

(2010) 09 KL CK 0111
In the High Court Of Kerala
Case No : W.A. No. 1623 of 2010

M.K. Kuttykrishnan, Excise Guard

APPELLANT

Vs

State of Kerala, Commissioner of Excise, Deputy Excise
Commissioner and Deputy Excise Commissioner

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0111

Hon'ble Judges : Jasti Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : S.P. Aravindakshan Pillay, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The issue projected in the writ appeal is whether the appellant is entitled to retain his seniority in Kannur District, pursuant to the inter-district transfer from Wayanad to Kannur, sought for and obtained by him on the basis of the relevant Government Orders then in existence.

2. The case has got a long history.

3. The appellant/petitioner was appointed as Excise Guard in the Excise Division, Wayanad on 23.9.1986 on the advice of the Kerala Public Service Commission by its District Office, Wayanad and he joined duty in Wayanad District. Later, he sought for inter-district transfer referring to the ailments of his father to a post in Kannur District contending that he was entitled to have some preference being the near relative of a soldier and that the stipulation to have completed five years before seeking such inter-district transfer was to be waived. Referring to the enabling orders as Exts.P3, P4 and P5, the appellant approached this Court by filing O.P. No. 2157 of 1994 wherein Ext.P7 judgment was passed on 30th March, 1994, directing to have his grievances considered.

4. In this context it is very much relevant to note that the norms for inter-district

transfer which were originally issued as per the relevant Government Order issued in the year 1961 stipulated that such transfer would be considered only on completion of five years of service and that the applicant will lose his seniority and will be treated as the junior-most hand in the transferred district. Pursuant to Ext.P7 judgment the matter was considered and Ext.P9 order was passed on 8.8.1996, whereby the appellant's claim was favourably considered and was ordered to be given a posting in Kannur District, making it clear that the appellant will join duty as the junior-most Excise Guard in Kannur Division. The appellant sought to challenge the above proceedings by filing O.P. No. 16800 of 1996 pointing out that he was entitled to have retained his seniority by virtue of the stipulations under Exts.P3, P4 and P5, he being the near relative of a soldier. After hearing both sides, this Court observed as per Ext.P11 judgment dated 13th January, 2005 that, by the time the matter was considered by the concerned authority Ext.P10 Government Order dated 2.12.1991 had already come into existence and going by the norms stipulated therein, the earlier conditions fixed as per Exts.P3, P4 and P5 had undergone a sea-change, making it clear that even in the case of near relatives of soldiers, they were to lose the seniority on granting such inter-district transfer. In the said circumstance, it was held that no interference was possible and accordingly, the legal and factual positions were answered against the petitioner and declined the reliefs sought for in this regard. However, taking note of the contention of the writ petitioner that he had already made a request to have a posting back to Wayanad District, he was permitted to file a representation in this regard, on which event, the first respondent was directed to consider the same and pass appropriate orders within a period of two months as specified. Pursuant to Ext.P11 verdict, the appellant/petitioner preferred a representation as borne by Ext.P12, which was considered by the concerned authority, who rejected the same as per Ext.P13 order dated 27.7.2005. It was challenging the said proceeding that the petitioner chose to approach this Court by filing W.P.(C) No. 25680 of 2010, virtually after five years of passing Ext.P13, simultaneously challenging Ext.P9 as well. Learned Counsel for the appellant submits that Ext.P13 has not become final, in so far as the appellant has filed Ext.P14 representation which is now stated as pending before the concerned Secretary to the Government, as borne by Ext.P15.

5. After hearing the learned Counsel for the writ petitioner, the learned Single Judge observed that the contention of the petitioner to reckon the seniority in Kannur District has already attained finality by virtue of Ext.P11 judgment and hence the same was not liable to be entertained afresh. With regard to the challenge raised against Ext.P13, it was observed in the last paragraph of the impugned judgment that no rule for cancellation of inter-district transfer once granted and no provision, either in the Special Rules or in the General Rules providing for cancellation of inter-district transfer once granted, was brought to the notice of the Court and accordingly, it was held that nothing erroneous was shown with respect to Ext.P13 as well. The appellant is challenging the correctness and sustainability of the above findings in this writ appeal.

6. With regard to the challenge raised against the loss of seniority on inter-district transfer, it is pertinent to note that by the time Ext.P9 order was passed, Ext.P10 Government Order dated 2.12.1991 had already come into existence and it was on the basis of the stipulations contained therein, that the matter was considered granting transfer to Kannur District; making it clear that the appellant was to suffer the loss of seniority. Obviously, there is no challenge against Ext.P10 Government Order in this round of litigation or even in the earlier writ petition wherein Ext.P11 judgment was passed. Clause 4 of Ext.P10 reads as follows:

4. Government have weighted the interests of the candidates in PSC rank lists and those who have already secured appointment seeking transfers to districts other than those opted by them. They are of the view that the sanctity of PSC lists have to be protected against distortion by indiscriminate transfers of those who have already secured appointments, to the detriment of those in PSC rank lists. They, therefore, order in supersession of the existing orders, that hereafter inter-district transfers will be allowed only on the following conditions.

i) Such transfers will be allowed only after completion of five years service in the district of recruitment. The only exceptions to this rule will be the cases of transfer to the district of choice, of candidates advised from district rank lists to headquarters vacancies and that of near relatives/dependents of serving soldiers/soldier's killed in action or died while duty in field/forward areas. Periods of service spend on deputation in a different district will not be reckoned as service for this purpose.

ii) Any inter-district transfer except the one of candidates advised to headquarters vacancies to the district of his choice will entail loss of seniority. Service prior to the transfer will count towards increment, leave and pension benefits.

It is also pertinent to note that Clause (6) of Ext.P10 Government Order stipulates that only 10% of the vacancies arising in the district in an year in a category in a department shall be filled up by inter district transfer, including relaxation cases and cases of near relatives/dependents of soldiers. In so far as the above stipulations were not under challenge and Ext.P10 Government Order has not been sought to be set aside, the challenge raised against Ext.P9 which has attained finality by virtue of Ext.P11 judgment is not assailable under any circumstance and no interference is warranted on this score.

7. With regard to the challenge raised against Ext.P13, as pointed out already, it was an order passed nearly "five years ago" by the concerned authority which can not be subjected to challenge by approaching this Court in the year 2010. True, there is a case for the appellant that he has filed Ext.P14 representation and that the same is pending consideration before the Government. It is open to the appellant to pursue Ext.P14 representation for consideration by the concerned authority. Absolutely no interference is warranted with regard to the

finding arrived at by the learned Single Judge, but for making it clear that the observation contained in the last paragraph of the verdict with regard to the absence of Rules is also left open, as a matter to be agitated and highlighted by the appellant before the Government, if he is so advised.

Writ appeal fails and the same is dismissed accordingly.