

(2014) 11 KL CK 0140

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 29863 of 2014 (G)

Sagi T.M.

APPELLANT

Vs

The Mahatma Gandhi University

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 KL CK 0140

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : Elvin Peter P.J., T.G. Sunil and K.R. Ganesh, Advocate for the Appellant; Varughese M. Easo, SC, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, who is working as the Head of the Department in the School of Medical Education, Gandhinagar, Kottayam, was subjected to transfer through Exhibit P5 to School of Medical Education, Angamaly, which is more than 100 Kms from the present place of working. Complaining of transfer in the middle of the academic year, thus affecting the academic prospects of her child, the petitioner is said to have made Exhibit P6 representation to the Vice Chancellor of the respondent University. In the face of imminent relieving from the present place of posting, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that Exhibit P5 merely declares that it is a transfer only on the premise that the petitioner and other employees, whose names have been reflected in Exhibit P5, have completed 3 years of service and that once an employee has completed 3 years in any self financing institution, the said employee shall be subjected to transfer. The learned counsel has stressed the aspect that the transfer is not based on

administrative exigency. In this regard, the learned counsel has placed reliance on *Director of School Education, Madras and Others v. O. Karuppa Thevan and another* (1994 Supp (2) SCC 666).

4. The learned Standing Counsel, on his part, has submitted that not only the petitioner, but also various other people have been transferred through Exhibit P5. He has further contended that if any differentiation is made at this juncture, it makes it impossible for the respondent University to administer properly, inasmuch as transfer is a necessary service concomitant. At any rate, the learned Standing Counsel has pointed out that since Exhibit P6 is pending before the Vice Chancellor, it may not be appropriate for this Court to adjudicate the issue on merits.

5. Indeed, through Exhibit P5, the respondent University has transferred not only the petitioner, but also certain other employees. It is further evident from Exhibit P5 that the transfer seems to have been effected on a simple premise that the petitioner and other employees have completed 3 years of service at one place and that it is incumbent to have them transferred to another place. In this regard, it is not the case of the respondent University that all employees who have completed 3 years have been transferred en masse.

6. There is no gainsaying the fact that, as has been reiterated time and time again by this Court and the Honourable Supreme Court, transfer is an incidence of service and it is not to be lightly interfered with while exercising the powers of judicial review under Article 226 of the Constitution of India.

7. In *Karuppa Thevan* (supra) in a very cryptic judgment, the Honourable Supreme Court has observed thus:

"1. Leave granted. Heard both counsel.

2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

8. In the light of the above ratio and in the light of the fact that Exhibit P6

representation is pending before the Vice Chancellor of the respondent University, this Court, without adverting to the merits of the matter, disposes of the writ petition with a direction to the respondent University to consider Exhibit P6 representation of the petitioner, and pass appropriate orders thereon, as expeditiously as possible. If the petitioner is to be relieved before Exhibit P6 could be considered, the whole issue renders itself academic or nugatory. To meet the ends of justice, in these circumstances, there shall be a direction to the respondent University not to give effect to Exhibit P5 to the extent of the petitioner till Exhibit P6 representation is disposed of.

With the above observation, this writ petition is disposed of. No order as to costs.