

(2023) 05 KL CK 0044

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28291 Of 2022

Ratheesh Dasan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 229, 235

Citation : (2023) 05 KL CK 0044

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Millu Dandapani, Siraj Abdul Salam, K.G. Sarojini, B.G.Harindranath

Final Decision : Allowed

Judgement

N. Nagaresh, J

1. The petitioner, who is a native of Udayanapuram in Kottayam District and who is now working as Process Server in Sub Court, Tirur, seeks to direct respondents 2 and 3 to consider Ext.P7 transfer application submitted by the petitioner without insisting for completing five years in the category to which transfer is sought.

2. The petitioner states that he joined service in the Last Grade Service as Attender Grade-II in the Motor Accidents Claims Tribunal, Tirur which is in Malappuram District on 10.02.2017. The petitioner was promoted as Office Attendant Grade-I on 20.02.2018, as Court Keeper Grade-II on 14.09.2018 and as Court Keeper Grade-I on 16.03.2019. Later, the petitioner was promoted as Process Server on 16.03.2019. The petitioner is now working as such in Sub Court, Tirur in Malappuram District. The petitioner has rendered five years of service as a Last Grade Service Employee.

3. The petitioner states that he is governed by the Last Grade Service Special Rules, 1966. Applications of Last Grade Employees for Inter-District Transfer were considered under the provisions of Rule 17(d) until 1980 without any

conditions. As the Inter-District Transfers affect the right of PSC candidates, the Government made a stipulation that a person recruited from districtwise rank list will not be transferred to another District before completion of five years in the District of appointment. A relaxation was made to the effect that any employee who wants any transfer from the District of recruitment to any other District will have to get approval from the Council of Ministers. It was also stipulated that only 10% of the vacancies arising in the District in a year in the category in a Department will be filled by Inter-District Transfer.

4. The petitioner states that the basic criteria to be fulfilled for considering an employee for Inter-District Transfer is to complete five years service and to take juniormost rank in another District without reverting to entry cadre. The 1st respondent as per Ext.P3 letter dated 04.02.2020 clarified that an employee working in a promoted post in Last Grade Service can be granted Inter-District Transfer to another unit in the same Department after completing five years service in the District of recruitment without being reverted to entry cadre. Unfortunately, the Deputy Registrar of the High Court of Kerala, without following Government Orders, is still insisting for reverting the Process Servers to the entry cadre of Office Attendant Grade-II for Inter-District Transfer.

5. The petitioner states that certain Process Servers who applied for Inter-District Transfer challenged Ext.P5 memorandum filing W.P.(C) No.5067/2021. This Court disposed of the said writ petition by Ext.P6 judgment directing the respondents to consider the applications of the petitioners without reverting to entry cadre. The petitioner states that those petitioners were issued favourable orders transferring them to their concerned District without reverting them to entry cadre. The petitioner also applied for transfer to Ernakulam District in view of the medical condition of his parents. Ext.P7 application was made on 22.04.2022. Surprisingly, the 2nd respondent issued Ext.P8 OM dated 05.08.2022. One of the conditions stipulated in Ext.P8 was that applicants for Inter-District Transfers should satisfy qualifying service in the concerned post. In view of Ext.P8, unless the petitioner completes five years service as Process Server, his application for Inter-District Transfer will not be considered.

6. The petitioner argued that the second direction in Ext.P8 OM as regards qualifying service is contrary to Ext.P1 Special Rules and Exts.P2 and P3 Government Orders. Ext.P7 transfer application of the petitioner has to be considered following the provisions contained in Rule 17(d) of the Special Rules. Ext.P6 judgment in W.P.(C) No.5067/2021 is clear and the application of the petitioner has to be considered taking into account more than five years service rendered by the petitioner in the Last Grade Service. Ext.P8 OM has been issued to get over Ext.P6 judgment. Ext.P8 OM has been issued by the 2nd respondent on 05.08.2022 and the application submitted by the petitioner being earlier to issuance of Ext.P8 OM, the petitioner's application should be considered only in the light of Ext.P6 judgment. Respondents 2 and 3 are therefore compellable to consider Ext.P7 transfer application of the petitioner without insisting for

completing five years in the category to which the transfer is sought.

7. Respondents 2 and 3 resisted the writ petition filing counter affidavit. Respondents 2 and 3 submitted that by Ext.P3 letter dated 04.02.2020, the Government clarified that an employee working in a promoted post in the Last Grade Service can also be granted Inter-District Transfer to another unit in the same Department without being reverted to the entry cadre.

8. Respondents 2 and 3 pointed out that a request was made by the High Court for issuance of a general relaxation order so that seniors holding promotion posts in the same cadre can also be considered for Inter-District Transfer against the vacancies in the entry cadre. The High Court is still in receipt of applications from employees in the Last Grade Service in the promoted posts who seek reversion to the entry cadre in relaxation of the existing rules.

9. Before issuance of Ext.P6 judgment, Inter Departmental applications were decided by the appointing authorities in terms of the relevant rules/orders in this regard. Many applications were pending with the Government for consideration of relaxation of the rules. After Ext.P6 judgment, the Government returned the applications and requested the High Court to consider the requests/applications in terms of the judgment. The High Court, after due deliberations and after considering Ext.P6 judgment, formulated norms for considering Inter-District / Inter-Departmental applications and issued Ext.P8 guidelines dated 05.08.2022. As per Ext.P8, the total period of service in the category in a District / Department to which the transfer is sought for alone will be counted as qualifying service to satisfy the five year rule. The petitioner, who was a resident of Vaikom, was willing to work at Malappuram District at the time of joining service. He now seeks transfer to Ernakulam District. Transfer is not a right of the employee.

10. It is further contended by respondents 2 and 3 that in matters of administration of the District Judiciary, High Court has superior powers and decisions are taken on the administrative side after the approval of the Hon'ble Chief Justice or the Administrative Committee or the Full Court. The application for transfer is considered and a decision on transfer is taken based on the existing rules. It is the rule which prevailed as on the date of consideration of the application which is to be applied.

11. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents.

12. The petitioner being a member of the Last Grade Service, Ext.P1 Rules will apply to the petitioner. Rule 17 of Ext.P1 Rules reads as follows:-

17. Postings and Transfers –

(a) A member of the service in any category may be required to serve in any post borne on the cadre of that category.

(b) All transfers and postings shall be made by the appointing authority.

Provided that the powers conferred on the appointing authority by this sub-rule may be exercised also by any authority to which the appointing authority is administratively subordinate.

(c) A member of the service may, on grounds of administrative necessity, be transferred from the jurisdiction of one appointing authority to that of another appointing authority. Such transfers shall be made by the authority to which the appointing authorities are administratively subordinate.

(d) Transfers on request – Probationers, approved probationers or full members desiring transfer from the jurisdiction of one appointing authority to that of another appointing authority may be permanently transferred, mutually or otherwise, with the mutual consent of the appointing authorities concerned, if the persons desiring transfer (i) forgo their right to seniority based on rule 14 and each of them takes his rank last in the list of probationers, approved probationers or full members, as the case may be, for the administrative unit to which he is transferred as it stands on the date on which he joins the new Unit and (ii) receive no TA for the journeys to the places to which they are transferred.

Provided that full members shall be re-transferred to the unit from which they were transferred in the event of there being no vacancy for them to continue in the administrative unit to which they were transferred or for any reason his pay in the substantive post in the parent department becomes higher than the pay of the new post held by him.

Rule 17(d) does not prescribe any minimum period of service to make application for Inter-District transfer.

13. Ext.P2 is a Government Order dated 02.12.1991 issued by the Personnel and Administrative Reforms Department of the Government of Kerala, relating to Inter-District transfers of employees. Clause 4(i) of Ext.P2 provides that Inter-District Transfers will be allowed only after completion of five years service in the district of recruitment. Ext.P2 does not stipulate that the five years service should be in the particular cadre to which transfer is sought.

14. Ext.P3 is a communication from the Additional Chief Secretary to the Government addressed to the Registrar of High Court in which it has been stated that an employee working in a promoted post in Last Grade Service (for example, Process Server) can be granted Inter-District Transfer to another unit in the same Department after completing five years of service in the District of recruitment without being reverted to the entry cadre, as per the provisions of Rule 17(d) of the Special Rules for Kerala Last Grade Service. Ext.P3 also pointed out that there is no rule allowing reversion to the entry cadre for the purpose of inter district / departmental transfer.

15. The issue was considered by a learned Single Judge in W.P.(C) No.5067/2021, as per Ext.P6 judgment. In Ext.P6, the learned Single Judge held as follows:

6. Having found the conditions in Rule 17(d) to be applicable to the petitioners, the next question is what impact the conditions would have on an employee seeking inter-district transfer. Going by the plain meaning of the provision, what is to be forgone is the inter-district transferee, is his right to seniority based on Rule 14. Further, the applicant should take his rank last in the list of probationers, approved probationers or full members as the case may be. Rule 14 stipulates that seniority of a member in any category of service shall be determined by the date of order of his first appointment to such category. In this context, it may also be relevant to consider Rule 2 which reads as under:

"2. Posts with different designations.-For the purposes of appointment and promotion probation and seniority, discharge for want of vacancies and reappointment, postings and transfers and appointment of full members, every post or group of posts in any category bearing a distinct designation shall be deemed to constitute a separate category."

Therefore, Process Servers constitute a separate category and if so, the impact of Rule 17(d) would be of the inter-district transferee being placed last in the ranked list of Process Server in the administrative unit to which he is transferred. This precisely is the clarification which the Government has given under Exhibit P3. Hence, the instruction in Exhibit P5 cannot be taken to indicate that the request of Process Servers for interdistrict transfer will be considered only against the entry post of Office Attendant Grade-II. So also, the applicant is not required to get an order of relaxation from the Government for interdistrict transfer, if he/she has completed five years service in the district of recruitment, since Exhibit P2 Government order makes approval of the Government a condition precedent only for relaxing the five year rule.

7. The contention that there cannot be any inter-district transfer affecting the right for promotion of persons from within the district cannot also be countenanced in the light of the provision for such transfer in Rule 17(d) and Exhibit P2, wherein, the Government, after weighing the interest of all parties made provision for filling up 10% of the vacancies in the district in a year in a category in a Department by inter-district transfer. As such, the competent authority is bound to consider the request for inter-district transfer made by eligible employees, subject to the 10% limit stipulated in Exhibit P2.

It is clear from Ext.P6 judgment that the learned Single Judge considered Rule 17(d) and relied on Ext.P2 GO and Ext.P3 clarification for arriving at such conclusions. Ext.P6 judgment was delivered on 07.03.2022 and the petitioner submitted Ext.P7 transfer application on 22.04.2022.

16. Thereafter, the 2nd respondent issued Ext.P8 Official Memorandum stipulating that the total period of service in the category in a District / Department to which the transfer is sought for alone will be counted as qualifying service to satisfy the five year rule. The petitioner challenges the said condition contained in Ext.P8. The question that arises for consideration is whether Ext.P8

goes against Ext.P1 Rules and if not whether Ext.P8 suffers from any illegality or infirmity.

17. Rule 17(d) of Ext.P1 relating to transfers on request provides that probationers, approved probationers or full members desiring transfer from the jurisdiction of one appointing authority to that of another appointing authority may be permanently transferred mutually or otherwise, with mutual consent of the appointing authorities concerned, if the persons desiring transfer (i) forgo their right to seniority based on Rule 14 and each of them takes his rank last in the list of probationers, approved probationers or full members, as the case may be, for the administrative unit to which he is transferred as it stands on the date on which he joins the new unit and (ii) receive no TA for the journeys to the place to which they are transferred.

18. It is well settled by now that transfer is not a right of employee. Rule 17(d) of the Special Rules for the Kerala Last Grade Service gives a discretionary power to the authorities for grant of transfer on request.

19. Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the subordinate courts. This control extends to all functionaries attached to the subordinate courts including the ministerial staff and servants in the establishment of the subordinate courts. The Hon'ble Apex Court in the judgment in *Renu and others v. District and Sessions Judge, Tis Hazari Courts, Delhi* and another [(2014) 14 SCC 50] held that if the administrative control cannot be exercised over the administrative and ministerial staff i.e., if the High Court would be denuded of its powers of control over the other administrative functionaries and ministerial staff of the District Court and subordinate courts other than judicial officers, then the purpose of superintendence provided therein would stand frustrated and such an interpretation would be wholly destructive to the harmonious, efficient and effective working of the subordinate courts.

20. The courts are institutions or an organism where all the limbs complete the whole system of courts. When the constitutional provision is of such wide amplitude to cover both the courts and persons belonging to the judicial office, there would be no reason to exclude the other limbs of the courts, namely, administrative functionaries and ministerial staff of its establishment from the scope of control. Such control is exclusive in nature, comprehensive in extent and effective in operation. The Hon'ble Apex Court in *H.C. Puttaswami v. High Court of Karnataka* [1991 Suppl. 2 SCC 421] held that judiciary is the custodian of constitutional principles which are essential to the maintenance of rule of law. Judges are the most visible actors in the administration of justice. But, the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the courts must also take account of the totality of the Judge's behaviour and their administrative roles. They may appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute a

substantial part of the mosaic which represents the ordinary man's perception of what the courts are and how the Judges go about their work. The Chief Justice is the prime force in the High Court. Article 229 of the Constitution provides that appointment of officers and servants of the High Court shall be made by the Chief Justice or such other Judge or officer of the court as may be directed by the Chief Justice.

21. Viewing Ext.P1 Special Rules and Ext.P8 official memorandum dated 05.08.2022 in the afore perspective, I find that Ext.P8 has been issued taking into consideration relevant provisions governing appointments, promotions and transfer in the Special Rules and the Government Orders regarding inter district / departmental transfer. Ext.P8 has the support of Article 235 of the Constitution of India. Ext.P8 cannot be said to be in conflict with Rule 17 of Ext.P1 Special Rules. The High Court is competent to prescribe conditions for inter district transfers without offending Ext.P1 Rules. Ext.P8 cannot be said to be arbitrary or perverse. The challenge raised by the petitioner against the requirement of qualifying service stipulated in Ext.P8 is therefore only to be rejected.

22. At the same time, I find that this Court considered the impact of Ext.P1 Rules, Ext.P2 GO and Ext.P3 communication in W.P.(C) No.5067/2021 and directed respondents 2 and 3 to consider the applications of the petitioners therein strictly in terms of Ext.P1 Special Rules and subject to the limit prescribed in Ext.P2. It is the specific case of the petitioner that the petitioners in the said writ petition are granted transfers without insisting for the five year tenure in the category to which transfer is sought. The petitioner submitted Ext.P1 application when Ext.P6 judgment governed the field and when similarly situated Process Servers were granted transfer without insisting for five years service in the category of Process Server. Ext.P8 Official Memorandum was issued only on 05.08.2022. The application of the petitioner was pending when the applications of the petitioners in W.P.(C) No.5067/2021 were being processed. Those petitioners were granted transfers without insisting for five years service in the category based on Ext.P6 judgment.

23. As a general principle, application for transfer is to be considered on the basis of existing rules prevalent on the date of consideration of the application. The petitioners in Ext.P6 judgment also were working as Process Servers in Malappuram District, where the petitioner is working. The petitioner's application was pending when applications of those petitioners were under process. Therefore, non-consideration of the petitioner's application in the light of Ext.P6 judgment and rejection the petitioner's application on the basis of subsequently issued Ext.P8 Official Memorandum would infringe Articles 14 and 16 of the Constitution of India.

In the facts of the case, the writ petition is allowed to the extent of directing respondents 2 and 3 to consider Ext.P7 application submitted by the petitioner for Inter-District Transfer based on the findings and observations of the learned Single Judge contained in Ext.P6 judgment and without regard to Ext.P8. Orders

in this regard shall be passed within a period of two months subject to availability of vacancies in the 10% quota.