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**(1989) 09 KL CK 0008**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 6273 of 1989-V**

G. Babu

APPELLANT

Vs

Chief Engineer (PS and GL) and Others

RESPONDENT

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**Date of Decision :** 08-09-1989

**Acts Referred:**

Constitution of India, 1950 — Article 14, 141, 311

**Citation :** (1990) 1 LLJ 502

**Hon'ble Judges :** V. Sivaraman Nair, J

**Bench :** Single Bench

**Advocate :** P.N.K. Achan, for the Appellant; K.R. Kurup and V.P.M. Kumar, for the Respondent

**Final Decision :** Allowed

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## Judgement

V. Sivaraman Nair, J.—Petitioner and the third respondent are Technical Assistants under the Kerala Water Authority. The former was working in Trivandrum for some considerable time and the latter at Alwaye for over three years. Both had rendered sufficiently long period of service at the respective stations and were due for transfer. In Ext.P1 order dated 15th March, 1989, petitioner was transferred to the World Bank Project Division, Alwaye, in the place of the third respondent, who was transferred from Alwaye to Public Health

Division, Perumbavoor. Petitioner was relieved from Trivandrum pursuant to that order and he joined duty at Alwaye on 27th March, 1989. The third respondent joined duty at Perumbavoor.

2. The Chief Engineer of the Water Authority passed a further order on 20th July, 1989, whereby the petitioner was transferred from Alwaye and was posted as Assistant Executive Engineer in the office of the Chief Engineer, Cochin. The 3rd respondent was transferred back from Perumbavoor to Alwaye replacing the petitioner. It is petitioner's submission that third respondent obtained Ext. P2 order due entirely to the influence of extraneous consideration and because she

could successfully prevail upon the authorities to post her back to Alwaye in cancellation of Ext. P1 order. It is also the case of the petitioner that in passing Ext. P2 order, the claims of the petitioner for retention at Alwaye for a reasonable period was not considered by respondent 1. He therefore submits that Ext. P2 order transferring him from Alwaye in cancellation of Ext. P1 order is arbitrary and discriminatory. He therefore seeks the issue of a writ of certiorari to quash Ext. P2 order. My learned brother, Viswanatha Iyer J., had passed an order of interim stay on C.M.P.No. 19009 of 1989 on 26th July, 1989. Petitioner filed C.M.P.No 19840 of 1989 on 2nd August, 1989 alleging that the order dated 26th July 1989 was not complied with for the reason that the third respondent had already been relieved from Perumbavoor and had taken charge at Alwaye on 24th July, 1989 before this Court issued the order dated 26th July, 1989. After hearing counsel for the petitioner, standing counsel for the Water Authority, and counsel for the third respondent, I passed an order on 3rd August, 1989, to the effect, that the order passed by this Court in C.M.P. No. 19009 of 1989 on 26th July, 1989 shall be immediately complied with. I also issued directions to the third respondent not to interfere with the petitioner's work as the Technical Assistant in the World Bank Project Division at Alwaye.

3. The third respondent has filed two counter-affidavits, one in C.M.P. No.19840 of 1989 and CM.P. No.19841 of 1989, and the other in the Original Petition itself. In the former, she explains the circumstances in which she was relieved from Perumbavoor on 22nd July, 1989 pursuant to Ext. P1 order. That is evidenced by Exts. R3A, R3C and R3F. She asserts that she was occupying the Departmental quarters at Head works Camp, Alwaye in pursuance to permission granted in that behalf under Ext. R3B. Rule 126 of the Kerala Service Rules was referred to make out that she could take only one day as joining time and therefore she had to take/assume charge at Alwaye pursuant to Ext. P2 order on 24th July, 1989. She submits that she had worked in the Alwaye Office from 31st July, 1989 to 3rd August, 1989 and that she has not flouted any order of this Court. She submits that due to physical ailment evidenced by Exts. R3D and E, she is constrained to attend only to such work as does not involve travel and the only post in Alwaye which does not involve travel is that of Technical Assistant in the World Bank Project. She submits that it was solely due to that reason Ext. P1 order was modified in Ext. P2 order so as to post her back to Alwaye.

4. In the counter-affidavit in the Original Petition, she asserts:

"It is true that when I was transferred to Perumbavoor, I had represented to the authorities my hardships and inconveniences and had pointed out that I do suffer from certain physical ailments and if it will not inconvenience any person, I had requested that I may be given a posting to a station which will not involve travel and dislocation of my family. I have learnt reliably that the petitioner who was transferred from Trivandrum was also moving the authorities for a transfer back to Trivandrum. I hoped therefore that I would be posted back to Alwaye. It is submitted that it is totally incorrect and irresponsible to say that I have high

political influence. If it had been"so, I would not have been transferred to Perumbavoor at ail."

It is asserted that Ext.P3 guidelines will not apply to the Water Authority since the Authority has not adopted that. It is submitted further that if the petitioner relies on Ext. P3, he is bound to submit his grievance before the Water Authority under Clause 18 of that Order.

5. In the two counter-affidavits filed on behalf of the first respondent on 10th August, 1989 and 22nd August, 1989, it is asserted that Ext. P2 order was passed "in the exigencies of service" and "for administrative reasons". It is stated that the service of the petitioner was more essential at Ernakulam than at Alwaye and that is the reason why Ext.P2 order was issued. It is also asserted that the number of years of service in a particular station is not a criterion for transfer and it depends on many other factors. Those other factors have not been specified in detail in the counter-affidavit. But, the Authority asserts that it had not adopted Ext. P3 containing the guidelines in the matter of transfer of Government employees. It is therefore asserted that the guidelines do not apply. It is further asserted that there is no rule that employees who had not completed three years in one station shall not be transferred; when vacancies arise it can be done. The Authority asserts that the posting at Ernakulam rather than at Alwaye will be more convenient to the petitioner, and therefore there is no bona fides in his approach to this Court challenging Ext.P2 order. In the second counter affidavit filed on 22nd August 1989 it is again asserted that Ext. P2 order was passed "on administrative reasons due to exigencies of service". It is, however, disclosed that the third respondent's physical ailment as represented by her with medical certificate was also taken note of in passing Ext.P2 order.

6. The question which arises for consideration is as to whether the second respondent was justified in cancelling Ext.P1 order, shortly after the same officer issued Ext.P1 order so as to accommodate the third respondent at Alwaye even after 3 1/2 years of service there. It is evident from the pleadings that the most important consideration which influenced Ext.P2 was an anxiety to accommodate the third respondent at Alwaye. It is clear from the counter-affidavits that it was the oral representations of the third respondent that led to Ext.P2 order in so far as the petitioner and the third respondent were concerned. It is also clear from the second counter-affidavit filed on behalf of the Authority on 22nd August, 1989 that it was the physical ailment of the third respondent as represented by her with medical certificates that prompted the second respondent to pass Ext.P2 order so as to accommodate the third respondent at Alwaye itself. It is evident that the modification of Ext. P1 by issue of Ext. P2 amounts to an out-of-the ordinary departure from the usual practice and policy of the Water Authority in the matter of transfer of its employees. The position taken up by the first respondent is that he is not bound by any principle or guidelines contained in Ext.P3 and he can therefore transfer any of the subordinates at any time "for administrative reasons due to exigencies of service".

7. Two important questions therefore arise for consideration: (1) whether the first and second respondents have absolute discretion and power to order transfer of its employees and cancel the same within a short period of time only to accommodate one of the transferees? and, (2) whether the phrases "administrative reasons due to exigencies of service" will justify out-of-the ordinary orders of transfer?

8. On the first question, I am reasonably certain that the power of transfer also shall be exercised only for bona fide purposes and any such order is liable to be reviewed on grounds of absence of goodfaith or abuse of power. There is certainly an area of discretion in the Authority in such matters. But that discretion may have to be tested on the touch-stone of reasonableness when it is challenged on grounds of arbitrariness or unreasonableness, absence of goodfaith or abuse of power. It is elementary that all wielding of power shall be bona fide and reasonable and shall not amount to abuse of power. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the question was considered with specific reference to transfer of a Senior Civil Servant. The following observations are relevant in this context (p.202):

Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant, but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16..."

Almost to the same effect are the observations of the Supreme Court in *Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another*, . The Court held (pp 27-28):

"6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C. J., in *Pilling v. Abergele Urban District Council* (1950) 1 KB 636, where a duty to determine a question is conferred on an authority which state their reasons for the decision, and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter;."

Reliance was placed on the observations of Lord Goddard, C.J. in *Pilling v. Abergele Urban District Council*, (1950) 1 KB 636 and Lord Esher M.R. in *The Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras*

(1890) 23 QBD 371 at 375. The same position is covered by the decisions of Lord Greens in *Associated Provincial Picture Houses v. Wednesbury Corporation* (1947) 2 All ER 680, of Lord Parker C.J. in *Taylor v. Munrow* (1960) 1 All ER 455 (460) and Lord Macnaghtan in *Kennedy v. Birmingham Licensing Planning Committee* (1972) 2 All ER 305. Decisions in this regard are a legion. I do not propose to multiply authority on this point. It is, sufficient for me to follow Royappa, (supra). I am therefore of the opinion that the claim of the Authority that it shall not subject itself to any guideline, any principle, any standard, in the matter of ordering transfer of its employees cannot be accepted.

9. I am equally certain that the ritualistic repetition of "administrative reasons due to exigencies of service" shall not preclude all judicial review of orders of administrative authorities, if it is manifest or can be demonstrated that the power was exercised arbitrarily or unreasonably.

10. It is evident from the pleadings that Ext.P3 has not been adopted and therefore does not apply to transfers of employees of the Water Authority. That by itself does not justify the claim that the Water Authority or its subordinates have power to cancel any order as and when it pleases them. Nor does that, fact justify a claim that the Authority is entitled to pass orders out-of-turn so as to accommodate an employee who has overstayed her term, or was otherwise due for transfer, at a particular station and who made an "oral representation with medical certificates" under the guise of administrative reasons due to exigencies of service.

11. The Supreme Court had occasion to consider the effect of the recital of such statutory formula on the scope of judicial review of administrative action in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , p. 192: The Court held:

"32. It is also clear that, even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the Court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori, the Court may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the Court will interfere."

12. Counsel for the Water Authority invited my attention to the decisions of this Court reported in *Babu v. State of Kerala* (1988) 2 K LT 258 and *Nirmalanandan v. Divakaran* (1989) 1 K LT 126. He asserted that those decisions are to the effect that transferability being an incident of service of any employee, orders of

transfer shall not be subject to challenge in proceedings under Article 226 of the Constitution of India. If that assertion be right, there is nothing more to be done in this case. The Original Petition can only be dismissed. But I do not understand either of those two decisions to lay down that orders of transfer of Government employees can never be challenged under any circumstances at all.

13. The same question was considered by this Court and the Supreme Court in a number of decisions. Perhaps one of the earliest among the decisions of this Court is by K.K.Mathew, J., as he then was, in *Abdul Khader Vs. Regional Deputy Director of Public Instruction*, It was clearly laid down that the power of transfer shall be used only in a reasonable manner even in the exigencies of service, and shall not be used for collateral purposes or as an instrument of harassment or for punishing an employee.

14. In *Mathew Muthalali, Sub-Inspector of Police Vs. Revenue Divisional Officer and Others*, my learned brother Subramonian Poti,J., as he then was, adopted the same principles. In later decisions, in *Balan v. D.P.O. Malappuram* 1975 KLT 375, *Chandrasekara Menon, J., P. Pushpakaran Vs. Coir Board and Another*, and *Gopalakrishna Iyer v. State of Kerala*, *Khalid, J., as he then was* ILR (1983) Ker 388, *Mohammed v. Director of Panchayat* 1982 K LT 258, *Balakrishnan Menon., and Mini v. D.D.E. Ernakulam* 1984 K LJ 457 (myself) have adopted the same reasoning that the power of transfer is not beyond reviewability. It does not give, according to the above decisions, an arbitrary power to the employer to use it according to its whims and fancies. Those decisions lay down positively that the power of transfer shall not be used for the purpose of harassment and victimisation, or even for accommodating one of the employees at the expense of another. The decisions of the Calcutta High Court in *Dr. Smt. Pushpika Chatterjee v. State of West Bengal* 1972 Lab IC 1396 and of the Patna High Court in *Ramanek y. State of Bihar* (1975) 2 S LR 67 have held that if the power is exercised for the purpose of favouring one or accommodating one at the expense of another, that would amount to colourable exercise of power.

15. The decisions of the Supreme Court on the same aspects are not a few. In *Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna Division, Patna and Others*, the Supreme Court observed, that the authorities ordering transfer of employees are bound to act in a reasonable manner and any complaint of unreasonableness must be considered by the authority superior to that which orders transfer. In *Governing Body, St. Anthony's College, Shillong and Others Vs. Rev. Fr. Paul Petta of Shillong East Khasi Hills*, the Supreme Court observed in the case of a transfer of a Principal of a Private College, that the appointing authority shall effect the transfer of that person only in compliance with the conditions of affiliation of the College, viz., that such transfers are ordered only with notice to the Principal of the College. The decision of the Supreme Court in *S.R Venkataraman v. Union of India*, (supra), also supports this proposition.

16. Recent decisions of the Supreme Court have put the position regarding the

scope of review of orders of transfer of government employees beyond controversy. In *B. Varadha Rao Vs. State of Karnataka and Others*, the Court observed (p.518):

"It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated".

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"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to every body equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period".

*Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, dealt with a case of discharge from service of an employee who refused to comply with an order of transfer. The Gujarat High Court held, that the discharge was violative of the principles of natural justice. Relying on clause 113 of the Service Regulations, which provided for summary discharge from service without the necessity of disciplinary proceedings under the relevant rules, the "Supreme Court allowed the appeal filed by the employee. In that context the Court made the following observations (pp 472-473):

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred he must comply with the order, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to

comply with the order of his transfer from one place to the other"

Counsel for the third respondent sought to rely on the above observations to contend that orders of transfer cannot be challenged in proceedings under Article 226 of the Constitution of India.

17. I do not understand that decision to lay down any such proposition, nor do those observations have the effect of unsettling the position of law crystallised in a number of precedents which I have referred to, to the effect that in case if the order is shown to be vitiated by mala fides, or amounts to an abuse of power, or is made for collateral or oblique purposes, or is arbitrary, the court is not without power to grant necessary relief. That position is reiterated in Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh and Others, in the following terms:

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides".

18. The basic question which has to be asked and answered as in the case of any other order made in exercise of administrative discretion is, whether the order of transfer is vitiated by mala fides, or abuse of power, or, though worded in innocuous terms, really camouflages collateral or oblique purposes like unduly favouring one at the expense of another or is to penalise or victimise or harass the concerned employee. The answer which courts have given over the years has been that if such vitiating circumstances are shown to exist, the courts will step in, review the order of transfer and grant such relief as the justice of the cause demands.

19. I will refer to some of the decisions of the other High Courts bearing on this question. Chiraranjan Shit v. State of West Bengal 1981 Lab IC Cal 1617 . Y.V. Thatte Vs. State and Maharashtra and another, , Govind Prasad v. Union of India (1980) 2 S LR 529: (Raj), C.Ramanathan v. AZM,FCI, Madras 1980 I LLJ I (Mad), PC. Saxena v. State of M.P. 1980 Lab IC 1311 (Madh Pra) and V.S. Sastry v. Government of A.P. 1980) 1 S LR 884 (Andh Pra), are only a few of the decisions which lay down the proposition that no appointing authority can claim or be granted an unbridled power to order transfer and compel employees to be shifted from place to place without any reasonable explanation for such conduct on its part.

20. Decisions from abroad on this aspect relating to discretion in the matter of transfer of Government employees also support the above proposition. I need only refer to the following observations of Lord Denning, M. R., In Merricks v. Nott Bower (1964) 2 WLR 702, at. P. 707:

"... It is a well-known principle of our law that any powers conferred by statute or regulation on an executive or administrative authority must be exercised in

good faith for the purpose for which they are granted. They must not be misused or abused by being applied to an ulterior purpose. Whether that principle applies here or not, I do not say; all I do say is that if the plaintiffs allege, as they do, that this was a misuse of the power of transfer-that it was used, not for the purpose of good administration and efficiency but for the motive of punishment-they have an arguable case which they are entitled to have tried by the courts".

21. Two decisions of this Court, which are of considerable importance are Dr.E.T. Kuriakose v. State of Kerala (1979) 2 S LR 508, and Dr. Damodaran v. State of Kerala 1982 Lab IC 251), by Chandrasekhara Menon J.

22. The question of reviewability of orders of transfer of employees was considered by a Division Bench of this Court in Director, Telecomms. v. Sukumaran Thampi 1094 KLT LJ 476. Subramonian Poti, Ag.C.J., as he then was, speaking for the Bench, laid down the proposition, that if a Government employee, who is transferred, is able to show before this Court in proceedings under Article 226 of the Constitution, that he was transferred due to considerations which were not relevant or germane to exigencies of service, this Court is entitled to interfere. The following extract from that decision is important:

"...If in normal cases a period is fixed for a person to anticipate to remain in a station any transfer before the expiry of the period in the case of any individual employee would be a discriminatory exercise unless such transfer is for valid reasons such as the need to hold an enquiry and the need to keep away the person concerned from that station pending that enquiry. Of course there may be administrative reasons for transferring a person before the expiry of the normal period, for, exigencies of service may perhaps require the transfer of the person concerned to another station either because of his extreme efficiency by reason of which his services are required elsewhere or because of his inefficiency which makes him unsuitable for the place he occupies. In either case it is due to the existence of valid reasons which are directly relevant to the interests of service that his transfer is thought of. If there be no reason and even then he is transferred while others are normally kept in a station for four years it would be a discriminatory treatment meted out to such persons. That is the reason why a person comes to Court challenging a transfer. Why he has been moved out of a station earlier than the expiry of the normal period for which he could expect to be in the station? This charge of discrimination has to be met by the Government by disclosing to the court the real reason for his transfer and the materials which enabled an opinion to be formed that there was such a reason. Of course the court will not sit in judgment over the decision of the authority effecting the transfer, but will certainly scrutinise the explanation offered for the transfer to see how far the reason stated is relevant and is supported by relevant material. This Court and the Supreme Court has said time and again that even in the matter of a transfer the mere whims and fancies cloaked by the expression "interests of service" or "public interest" may not by itself justify the transfer

contrary to normal guideliness or rules. We have come across cases where nevertheless the respondents who are responsible for the transfer not only are not fair to disclose reasons in the counter-affidavit, but take the stand that it may not be necessary."

23. Another Division Bench of this Court (Khalid and Balagangadharan Nair, JJ.) in W.A.No.490 of 1181 affirmed the decision in *Dr. Damodaran v. State of Kerala*, (supra). Dealing with almost similar facts of retransfer of the appellant to a station of his choice allegedly on compassionate grounds after 9 months, the Division Bench made the following observations:

"We do not find any mention of any compelling reason therein to justify the displacement of the petitioner to accommodate the 3rd respondent. It is true that Clause 7 gives a right to the authorities concerned to effect transfers overlooking the directions contained in Clause 2...But the transfer effected in this case of the petitioner and the third respondent should be demonstrated to have been done in public interest or for other compelling reason...without making any other observation, we only state the fact that the 3rd respondent-appellant immediately after he was transferred to Calicut assumed charge and took leave and thereafter was safely placed at Tirur on request transfer. The materials placed before us do not justify his retransfer to Tirur. We find that the learned Judge was justified in holding that the transfer of the 3rd respondent-appellant back to Tirur was not proper".

24. Neither *Babu v. State of Kerala*, (supra) nor *Nirmaianandan v. State of Kerala*, (supra) has strayed away from the principles laid down in the binding precedents from the Supreme Court and earlier Bench decisions of this Court, which I have referred to above at some length. In both cases the complaint was against departure from one or the other of the guidelines contained in the Government Order relating to transfer. In both cases, the contending parties had almost equally balanced claims in their support. It was in that context that the Division Bench dismissed the appeals. In *Nirmaianandan*, (supra) the Bench went a step further and held on the basis of *Varadha Rao*, (supra) that transferability is an incident of service, and-

"no government servant can claim to remain in a particular place or in a particular post, unless of course his appointment itself is to a specified non-transferable post".

That principle does apply in all ordinary cases of transfer. But I do not find anything either in *Babu* or *Nirmalanandan*, which precludes judicial review of out-of-the-ordinary orders of transfers which are manifestly and demonstrably mala fide or amount to abuse or colourable exercise of power. *Babu* and *Nirmalanandan*, dealt with ordinary orders of transfer passed in the usual course, whereas *Director of Telecommunication v. Sukumaran, Thampi*, (supra) and *Writ Appeal No.490 of 1981* and a host of decisions of this Court which I have referred to above, dealt with out-of-the-ordinary cases in which the power or discretion

was exercised mala fide or for collateral purposes or was abused. The effect of neither Babu nor Nirmaianandan was to overrule any of those precedents which dealt with a different aspect of the exercise of administrative discretion and its reviewability. The respondents are not therefore right in their submission that this court has held either in Babu or in Nirmaianandan that orders of transfer can in no circumstances be the subject matter of proceedings under Article 226 of the Constitution of India. It is well to remember that in Babu and Nirmalanandam, the Bench approved the decisions disposing of Original Petitions holding that orders of transfer impugned therein did not amount to abuse or mala fide exercise of power. The single Judges had examined the complaints of the petitioners and refused to grant relief. The impugned orders were found to be orders issued by the competent authority in the exigencies of service. Those decisions therefore dealt with the usual orders of transfer for administrative reasons. It is well to remember that in Nirmaianandan, the appellant had been working at Trivandrum for over 12 years; and it was his assertion that he was entitled to remain in the same station indefinitely under cover of one of the clauses of the guidelines that was rejected concurrently by the single Judge and the Division Bench. As I have stated earlier, the relief which the petitioner seeks in this Original Petition is not enforcement of any provision of the guideline, but freedom from what the Supreme Court described in Varadha Rao, (supra) as-

"frequent, unscheduled and unreasonable transfers".

The observations in Varadha Rao, which I have extracted in paragraph 16 above, constitute law declared by the Supreme Court about abuse of the power of transfer and the need for review in cases where such abuse is manifest. I am bound to follow them in view of Article 141 of the Constitution of India, even in spite of discordant notes in prior or subsequent decisions. I am sure that if my learned brethren in the Division Bench intended to overrule prior decisions, they would have done so in specific terms. If they doubted the correctness of prior Division Bench decisions dealing with out-of-the-ordinary orders of transfer which are vitiated by mala fides or abuse of power or collateral or oblique purposes, they would have referred the matter to a larger Bench for consideration as Leach C.J., held on behalf of a Full Bench in *G. Seshamma v. K.V. Narasimharao* AIR 1940 (Mds) 356. The Supreme Court also reiterated the same principles of propriety in its decisions in *Shri Bhagwan and Another Vs. Ram Chand and Another*, at p.1778, *Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel*, at p.376 and *Shyamaraju Hegde Vs. U. Venkatesha Bhat and Ors*, at p.2327. I have, therefore, no hesitation in holding that neither Babu nor Nirmalanandan, is authority for ousting the jurisdiction of this Court, to review orders of transfer in deserving cases of manifest abuse of power or other like causes. I cannot persuade myself to agree that this Court, steeped in the traditions of judicial decorum and propriety and excellence in its pronouncements, must be taken to have overruled precedents which have held the field for over two decades or concealed its disagreement with decisions of coordinate Benches on the same point without referring to them or ignored binding precedents of the Supreme

Court - many of which I have referred to above.

25. The question whether recitals like "administrative exigencies" or "public interest" will be sufficient to exclude judicial review and justify the exercise of power of transfer in extraordinary circumstances was considered in some of the decisions of this Court 1978 K LT 539: 1979 Lab IC 13), (1979) 2 S LR 508, ILR (1983) 1 Ker 143: (1982 Lab IC 251) ILR (1983) 1 Ker 388 etc.) following Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, which I have referred to above. The definite case of the petitioner is that all employees are subjected to periodic transfers and normal period is that which is indicated in Ext.P3 guidelines. It is true that Ext.P3 applies only to government employees. I have found that the 1st respondent is right in this submission. But that does not mean that an unregulated power shall be conceded to him to issue "frequent unscheduled or unfair" orders of transfer according to his whims and fancies. The Supreme Court has pointed out in Varadha Rao's case, (supra) that "it cannot be forgotten that so far as superior or more responsible posts are concerned continued posting at one station or in one department of the government is not conducive to good administration". The court also indicated that there shall be periodicity in transfer which shall be fair and reasonable and apply equally to all. Transfer of the petitioner out of Alwaye within 4 months of his posting there only for the purpose of accommodating the third respondent in the post and station in which she had completed 3 1/2 years of service cannot but be considered as arbitrary and unreasonable. It is important to note that the respondents have no case that petitioner and third respondent were not due for transfer at the time when Ext.P1 order was passed. In that event, cancellation of that order by Ext.P2 can only be treated as an out-of-the-ordinary order. It is not denied that in the case of the petitioner he was transferred out-of-turn hardly four months after he was transferred to Alwaye. It is also practically conceded that he was moved out of Alwaye only for the purpose of accommodating the third respondent. These facts cannot be camouflaged by the recital, that the transfer of the petitioner to Ernakulam was occasioned by administrative reasons in the exigencies of service. I am not in a position to hold that the statement contained in the counter-affidavit filed by the Water Authority that Ext.P2 was fully justified by administrative reasons shall be the last word in the matter. What those "administrative reasons in the exigencies of , service" were, have not been explained. The case of administrative exigencies of posting the petitioner at Ernakulam as pleaded by the first respondent is belied by his own counter-affidavits and those of the third respondent. This equivocal stand lends considerable support to the case of the petitioner that Ext.P1 was modified not in administrative exigencies but only to favour the third respondent. The only explanation which I could discern from the counter-affidavit of respondents 1 and 3 is that the third respondent had some physical ailment and she had made representations before the second respondent along with medical certificates. Such representations were oral is clear from the pleadings. It was only and entirely because of the oral representations that the first respondent decided to

cancel Ext.P1 order to accommodate the third respondent. I have no doubt that the anxiety to accommodate the third respondent is not an administrative reason in the exigencies of service or public interest.

26. I am of the view that there was absolutely no justification of public interest or exigencies of service or administrative reasons why the second respondent should have passed Ext.P2 order in modification of Ext.P1. Such modification resulting in shifting the petitioner from Alwaye within four months after he was transferred to that station amounted to an abuse of power. The anxiety to accommodate the third respondent at Alwaye in which station and post she had completed 3 1/2 years of service was a collateral and oblique purpose. The undue solicitude of the first respondent for the convenience and welfare of the petitioner and the discovery that his service would be more useful at Ernakulam only camouflages an anxiety to provide for the third respondent at any cost. These vitiating circumstances render Ext.P2 in so far as it relates to the petitioner and the third respondent illegal and unsustainable. Respondents submit that posting at Ernakulam must suit the petitioner better, since he belongs to Trivandrum and there is no bona fides in his challenge against Ext.P2 order. That at least is something which the petitioner has to say and cannot be imposed upon him either by the third respondent or the first respondent. It is clear to me that Ext.P2 order in so far as it retransferred the third respondent to the same post in Alwaye which she had been occupying for over 3 1/2 years and transferred the petitioner to Ernakulam only to accommodate her amounted to an abuse of the power of transfer for an unreasonable and collateral purpose.

27. In the result, I allow the Original Petition and quash Ext.P2 order to the extent it related to the modification of Ext.P1 order in so far as it concerned the petitioner and the third respondent. Parties will suffer their respective costs.

28. Issue photo copies of this judgment to counsel on both sides on usual terms.