

(2024) 01 KL CK 0057

In the High Court Of Kerala

Case No : Original Petition (CAT) NOS.185 & 186 Of 2023

Dr. Kala C. Mohan

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 10-01-2024

Acts Referred:

Citation : (2024) 01 KL CK 0057

Hon'ble Judges : A.Muhammed Mustaque, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : V.Philip Mathews, E.Radhakrishnan, T.V.Ajayakumar, Rimju P.H.

Final Decision : Disposed Of

Judgement

Shoba Annamma Eapen, J

1. Both the above original petitions are filed challenging the order dated 14.11.2023 in O.A.Nos.533 & 534 of 2023 refusing to grant stay against Ext.P1 transfer order. Hence, these two original petitions are tried together and disposed of by this common judgment.

2. As per Ext.P1, the petitioners were transferred from Employees State Insurance Corporation Hospital, Udyogamandal to Employees State Insurance Corporation Hospital, Asramam, Kollam.

3. Brief facts narrated in O.P.(CAT)Nos. 185 & 186 of 2023 are as follows:-

O.P.(CAT) No.185 of 2023:

Petitioner- a Gynaecologist, is working as Employees Insurance Medical Officer Grade-II, Department of Obstetrics and Gynaecology, ESIC Hospital, Udyogamandal, Ernakulam district. Her husband is also a Doctor and works in Lakshmi Hospital, Ernakulam and they have two children aged 17 years and 6 years respectively. The children of the petitioner are suffering from severe bronchial asthma and they are undergoing inhaler therapy treatment. The

mother of the petitioner is aged 89 and she is suffering from diabetes mellitus, coronary artery disease, diabetic nephropathy, and age-related dementia. She is undergoing treatment at Lakshmi Hospital, Ernakulam. The petitioner's father is no more and her aged mother is dependent on the petitioner since she is her mother's only child. Petitioner's elder daughter is presently pursuing 11th standard and will be in 12th standard from March 2024.

O.P.(CAT)NO. 186/2023:

Petitioner is working as an Insurance Medical Officer Grade-I, Department of General Surgery, E.S.I.C. Hospital, Udyogamandal. Her husband is a senior researcher at Ericsson, Bangalore and they have a minor child aged 7 years. The petitioner's mother is suffering from Benign Paroxysmal positional vertigo and needs constant attention.

4. Challenging Ext.P1 transfer order, the petitioners have approached the Central Administrative Tribunal, Ernakulam bench by filing O.A.Nos.533 and 534 of 2023 respectively. The said applications came up for consideration before the tribunal on 14.11.2023 and the tribunal was not inclined to grant any interim order since it was submitted by the learned Standing Counsel for the Employees State Insurance Corporation that the applicants were relieved from Udyogamandal on 10.11.2023. Challenging the said interim orders, petitioners have approached this Court with the above original petitions.

5. Heard the learned counsel for the petitioners as well as the learned Standing Counsel for the Employees State Insurance Corporation.

6. Both the petitioners are working mothers having family responsibilities including the responsibility to take care of the aged parents, who are suffering from severe diseases. The husband of the petitioner in O.P(CAT)No.185/2023, is not in a position to shift to Kollam since he is working as Doctor in Lakshmi Hospital, Ernakulam. Similarly, the husband of the petitioner in O.P(CAT)No.186/2023 is also working in Bangalore. The petitioner in O.P(CAT)No.185/2023 claimed that the petitioner would not be able to arrange admission for her elder child studying in 11th standard at present during the midst of the academic year and she may be allowed to continue in Udyogamandal till the end of the academic year 2024-25 to facilitate the studies of her elder child and the first respondent is granting exemption from transfer for parents of the children studying in 10th and 12th standards. The petitioner in O.P(CAT)No.186/2023 submits that her husband, working in Bangalore, does not get transfer to Kollam and the petitioner has a minor child and that the mother of the petitioner is a widow, who is being taken care of by the petitioner. Though their grievances were submitted before the Grievance Cell, no orders were passed.

7. The main contentions raised by the petitioners are that due to unavoidable family circumstances, Ext.P1 transfer order causes inexplicable difficulty. Both the women employees have their aged mother to be taken care of and the

daughter, who is studying in class XI as well as a minor girl child aged 7 years.

8. Learned Standing Counsel for the respondents submits that it is the discretion of the employer to decide as to where the employee should be posted and should work and the court cannot interfere with the order of transfer.

9. The learned counsel for the petitioners relied on the decision of the Supreme Court in Punjab and Sind Bank and others v. Mrs.Durgesh Kuwar [(2020)19 SCC 46]. However, we are not entering into any finding regarding the entitlement of the petitioners to remain in the E.S.I.Hospital, Udyogamandal.

10. When the original petitions came up for admission on 20.11.2023, this Court had directed to maintain status quo and the order of status quo was extended from time to time.

11. When working women are transferred to new destinations, they often encounter challenges like finding suitable childcare arrangements and maintaining a work-life balance in an unfamiliar environment. They also find it difficult in coping with the stress of relocation, including establishing new social networks and support systems. Additionally, access to career advancement opportunities and facing potential disruptions to their career progression might also be significant concerns. Similarly, a mother when transferred to another destination leaving aside a child who is studying in 11th standard, several challenges may arise. It is difficult to shift a child to another school during the midst of the academic year, especially in the 11th standard. To take care of the aged parents is the primary responsibility of children. Mainly women play the major role in taking care of the parents who are sick due to old age. In such situations, open-mindedness, empathy and understanding are expected from the employers.

12. Considering the facts and circumstances of the case, we are of the view that since the issue is pending consideration before the Central Administrative Tribunal, the petitioners as well as the respondents shall take appropriate steps to get the original applications disposed of by the Central Administrative Tribunal. For the time being, status quo as on today shall be maintained till the original applications are decided and disposed of by the Tribunal.

The Original Petitions(CAT) are disposed of as above.