
(1977) 12 KL CK 0016
In the High Court Of Kerala

P. Pushpakaran

APPELLANT

Vs

Coir Board and Another

RESPONDENT

Date of Decision : 19-12-1977

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1978) 2 ILR (Ker) 219 : (1979) 1 LLJ 139

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Judgement

V. Khalid, J.—In this writ petition I am called upon to decide the question whether the transfer of the petitioner by the Coir Board was in the exigencies of service or was for other reasons. The task is none too pleasant. I tried my best to persuade the counsel for the Coir Board to arrive at a satisfactory adjustment so that I could dispose of the writ petition without considering the rival contentions on merits. I wanted a consensual order if possible in view of the fact that the petitioner had continued at Ernakulam till now in spite of the transfer order dated 31-3-1975 and since the ground urged for Ext. P3 transfer is no longer available. The transfer was necessitated as a clerk in the Bombay Office went on leave for 45 days. She has now joined duty. Therefore, the need to fill up the vacancy and the administrative reason urged in support of Ext. P3 no longer exist. However, the counsel for the Coir Board was not amenable to this suggestion. His apprehension was that the cancellation of Ext. P3 transfer order might be indirectly interpreted to mean that the Coir Board had no power to transfer its employees. I made it clear that no one else disputed the power of an employer to transfer his employees for administrative reasons and a transfer could be called in question in a Court of law only when there was strong evidence in support of the mala fide plea. I have to decide the case on merits, since no agreed order can be passed.

2. The petitioner's case of mala fides has been projected in his petition and in the reply affidavit against the background of a long history of victimisation by the

then Chairman and the Secretary of the Coir Board of employees who, according to the petitioner, were not submissive to them. I shall simply state the facts on which the allegations of mala fides is ought to be built up.

3. The petitioner is a Lower Division Clerk in the Coir Board at Ernakulam. He joined service on 27-5-1968 and has been working in the Head Office of the Coir Board at Ernakulam. There are more than 200 employees in the Coir Board. The Coir Board Staff Association was founded in the year 1967. This Association was granted recognition by the Board on 8th July, 1968. The petitioner was the Treasurer of the Association when the writ petition was filed. The petitioner, according to him, has been an active participant in the affairs of the Association. (The averment that he has been so ever since the inception cannot be true because he joined service only in 1968 while the Association was founded in 1967). The 2nd respondent, present Secretary of the Coir Board, assumed office in 1968 and the Chairman in May, 1971. The Association wanted the Board to frame rules regulating the conditions of service of the employees of the Board so as to safeguard their interests. It is averred in the petition that this attempt of the Association led to unhappy relationship between the Association and the 2nd respondent and the 2nd respondent even tried to split the Association. The 2nd respondent is alleged to have taken the petitioner to task in October, 1972 when he was the Joint Secretary of the Association for having used the Coir Board premises for the purpose of the Association. As a consequence of this, the then Secretary of the Association wrote Ext. P1 letter to the 2nd respondent (The receipt of Ext. P1 is admitted by the 2nd respondent. No reply was sent since it did not merit a reply). Permission was refused by the 2nd respondent to the Association to hold its meeting within the Coir Board premises. This was strongly resented by the Association in its resolution dated 4-12-1972. It is alleged that the 2nd respondent, thereafter, started a war of attrition against those persons with whom he fell foul. Even the founder-President of the Association Sri P.K. Balakrishnan and then President Sri R. Bhaskaran Pillai were suspended on 8th February, 1973. The suspension was on the ground that they had abused one Sri M.P. Paul, another employee of the Coir Board. It is alleged that this Paul was a tool in the hands of the 2nd respondent who was used to build a rival association of the employees of the Coir Board. It is further alleged that this Paul had gone to some of the employees and demanded letters of resignation from the staff association.

4. One Shri G.N. Prabhu, the Director of the Central Coir Research Institute at Kalavoor was appointed as Inquiry Officer to conduct an enquiry against Sri Bhaskaran Pillai. The substance of the allegations as stated in para 5 of the petition is that an attempt was made by this Prabhu to somehow implicate the petitioner by directing him to hand over a memorandum to Bhaskaran Pillai and obtain his acknowledgement and submit the same to Sri Prabhu or to the Secretary. The petitioner is not in any way under the administrative control of G.N. Prabhu. This strange procedure was attempted, according to the petitioner, with ulterior motives. The petitioner escaped since he complied with the

directions to hand over the memorandum to Balakrishna Pillai.

5. After the suspension of the two main activists of the Coir Board Staff Association, the 2nd respondent wanted to proceed against another active member Sri K. Ramavarma Raja. Though he was promoted as a Superintendent in the Central Coir Research Institute at Kalavoor and had successfully completed probation for a period of one year was reverted in spite of the fact that there were two vacancies of Superintendents in the Coir Board. The further allegations in the petition relate to refusal of loans applied for by some of the employees. What is attempted is to make out that the refusal of loans was actuated by mala fides. In one case, a loan that was granted was later on directed to be refunded in violation of the agreement to which the 2nd respondent himself was a party and in another case an application for advance from the Contributory Provident Fund met with a reply from the 2nd respondent as follows :

I am not concerned with the reason. Apart from this, he is one who does not know how to organise his affairs within the salary. The request is therefore rejected.

The petitioner also applied for an advance from the Contributory Provident Fund in connection with his father's operation, but that was rejected. While the petitioner's application was rejected, certain other applications were allowed, thus discriminating the petitioner in the matter of grant of loans.

6. Another instance of victimisation was that of an active member Shri P.J. Antony being refused medical leave. In spite of the fact that the application was supported by a certificate from an Assistant Surgeon and confirmed by the District Medical Officer, the application was rejected. Sri Antony had subsequently to be admitted in the Lissie Hospital for over three weeks and the office had to sanction leave to him on the basis of their certificate. This attitude was the subject-matter of protest of the hands of the Association.

7. The petitioner came in for victimisation after the chain of events mentioned above. On 5-3-1975 the petitioner was distributing a pamphlet of the Coir Board Staff Association, which was noticed by the Secretary. It is alleged that the Secretary sent for the petitioner and warned him that he would have to pay heavily for this conduct.

8. At the Board meeting, the administration of the Board came in for sharp criticism at the hands of the members of the Board. It is further alleged that a news item appeared in the newspapers wherein the then State Minister for Industry called for the ouster of the then Chairman of the Board. All this culminated in Ext. P3 by which the petitioner was transferred to the show room and sales depot of the Coir Board at Bombay. By Ext. P3, the petitioner was directed to report at Bombay as early as possible. It is averred in the petition that he was relieved with effect from the same day. He made Ext. P4 representation which was rejected. Hence this writ petition to quash Ext, P3.

9. The counter-affidavit is sworn to by both the first and second respondents. It is stated in the counter-affidavit that Ext. P3 was issued "in the course of administrative routine and due to administrative necessity", and that it was not done mala fide. The show-room and sales-depot at Bombay has a Manager and two clerks. The increase in sales in the show room necessitated an additional post and the same was sanctioned. The post was advertised. The formalities connected with the selection of candidate would take some time. In the meantime, one of the clerks working in the show room entered on leave with effect from 28th April, 1975 for 45 days. Thereafter, there was only the Manager and a Lower Division Clerk. The clerk who took leave was a lady and was an Upper Division Clerk. Her request was granted and in the interests of the work in the show-room it became necessary to post a clerk from the Head Office. The Manager at Bombay wanted an experienced hand from the Head Office immediately. This resulted in the transfer of one Lower Division Clerk from among the Lower Division Clerks working in the Head office. It is stated in the counter-affidavit that in the normal course leave vacancies would not have been filled up but in this particular case there was urgent need to do so and that was the reason why the transfer order was made. In the matter of selection of the petitioner for transfer, the primary consideration was suitability vis-a-vis other clerks available for transfer from the Head Office. Out of them five are ladies Out of the rest, three are married man with family, to transfer whom, it was felt, would be to dislocate their family life. The petitioner was found to be the suitable one for the transfer.

10. The respondents have denied that the Coir Board comes under the expression " State " under Article 12 of the Constitution. The various allegations in the petition that efforts were made by the respondents to split the Association are denied. Exhibit P1 is admitted. Since it did not merit any reply, no reply was sent.

11. With reference to the allegations against the Board in connection with the suspension of Sri P.K. Balakrishnan and R. Bhaskaran Pillai, it is averred that they were suspended for gross misconduct and gross indiscipline. The allegations against Sri G.N. Prabhu have also been denied. The various allegations about the refusal to grant loans are denied. In Para 10 of the counter-affidavit instances are detailed when loans were granted liberally by the Board. In para 11 the reasons why the petitioner's request for advance from the Contributory Provident Fund was rejected are mentioned. In August, 1974 a loan was granted to him. For the same reason, he made another application for advance. This was rejected as there was reason to doubt the bona fides of the request. The petitioner was not singled out for this treatment since several applications like this were also rejected. In para 12 the circumstances under which the leave application of Antony was rejected are detailed. In para 13 it is stated that the respondents do not know about the existence of C.B.I. Enquiry and who all figured as witnesses. In para 14, the allegations that the petitioner was chastised for distributing pamphlets is denied. In the succeeding paragraphs, the various

grounds taken by the petitioner in the petition are traversed. The counter-affidavit winds up with the statement that the transfer of the petitioner was ordered in public interest but could not be accomplished because of the stay order issued by this Court. It is further stated that an office like the Coir Board which has sub-offices scattered all over India and in the Union territory of Lakshadweep cannot function effectively without interoffice transfers and if one were to construe it as a punitive action and seek judicial remedy it will create an administrative vacuum and the whole functioning of the institution will come to a stand still resulting in inefficiency.

12. The petitioner has filed a reply affidavit. It is stated therein that the Upper Division Clerk who went on leave had taken charge. Thus, there was no vacancy to be filled up. The administrative reason urged in support of Ext. P3 has, therefore, disappeared. It is further stated that the Board discriminated against the petitioner in granting advances from the Contributory Provident Fund.

13. Before considering the allegations and counter-allegations, it would be necessary to consider the jurisdiction of this Court in interfering with the orders of transfer of employees by the employers. It cannot be disputed that an employer has a right to transfer his employee. An employee accepts employment fully knowing that he is liable to transfer from place to place for administrative reasons and in the interests of the employer. This is one of the conditions of service. No employee can demur or cavil at an order of transfer. It is only when an order of transfer is made otherwise than in public interest or for no administrative reasons and in the circumstances amounting to punishment or with mala fide intentions, that the transfer order gets exposed to challenge.

14. Counsel on both sides drew my attention to a few cases where the question of transfer was considered. I may refer to them in passing. In *Abdul Khader v. Regional Deputy Director 1967 KLT 334*, Mathew J., as he then was had occasion to consider the question of transfer. In that case, the transfer was of a teacher. The learned Judge observed that it is the inherent right of a Government to transfer its employees from one service to another. Normally, an employee cannot complain about such transfer in Court. In deciding the question as to what was the motive operating in the mind of the authority while passing the order of transfer, one has to look into the circumstances under which the order of transfer was passed. If the dominant motive of the employer was to punish the petitioner, the transfer is bad. If it was to ensure efficiency in administration, the transfer has to stand. Considering the circumstances in that case, it was held that the transfer was to ensure efficiency of administration in the school and the challenge was not upheld.

15. In *Mathew Muthalali v. R.D.O. Calicut 1972 KLT 54* Poti, J., was considering the transfer of a Government servant pending enquiry into misconduct in violation of administrative order of the Government. The learned Judge upheld that the order of transfer of a Government servant made for administrative reasons cannot be called in question merely because the order causes

inconvenience to the Government servant concerned. Nor can it be said that it visits him with civil consequences. But if the order is really intended as a punishment, though apparently innocuous, it will be open to the Court to consider whether the order is vitiated either by mala fides or by non-compliance of the principles of natural justice.

16. In *Balan v. District Panchayat Officer* 1975 KLT 375, Menon, J., while considering the transfer of a Panchayat employee observed that while normally this Court will not intervene in orders of transfer it will certainly step in where it is found that in ordering the transfer the authority is not motivated on account of administrative exigencies but by an improper purpose. In that case, the learned Judge quashed the order of transfer because it was found that it was at the instance of the President and some members of the Panchayat.

17. On the respondents' sides the following decisions were brought to my notice. In *Lachman Dass Vs. Shiveshwarkar and Others*, The Punjab High Court was dealing with the transfer of a Government employee who complained that the departmental enquiry against him by a superior authority was engineered by subordinate authority and that the transfer order after enquiry was mala fide. The learned Judge in that case after considering the evidence on both sides came to the conclusion that the petitioner had failed to show that the order impugned was made mala fide.

18. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , the Supreme Court was dealing with the case of transfer by a company Law Board, It was held that the allegation as to bad faith or indirect motive or purpose cannot be held established except on clear proof thereof.

19. In *Forane Church v. State of Kerala* 1971 KLT 733, a Division Bench of this Court was considering the question of mala fides in a land acquisition proceedings. The acquisition was for the purpose of a Church. This Court held that the mala fides of the Church even if established is no proof that the Collector or the Board of Revenue who actually passed the order was actuated by mala fides and in the absence of such proof interference was refused.

20. In *K. K. Ramankutty v. State of Kerala* 1972 K.L.J. 418, Poti J., was considering the case of mala fides in the case of the 2nd Member of the Board of Revenue of the Kerala State. The learned Judge held that " to find a plea of mala fides the Court must be in a position to hold positively that the authority whose act is impugned could have been acting only with a dishonest motive. It is not sufficient to find that is probably so.

21. I shall first dispose of the case that the Coir Board is not a " State " under Art. 12. The matter was considered by Menon, J., in his judgment reported in *Pankajakshan v. Union of India* ILR 1976 Ker I. Menon, J., held that the Coir Board came within the meaning of Article 12 and was " State " under the said Article. I respectfully agree with the reasoning and conclusion of my learned brother and do not propose to go into the question in further detail.

22. Now, I will consider the question whether the challenge against Ext. P3 transfer order is well-founded. I shall do so unaided or uninfluenced by the allegations contained in the records of this case, which have been detailed as a background for the transfer in question. Exhibit P3 in the transfer order which reads:

Shri P. Pushpakaran, L.D.C. working in the Head Office of the Coir Board, is posted to the show-room and sales depot, Bombay.

Shri Pushpakaran is relieved of his duties in the Head Office with effect from the afternoon of today, the 31st March, 1975.

He is directed to report to the Manager, Coir Board Show Room and Sales Depot, Bombay as early as possible .

As per this order, the petitioner was relieved from duty from the afternoon on 31-3-1975 and he was to report to duty at Bombay as early as possible. This unseemly haste was adversely commented upon the counsel for the petitioners. It was contended by the petitioner's counsel that this was not a normal practice. The vacancy that arose at Bombay was for a short period of 45 days. The clerk who took leave was an Upper Division Clerk. The petitioner was admittedly a Lower Division Clerk. In the counter-affidavit it is stated that the petitioner was selected from among the 11 Lower Division Clerks at the Head Office. There is no mention in the counter-affidavit whether there were any Upper Division Clerks at the Head Office from whom one could have been transferred to Bombay. If the petitioner was transferred to Bombay on promotion as an Upper Division Clerk, that would have been beyond reproach. I would have expected a statement in the counter-affidavit that there were no Upper Division Clerks at all in the Head Office or if there were, none could be spared. The attempt in the counter-affidavit is to show that out of 11 Lower Division Clerks working in the Head Office, five are ladies. That they could not be spared is understandable. The remaining 3, who were married, also have been spared, again on understandable grounds. From the rest, the petitioner has been chosen as he was found to be suitable one for the present transfer". The vacancy is of an experienced hand from the head office. The counter-affidavit is silent whether the petitioner had previous experience at any shop-room or sales-depot and whether he was the best suited among the remaining three for this job. The statement in the counter-affidavit contained in para 3 that " both personal consideration and office interest weighed uppermost in our minds" should have been more communicative of what was intended. There is no gain saying the fact that there is no love lost between the petitioner and the Board. What prompted the Board to pick and choose the petitioner alone for a job that was being done by an Upper Division Clerk at Bombay, and that too for 45 days, has not been satisfactorily explained in the counter-affidavit. Whether the shop room at Bombay would have been rendered ineffective for 45 days without a substitute is anybody's guess. There is no mention in the counter-affidavit whether any person was appointed pursuant to the advertisement mentioned therein. That the lady clerk who took leave

rejoined duty cannot be denied. Even so, respondents want this Court to justify Ext. P3, as a validly passed order.

23. On a careful consideration of the materials available in the records, I find that the respondents have not disclosed all that is necessary for this Court to justify Ext. P3. When allegations are made against the respondents, including that of mala fides, it is the duty of the respondents to clear all charges against them so that the Court will be in a position to hold them. That things were not satisfactory can be discerned from the language of the correspondence and orders that have been exhibited in the files. The respondents cannot feign ignorance of the fact that some news item appeared in the press that the then industries Minister had desired the ouster of the then Chairman of the Board. I am not referring to these facts to reinforce my conclusion regarding Ext. P3, but I am referring to them only to highlight the fact that in such cases the duty of the employer is to take the Court into confidence and tell the Court the whole truth. In view of the fact that the counter-affidavit does not indicate the availability or otherwise of the Upper Division Clerks in the Head Office, as to how the petitioner was picked from the remaining three bachelor Lower Division Clerks and how he was found more competent than the others. I have to hold that the transfer was not in the course of administrative routine or due to administrative necessity but for other reasons.

24. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.

25. From the facts and circumstances disclosed, I hold that Ext. P3 was not passed innocently for the purpose of filling up a vacancy at Bombay. On an examination of Ext. P3 and the reasons given in support of it and against it, I am of the view that Ext. P3 has been passed more as a punishment than for administrative necessity. After finding this, I think it only fair to consider the various circumstances which were brought to light in the affidavit, the counter-affidavit and the reply affidavit. There are materials to fortify my conclusion that Ext. P3 suffers from the vice of mala fides exercise of power. This Court will normally lean in favour of the employer when a transfer order is challenged, for, for a proper administration of a Government or a Department of Government or even a Private Company, transfers will be necessary in the exigencies of service or for administrative reasons. An employee will not be lightly taken when orders of transfer are challenged. The whole difficulty arises when under the cover of

ordering a transfer, an employer seeks to achieve something which he cannot otherwise achieve. In such cases, the employees in distress seek the assistance of Courts in their unequal contest with their employers. A transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when affected by way of punishment, though on the face of it may bear the insignic of innocence, are quashed by Courts, I am not satisfied with the explanation given by the respondents.

26. I quash Ext. P3 and allow this writ petition. The parties are directed to bear their costs.