provided in Article 24 of the UDHR. Their fundamental right to live with dignity guaranteed under Article 21 of the Constitution of India, can in no way be diluted by way of a management manual. On the other hand the respondents are duty bound to ensure their rights. As

held in the judgment in Seenath's case (supra), the respondents cannot have any unfettered power to compel the applicants to work continuously and without adopting shift system, without rationalizing their duty hours in tune with the system adopted in the case of Nurses in the Health Services Department, and in the case of Watchmen covered by Annexure-A19 order, etc. As held in Seenath's case (supra) the financial implications cannot also be an answer justifying refusal to rationalize working hours. When none of the legislations permit an employer to impose more than 8 hours' duty per day or more than 48 hours a week, the applicants are also entitled to be provided similar working conditions. It is the duty of the 1<sup>st</sup> respondent to ensure them such just and humane conditions of work, as held in the ***Bandhua Mukti Morcha V Union of India: (1984) 3 SCC 161*** and in Samatha's case (supra) and as held in the judgment in Seenath's case (supra). While protecting the marginalized people, the respondents have to consider the fact that the Ayahs are also having personal and family responsibilities and they are also having the right to exercise their fundamental and human rights. The problems raised by the applicants can be solved only if the duty hours are fixed and the work force is strengthened so as to apportion the work load among them.





12. In the circumstances it is declared that compelling the Ayahs like applicants to perform duties for 24 hours a day continuously and 6 days in a week without break is arbitrary and unconstitutional.

13. There shall be direction to the respondents 1 and 2 to see that the number of duty hours of Ayahs like applicants are rationalized and to see that the working hours are limited to 8 hours in a day and 48 hours in a week. The Superintendents of the institutions shall be directed to implement such duty hours in the case of the Ayahs, if necessary by modification of the Management Manual or otherwise. The respondents 1 and 2 shall take all steps for implementing the shift system, as aforesaid, within a period of 4 months from the date of receipt of a copy of this order.

The Original Application is allowed to the above extent.

Sd/-

Justice P.V. Asha, Judicial Member

Sd/-

Dr. Pradeep Kumar, Administrative Member.

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Certified that this is a true and accurate copy of the  
document/letter as in the case file No. 204 of 2023  
O.A. 204 / 2023  
Certification

*[Signature]*  
Officer in charge of  
Copy Room

APPENDIX

QA-204/2023

APPLICANT'S ANNEXURES:

Annexure A1- A true copy of the appointment order No. E10-40222/15 dated 04.11.2017 of the 2nd applicant .

Annexure A1(a)- A true copy of the appointment order No. SJD/1677/2020-E3 dated 04.05.2020 of the 3rd applicant issued by 2nd respondent .

Annexure A1(b)- A true copy of the communication no MR11 (1) 4761/14 (1) dated 24.06.2017 issued by the District Officer, Kerala Public Service Commission issuing advice to the 4th applicant .

Annexure A2- A true copy of the reply no. SJD/698/2022-E3 dated 18.02.2022 issued by the Senior superintendent and State Public information officer, Social Justice Department, Thiruvananthapuram to Vishnu Kumar .

Annexure A3- A true copy of the sample of 8 questions to which Annexure A2's reply was given .

Annexure A4- A true copy of the duties and responsibilities of Ayah issued by the Superintendent Grade I, Old Age Home, Muthalakodam P.O Idukki as Order no. HPH/IDK/55/2021 dated 01.03.2021.

Annexure A5- A true copy of the Order no HPH/IDK/55/2021 dated 01.03.2021 issued by the Superintendent Grade I, Old Age Home, Muthalakodam P.O, Idukki.



Annexure A6- A true copy of the Circular number Spl Cell/1/2019 dated 11.11.2019 issued by 2nd respondent .

Annexure A7- A true copy of the table showing relevant provisions of International documents and declarations prepared by the applicants .

Annexure A8- A true copy of the relevant pages of Universal Declarations of Human Rights .

Annexure A9- A true of relevant pages of Coo1 - Hours of Work (Industry) Convention, 1919 (No.1).

Annexure A10- A true copy of relevant pages of C132-Holidays with Pay Convention (Revised), 1970 (No. 132).

Annexure A11- A true copy of the relevant pages of the C106-Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

Annexure A12- A true copy of the relevant pages of the C156- Workers with Family Responsibilities Convention, 1981 (No. 156) .

Annexure A13- A true copy of the relevant pates of the C030-Hours of Work Convention, 1930 (No. 30).

Annexure A14- A true copy of the relevant pages of the C047 - Forty - Hour Week Convention, 1935 (No. 47).

Annexure A15- A true copy of relevant pages of Health Care Worker Resource Management Guidelines for Centres Providing Covid-19 Care No. 31/F2/2020 Health dated 20.06.2020 issued by the Covid - 19 (nCorona) Outbreak Control and Prevention State Cell Health and Family Welfare Department, Government of Kerala.

Annexure A16- A true copy of the G.O (Ms) No. 422/2010/H&FWD dated 01.07.2010.

Annexure A17- A true copy of the relevant pages of the WHO Healthy Workplace Framework and Model : Background and supporting Literature and Practice by Joan Burton issued by the World Health Organization .

Annexure A18- A true copy of relevant pages of a review study named as Working Long Hours HSL/2003/02 ; Project Leader: Johanna Beswick MSc Author (s): Joanne White MSc, Johanna Beswick Science Group : Human Factors.

Annexure A19- A true copy of the final order dated 22.03.2017 in OA 2048/2016.

Annexure A20- A true copy of the judgment in Seenath Beevi vs. State of Kerala (MANU/KE/0428/2003) dated 03.09.2003.

RESPONDENT'S ANNEXURES:

Annexure R1(a)- True copy of the G.O (Rt) No. 501/2014/SJD dated 08.08.2014.

Annexure R1(b) True copy of the GO. (Ms) No. 23/18/SJD dated 07.10.2018.