

(2021) 08 KL CK 0073
In the High Court Of Kerala
Case No : Writ Petition (C) No.17 Of 2021

Mohammed Shafeer K.M

APPELLANT

Vs

Chairman, Kerala State Electricity Board Vidyuthi Bhavan

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Citation : (2021) 08 KL CK 0073

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : K.P.Satheesan, P.Mohandas, K.Sudhinkumar, S.K.Adhithyan, Sabu Pullan, Gokul D. Sudhakaran, Asok M.Churian, N. Satheesh

Judgement

Anu Sivaraman, J

1. This writ petition is filed seeking the following reliefs:-

i)to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext. P3 order No. EB4(b)/Ovr(ele)/GT/2020 dated 4-9-2020 issued by the

respondent to the extent of transferring the petitioner from Moothakunnam Electrical Section (North Paravur Geographical area) to Para Electrical Section (Thalassery

Geographical area) as the same is vitiated with malafides and ill motives.

ii)to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext.P7 order No. EB4(b)/Ovr(Ele)WP(C)22293/2020 dated 21-12-2020 issued

by the 2nd respondent as it is vitiated with malafides and arbitrariness;

iii) to issue a Writ of Mandamus or order or direction to the respondent to give a transfer to the petitioner as requested in Ext.P1 to Electric Section, Marayoor in

Adimali Geographical area, if necessary, by transferring out the incumbents have longer years of service at Marayoor;

iv) to issue a Writ of Mandamus or order or direction to the respondent to consider the claim of the petitioner for a transfer to Marayoor in the light of Ext.P2 transfer

guidelines as he has completed more than three years of service at Moothakunnam Electrical Section;

v) to declare that the petitioner is entitled for a transfer to Marayoor Electrical Section under Adimali Division as there are two open vacancies of Overseers and also

there are large number of Overseers continuing there for more than 20 years even without a single transfer.â??

2. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

3. It is submitted that the petitioner is the Overseer in the respondent Board attached to the Moothakunnam Electrical Sub-division in North Paravur

Geographical area. He was working in the said station from 2014. He had, therefore, submitted a request for transfer to Marayoor Electrical Sub-

division in Adimaly Geographical area. It is contended that there are a number of Overseers who have completed 15 to 24 years of service at those

stations. However, the request of the petitioner for a posting at Marayoor was declined and the petitioner was transferred out to Thalassery. Though

the petitioner submitted an objection to the draft transfer order, the objection was overruled and final transfer order was issued affirming the transfer

to Thalassery. The petitioner submitted Exhibit P4 representation before the respondents. Ext.P5 order was issued by the 2nd respondent. Against

Exhibits P3 and P5 orders, the petitioner filed an appeal before the 1st respondent. Since no decision was taken on appeal, the petitioner approached

this Court. By Exhibit P6 judgment dated 9.11.2020, the respondents were directed to consider the claim of the petitioner. By Exhibit P7 order, the

representation of the petitioner was rejected. It is stated in Exhibit P7 that 133 Overseers, who had completed 3 years of service in Ernakulam district,

were transferred out to northern districts of Kerala in order to accommodate all eligible requests for accommodation in Ernakulam district. It is stated

that there were no eligible requests in to Idukki district in the General Transfer 2020. Moreover, it is submitted that one of the conditions to become

eligible for transfer is that domicile of the employee should be in the requested district. It was stated the petitioner's voluntary choice was Marayoor

and none of the Overseers working in Marayoor had completed 3 years at that station. It is further stated in Exhibit P7 as follows:-

“On a close examination of vacancy position pointed out by the petitioner it is learnt that contention of vacancy position in Electrical Section Marayoor would not be accepted by KSEBL because Board can manage the works at Electrical Section Marayoor by arrangements already existing in Electrical Section Marayoor. No

exigency is found greater than that at the office of Electrical Section Parad in Kannur, where the petitioner is posted. General Transfer 2020.”

4. The learned counsel for the petitioner submits that the said findings in Exhibit P7 are completely arbitrary and illegal and are intended only to decline

the request made by the petitioner for a posting at Marayoor to which he is fully eligible. It is submitted by the learned counsel for the petitioner that

there is no stipulation in Exhibit P2 guidelines to the effect that the workmen can make a request for transfer only to the domicile stations. It is,

therefore, contended that it is only to protect the persons working in Adimaly from transfer that an order in the nature of Exhibit P7 had been issued.

5. A statement has been placed on record on behalf of the 2nd respondent. It is stated in paragraphs 2 to 5 as follows:-

“2. KSEBL adopted online transfer system since 2017 through HIRS software. Online General Transfer is guided by Software Requirements Specification for

Online Transfer of Workmen and Officers of KSEBL and under general conditions, an employee is liable to be transferred out from his present Working

District after the employee completes 3/5 years in that station based on the eligible Transfer in requests and available vacancies. Such type of employee

transfer process is termed as District Transfer Out. Based on the eligibility as on the cut-off date, the online system marks employees for domicile district

Transfer-Ins and corresponding district Transfer Outs. In the case of voluntary requests, employees who have obtained posting on account of transfer-in or transfer-

out are excluded from the list automatically. It is also submitted that posting according to voluntary chosen area considered only if vacancies are available within the

choice area.

3. It is submitted that petitioner was transferred out in order to accommodate eligible transfer-in requests. 133 overseers who have completed 3 years in

Ernakulam District, comprising Aluva, Angamaly, Ernakulam, Mattancherry, Moovatupuzha, North Paravur, Tripunithura and Perumbavoor Geographical Areas, were

transferred out in General Transfer 2020 and all the transferee are bound by the same logic and all are posted accordingly to the software logic by the system in the

General Transfer process. The petitioner ranked 23 in the seniority list of overseers in North Paravur, geographical area and persons ranked up to 31 were transferred

out.

4. Exhibit P3 and P8 comprises a list of 1712 overseers, of which 898 were transferred in and out of Malabar region; 266 from Ernakulam, 202 from Thrissur, 196 from

Thiruvananthapuram,, 112 from Alapuzha, 66 from Kottayam, 48 from Palakkad and 8 from Pathanamthitta. Change in place of posting as shown in Exhibit P9 order

Gated 16-10-2020 was issued after applying transfer protection guidelines and addressing grievances related to General Transfer 2020.

5. It is submitted that the KSEBL does not require more personnel and Electrical Section, Marayoor as it can manage the works at Electrical Section, Marayoor with the existing arrangements.

6. A reply affidavit has also been placed on record by the petitioner. The petitioner has specifically pointed out that there is an open vacancy available

at Marayoor to accommodate the petitioner and in case the petitioner's request for a posting to Marayoor is considered in terms of the guidelines in the

next general transfer, the petitioner will be satisfied.

7. I have heard the learned counsel on either side and considered the contentions advanced. The issue is only with regard to a transfer of an employee

which is purely the administrative exercise to be undertaken by the employer. However, by Exhibit P6 judgment, this Court had directed the

consideration of the appeal preferred by the petitioner seeking a transfer to Marayoor in terms of the guidelines. Exhibit P7 order proceeds to state

that an employee can make a request for transfer only to a domicile station. It is further contended that the petitioner's request for a transfer to

Marayoor in the General Transfer cannot be considered since there is no necessity for the transfer of the petitioner to Marayoor. However, a reading

of Exhibit P2 guidelines would not support the contention of the respondents that a person can make a request for transfer only to a domicile station.

On the contrary, Clause 9 of Exhibit P2 would show that apart from request to domicile station, employees are eligible to make requests for transfer to

remote/hilly areas which will be considered if vacancies are available in the offices situated in such areas. It is the specific case of the petitioner that

there are vacancies available in Marayoor electrical section which is a remote/hilly area. The petitioner had admittedly submitted a request for transfer

to an office in the said station. This Court had directed the consideration of the said request as well. However, in Exhibit P7, the request of the

petitioner is turned down on the strange reasoning that "the Board can manage the works at Electrical Section Marayoor by arrangements already

existing in Electrical Section Marayoor".

8. Having considered the contentions advanced on both sides, I am of the opinion that the refusal on the part of the respondents to consider the

specific request of the petitioner for a transfer to Marayoor is completely unjustified. The reasons stated in Exhibit P7 for refusing to consider the said

request are beyond the scope of Exhibit P2 guidelines, which though non-statutory in nature, have been relied on by the respondents themselves in

Exhibit P7. In the above view of the matter, I am of the opinion that the writ petition is liable to be allowed. The impugned orders are set aside. There

will be a direction to the respondents to consider the application of the petitioner for General Transfer taking specific note of Clause 9 of Exhibit P2

and with regard to the vacancy position in the offices of the Board in the remote/hilly area to which the petitioner had made an option for being

transferred in the 2021-2022 General Transfer.

Writ petition is ordered accordingly.