

(2025) 05 KL CK 1142

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11018 Of 2025

Dr. Sangetha S

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-05-2025

Acts Referred:

Mahatma Gandhi University Act, 2010 — Section 64A, 68A

Citation : (2025) 05 KL CK 1142

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, Thulasi K. Raj, Chinnu Maria Antony, Aparna Narayan Menon, V.Venugopal, Surin George Ipe, G.Biju, Seemandini, Anison M.R, R.S.Lakshman, P.Vijayakumar Puthiyakovilakom, C.R.Reghunathan, M.V.Ashim, B.Harrylal, R.Balakrishnan, P.A.Rinusa, Annie Jacob, Dona Margret P.R., Anagha Renjith V.R., M.U.Soorya

Final Decision : Disposed Of

Judgement

N. Nagaresh, J

1. The petitioner is before this Court aggrieved by Ext.P4 order transferring the petitioner from DB Pampa College, Parumala under the Mahatma Gandhi University to DB College, Sasthamcotta under the Kerala University.
2. The petitioner was appointed as Assistant Professor (Botany) at DB Pampa College, Parumala with effect from 09.11.2017, as per Ext.P1. The petitioner states that in order to accommodate the 9th respondent, who is the juniormost in comparison to the petitioner, as Assistant Professor (Botany) at the DB Pampa College, Parumala, the petitioner has been transferred from DB Pampa College, Parumala to DB College, Sasthamcotta. Ext.P4 would show that the transfer is caused due to the illegal appointment of the 9th respondent.
3. The petitioner states that approval was declined to the appointment of the 9th respondent on the ground that there exists an additional permanent Teacher in

the Department of Botany at DB College, Thalayolaparambu, whose workload is less than 16 hours. Due to lack of sufficient workload, the 8th respondent requested a re-transfer to DB Pampa College, Parumala. But, the 9th respondent was appointed in DB Pampa College, Parumala. Until the 9th respondent's appointment receives approval, she cannot be transferred. Therefore, the 8th respondent was transferred back to DB Pampa College, Parumala. Consequently, the petitioner has been imposed with a inter University transfer to DB College, Sasthamcotta.

4. The petitioner states that as per Section 68A of the Mahatma Gandhi University Act, inter university transfer shall be made only on the written request of the Teacher who has completed three years of service. In the petitioner's case, the transfer is ordered without obtaining consent of the petitioner. Ext.P4 order is necessitated due to the illegal appointment granted to the 9th respondent. The transfer order is vitiated by malice. The transfer imposed undue hardship on the petitioner. Therefore, Ext.P4 order should be quashed, contends the petitioner.

5. The 6th and 7th respondents filed counter affidavit. Respondents 6 and 7 submitted that on 14.05.2018, the 8th respondent requested for a transfer from DB Pampa College, Parumala to DB College, Thalayolaparambu. The 8th respondent was transferred to Thalayolaparambu. Thereafter, the 9th respondent was selected and appointed in DB Pampa College, Parumala. The Deputy Director of Collegiate Education refused to approve the appointment of the 9th respondent on the ground that there is one excess permanent teaching staff at DB College, Thalayolaparambu.

6. In the meanwhile, the 8th respondent sought for transfer from DB College, Thalayolaparambu to DB Pampa College, Parumala. As the 8th respondent is senior to the petitioner, the 7th respondent transferred the 8th respondent to DB Pampa College, Parumala and the petitioner was transferred to DB College, Sasthamcotta. There is no illegality or irregularity in the order of transfer.

7. The 8th respondent submitted that she is settled at Thripunithura and she had to shift her residence to Thripunithura to take care of her aged mother. The 8th respondent was originally selected and appointed at DB Pampa College, Parumala with effect from 11.06.2015. At the request of the petitioner, she was given a transfer to DB College, Thalayolaparambu. However, on eventual revaluation after the introduction of new syllabus, the workload will go above 48 hours justifying the appointment of the petitioner at Thalayolaparambu. To protect the interest of the 9th respondent, it was necessary that one Teacher in Botany working at DB College, Thalayolaparambu be transferred out. The 8th respondent being the juniormost Teacher, offered her willingness for transfer to DB Pampa College, Parumala. Thereupon, Ext.P4 order was issued. The 8th respondent joined DB Pampa College, Parumala on 17.03.2025 even before this writ petition was filed. The writ petition is without any merit.

8. Counsel for the petitioner relied on a judgment of this Court in W.P.(C)

No.34296/2017 wherein this Court held that in view of Section 68A of the Mahatma Gandhi University Act, 1985, an inter university transfer can be ordered only on getting consent from the Teacher. The 9th respondent, on the other hand, relied on the judgment of the Hon'ble Apex Court in Pubi Lombi v. State of Arunachal Pradesh [2024 KHC 6135] and argued that a person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest. Interference in transfer order is justified only in a case of malafide or infraction of any professed norms or principles. In cases where career prospects of a person challenging transfer remain unaffected and no detriment is caused, interference with the transfer must be eschewed.

9. The Standing Counsel representing the Devaswom Board relied on the judgment of this Court in

Johnson George v. State of Kerala [2003 (2) KLT 676] wherein it was held that transfer of a Teacher from a College under a particular Management affiliated to a particular University to a College under a different Management affiliated to a different University is permissible and the Managers have got the basic right to transfer the staff, for transfer is an incidence service.

10. I have heard the learned counsel for the petitioner, the learned Government Pleader representing respondents 1, 5 and 11, the respective Standing Counsel appearing for respondents 2 to 4, 6, 7 and 10 and the learned counsel appearing for respondents 8 and 9.

11. The petitioner was working as Assistant Professor (Botany) in DB Pampa College, Parumala within the territorial limits of the Mahatma Gandhi University from 09.11.2017. The petitioner was transferred to DB College, Sasthamcotta under the limits of the Kerala University on 14.03.2025. It is not in dispute that the transfer effected as per Ext.P4 is a inter university transfer.

12. Section 68A of the Mahatma Gandhi University Act, 1985 provides that inter university transfer of Teachers shall be made only on the written request of the Teacher who has completed three years of service. The petitioner has not made any request for any inter university transfer. Therefore, Ext.P4 is illegal. Ext.P4 transfer order has serious consequences. The petitioner will become the juniormost Teacher in the transferred station. As Section 68A provides that an inter university transfer can be given only once during the entire period of service of a Teacher, it would be legally impossible for the petitioner to come back to the home station. Therefore, I am of the view that Ext.P4 cannot stand the scrutiny of law.

13. The reliance placed by the Standing Counsel for the Devaswom Board on the judgment in Johnson George (supra) is of no consequence as the said judgment was delivered without reference to Section 64A. Paragraph 17 of the judgment in Johnson George (supra) would indicate that the learned Single Judge also has taken a view that right of the Management to effect inter university transfers can be taken away by specific provisions in the University Act. I am also not in a

position to agree with the proposition made by the Senior Counsel for the 9th respondent relying on Pubi Lombi (supra). In the said judgment, the Hon'ble Apex Court has held that a person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest. In the case of the petitioner, the transfer order is in violation of a statutory provision. Furthermore, in the judgment in W.P.(C) No.34296/2017 this Court has held that transfer of Private College Teachers to one University to another can be ordered only with their consent as provided under Section 68A of the Mahatma Gandhi University Act.

14. For all the afore reasons, Ext.P4 order is not legally sustainable. Ext.P4 order is therefore set aside. Respondents 4, 6, 7 and 10 are directed to retain the petitioner at DB Pampa College, Parumala under the Mahatma Gandhi University.

The writ petition is disposed of as above.