
(2015) 06 KL CK 0105

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 16088 of 2015 (I), 16105, 16106 and 16215 of 2015

Anupama N. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 06 KL CK 0105

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; Rinny Stephen Chamaparambil, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Jayasankaran Nambiar, J.—As all these writ petitions involve a common issue, they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to facts and exhibits is from W.P.(C) No. 16088 of 2015, in which the respondents have filed a statement.

2. The petitioners in all these writ petitions are presently working as Assistant Managers/Deputy Managers at Kottayam and Alappuzha districts of the respondent Council. In the writ petition, they are aggrieved by Ext. P2 order of transfer, whereby they have been transferred to Wayanad/Idukki/Palakkad districts. The transfer order, that is impugned in the writ petitions, indicates that the transfer was for administrative convenience and the District Managers-in-charge of the various districts were to relieve the transferred employees, and to allot suitable duties to the employees, as and when they reported at the transferred stations. The petitioners in Writ Petition Nos. 16215 and 16106 of 2015 were transferred from Alappuzha to Palakkad district, whereas the petitioners in Writ Petition No. 16088 of 2015 was transferred from Kottayam to Wayanad district and the petitioners in Writ Petition No. 16105 of 2015 were

transferred from Alappuzha to Idukki district.

3. The challenge against the transfer orders in the writ petition is premised, *inter alia*, on the following grounds, namely, (i) that juniors to the petitioners, in service, were transferred to places of their choice based on requests put in by them and hence, the petitioners were forced to go to the stations indicated in the transfer order. It is contended that this amounted to a violation of the transfer norms, extract of which is produced as Ext. P1 in the writ petition, (ii) While Ext. P1 norms contemplate that an application for general transfer will be invited during the first week of April every year, and that employees can apply in the prescribed format indicating details of the service and stations to which transfer is required, the said process was not followed prior to the issuance of the transfer orders, that are impugned in the writ petitions, (iii) that the stand of the respondent, that there was a shortage of personnel in Wayanad/Idukki/Palakkad districts, and that it was this shortage of personnel that necessitated the transfer of the petitioners is belied by the action of the respondent in transferring a person from Wayanad district to Thrissur district in Ext. P2 transfer order itself. In short, the petitioners would contend that the transfer orders have been issued in violation of the norms governing transfer in the institution namely, Ext. P1 norms and therefore, the impugned orders of transfer require to be interfered with by this Court in exercise of its powers under Article 226 of the Constitution of India. Although the petitioners would also allege *factual mala fides* in the matter of transfer, I note that there is no express pleading with regard to *mala fides* attributed to any particular person and further, no such person has been impleaded in its personal capacity, to support the allegation of *mala fides*.

4. A statement has been filed on behalf of the 2nd respondent, wherein it is stated that the transfers, that were ordered in Ext. P2 order, were necessitated on account of administrative exigencies. It is pointed out that the transfer of an employee is an incident of service, and that the 2nd respondent resorted to the transfers only to meet the staff requirements in other districts. In response to the contention of the petitioner with regard to the non-calling of applications for transfer, it is pointed out that the present transfers are not part of the general transfer, for which alone, the calling of applications is necessitated in accordance with Ext. P1 norms. It is stated that the petitioners are persons, who have had the advantage of working at the present station for a long tenure - between six to thirteen years - without any interruption and hence, they had no right to insist on continuing in the present station so as to avoid the transfer under Ext. P2 order. As regards the difficulties faced by the 2nd respondent in the matter of staff at various districts/stations, a table at Paragraph 5 of the statement indicates that, while there is an excess of staff at Kottayam and Alappuzha, there is a significant shortage of staff at Idukki, Palakkad and Wayanad. The reasons that necessitated the 2nd respondent to go in for a transfer of personnel from Kottayam and Alappuzha to Wayanad, Palakkad and Idukki are stated at Paragraph 6, 7 and 8 of the statement, which read as under:

"6. In order to compensate the staff shortage, the respondent recently recruited new staff. This respondent could allot only 8 candidates as against the requirement of 11 in Wayanad District. Even after the new recruitment, Wayanad district is in need of 3 more staff. The scenario being so, the 2nd respondent transferred 3 staff from Kottayam to Wayanad. As far as Wayanad District is concerned, the operations of the 2nd respondent are crippled due to the dearth of staff. The existing staff is overburdened and they are unable to reach different areas of the District and serve the farmers. There are more than 12000 farmers whom the 2nd respondent provide different services. The 2nd respondent finds it difficult to cater to the needs of these 12000 farmers who are spread all over the district, which is classified as hill tract, with the help of just six staff members. Needless to say, that the quality of service is severely affected as the staff strength in Wayanad District is not in full complement. In Wayanad District, many of the Government schemes to promote cultivation are being implemented by this respondent and the tribal belt requires special attention. The situation being so, shortage of staff to implement various schemes entrusted to the 2nd respondent will definitely affect the reputation of not only the 2nd respondent but also the Government. Under these circumstances, the 2nd respondent was compelled to transfer the excess staff from Kottayam to Wayanad to compensate the imbalance in staff deployment. This is done considering long stint of the petitioners in the existing station and experience gained thereby. The 2nd respondent also felt that, districts like Wayanad requires service of experienced staff, hence the 2nd respondent left without any alternative except to transfer the petitioners.

7. From the table, it is clear that Alapuzha District also is in excess of 4 persons, whereas, Idukki District is functioning with a shortage of seven employees. In order to compensate the staff shortage from the new selection the 2nd respondent could allot only 3 candidates as against the requirement of 7. Therefore, even after the new recruitment, Idukki District is in need of 4 more staff. As far as Idukki District is concerned, the operations of the 2nd respondent, in this highly potential area for vegetable cultivation, are being crippled due to the dearth of staff. The existing staff is overburdened and they are unable to reach different areas of the District and serve the farmers. There are approximately 14000 farmers whom the 2nd respondent provides different services. The 2nd respondent finds it difficult to cater to the needs of these 14000 farmers who are scattered all over the district, just with the help of 11 staff members. Needless to say, that the quality of service is severely affected and compromised as the staff strength in Idukki District is not in full complement. Under these circumstances, compelled the 2nd respondent to transfer the excess staff from Alappuzha to Idukki.

8. Palakkad District is functioning with a shortage of seven employees. As far as Palakkad District is concerned, the operations are crippled due to the dearth of staff. The existing staff is unable to reach different areas of the District. There are approximately 20000 farmers for whom the 2nd respondent provides

different services. The 2nd respondent finds it difficult manage the operations with the help of 11 staff members. Moreover, the 2nd respondent is implementing a project titled "Vegetable and Banana Cultivation in Attappady" which is a prestigious project of the Government of Kerala meant for the overall development of the Tribal people. Needless to say, that the quality of service is severely affected and compromised as the staff strength in Palakkad District is short."

5. It is stated, with reference to the above, that the transfer orders having been issued in the exigencies of service and with a view to ensuring that the stations at Idukki, Wayanad and Palakkad are also adequately staffed with experienced personnel, the transfer order ought not to be interfered with by this Court in proceedings under Article 226 of the Constitution of India.

6. I have heard the learned counsel appearing for the petitioner, the learned Standing Counsel appearing for the 2nd respondent and also the learned Government Pleader for official respondents.

7. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in all these cases, the transfer of the petitioners is from a station, where there is a surplus of personnel, to stations where the respondent Council is facing a shortage of personnel. The only exception, in Ext. P2 transfer order, is with regard to Sl. No. 1 namely, Smt. Roshni N.I., who appears to have been transferred from Wayanad to Thrissur District. The learned counsel for the petitioner would, no doubt, point out that if the stand of the respondent is that there is a shortage of personnel in Wayanad, then the fact of transfer of Smt. Roshni from Wayanad to Thrissur contradicts the said stand of the respondent. Counsel for the respondent Council, however, clarifies that the said transfer was necessitated on account of a request put in by the said Smt. Roshni, who had completed more than two years in the hill-tract and was therefore eligible for seeking transfer to another station, as per Ext. P1 norms. As regards the contentions of the petitioners, in general, with regard to the non-compliance with Ext. P1 norms, I find that, in Ext. P1 norms, there are two types of transfers contemplated, namely, transfers that are effected under exigencies of service and those that are based on a request from the employee concerned. The transfers effected under exigencies of service can either be in the nature of a general transfer or specific instances, other than general transfer. A perusal of Ext. P2 order reveals it to be a transfer, other than a general transfer, necessitated under exigencies of service. The statement filed on behalf of the 2nd respondent would clearly indicate that there was a shortage of staff in three districts namely Palakkad, Wayanad and Idukki and it was in order to make up for this shortage of staff faced in the said three districts that the transfer, as contemplated in Ext. P2 order, was necessitated. When this is the stated position of the respondent, I am of the view that the petitioners cannot be heard to say that they cannot be transferred to the aforesaid stations, since a transfer is an integral part of their service conditions, which they accepted at the time of

entering into the service of the 2nd respondent Council. The contention of the petitioners that there are other more experienced persons in Alappuzha and Kottayam, who could have been transferred in preference to the petitioners also does not appeal to me, inasmuch as I am of the view, that in matters of transfer, this court must defer to the decision of the employer, with regard to the personnel to be transferred, for it is the employer alone who knows the needs of his establishment. The choice as regards the employee, who fulfils the criteria of relevant experience and who will suit the needs of a particular station, must be that of the employer. It is only when there is patent arbitrariness in the exercise of powers by the employer, or in the event of the said power being exercised with mala fide motives, that this court will be inclined to interfere with an order of transfer.

8. Before parting with this case, I must deal with the judgments that are relied upon by counsel for the petitioner, in support of his contentions against the orders of transfer. The decisions in *Balan v. Dist. Panchayat Officer, Malappuram* [1975 KHC 20], *P.K. Damodaran Unni Vs. State of Kerala and Another*, AIR 1982 Ker 358 and *Gopalakrishna Iyer v. State* [1983 KHC 348] are relied upon to contend that where the power of transfer is exercised without due regard to the interest of the administration or the interest of the public or the requirement of justice or the provisions of law, then this Court can exercise its powers under Article 226 of the Constitution of India and interfere with such transfer. I notice from a perusal of the said decisions that, while the general proposition of law stated therein is not in doubt, the decisions in those cases in favour of setting aside the transfer orders, were arrived at on the basis of specific findings that the order of transfer was not one that was for administrative convenience or for exigencies of service. It was also found that the said orders were vitiated on account of a violation of the norms that governed transfer in the respective organisations. In the decision reported in *Balan v. Dist. Panchayat Officer, Malappuram* [1975 KHC 20], at paragraph 11, it was found that the transfer was not made for administrative reasons but was really a case of harassment of the Government Official concerned, for some reason or other. While there cannot be any dispute with regard to the general proposition of law that a transfer order can be interfered with, if the same is vitiated by mala fides or if it is vitiated by a non-adherence to the norms governing transfer in the institution, I do not find any such instance in the instant cases that would persuade me to interfere with the orders of transfer impugned therein.

Under the circumstances, I am of the view that the challenge in the writ petitions, against the orders of transfer, is to be repelled. The writ petitions fail and are accordingly dismissed.