

(2013) 09 KL CK 0090

In the High Court Of Kerala

Case No : WA. No. 1461 of 2013 in WP (C) . 21840 of 2013

Santhosh K. and Rajan. V

APPELLANT

Vs

The Chief Engineer (H.R.M.), Kerala State Electricity Board

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 4 KHC 624 : (2013) 4 KLJ 504 : (2013) 4 KLT 696

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Mathew P. Joseph, J

Bench : Division Bench

Advocate : K.P. Satheesan and Sri. S. Vibheeshanan, for the Appellant; K.S. Anil, SC, KSEB, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—Appellants challenge the judgment of learned single Judge, refusing to interfere with their orders of transfer, which are essentially general in nature. Heard learned Senior Counsel for the appellants and learned Standing Counsel for the Kerala State Electricity Board, for short, "KSEB".

2. Two issues are raised before us on behalf of the appellants.

3. One is that going by the general transfer norms relating to officers, the minimum period during which the employee belonging to SC/ST category could continue in a station is five years. The learned single Judge rightly noted that the appellants had initially worked in the category of workers, governed also by the labour agreements with the intervention of the trade unions and that they had a total period of more than five years in both categories taken together. This is impeached as unavailable on the basis of the Board orders regulating the guidelines.

4. The second argument is that going by Exhibit P8, there are many employees who continue to be parked in particular stations, while the appellants have not even completed five years in a particular station as Assistant Engineers. It is,

therefore, pointed out that there is hostile discrimination in the matter of application of the transfer norms.

5. B.O.(CM) No. 945/2013 (EB. 7/General Transfer/2013) dated 24.04.2013 is the abstract of the KSEB orders which dealt with the transfer guidelines, as far as employees other than officers are concerned. Exhibit P5 is the KSEB order which deals with the officers.

6. It is salutary that the contents of both the aforesaid KSEB orders cannot be treated as either statutory, or amounting to conditions of service. They are essentially guidelines, relating to transfers of employees of KSEB. The realm of judicial intervention in such matters gets confined to a scrutiny as to whether there is any vitiating element of mala fides, malice, substantial legal and factual perversity or arbitrariness, recognizable on the touch stones of the Fundamental Rights, as enshrined in the Constitution, to visit the executive decision of the KSEB as the employer.

7. To answer the first issue raised, we pose to ourselves the question as to whether an employee, who was a worker for about 4= years or more in a particular station, can continue to claim eligibility to continue in the same station as an Assistant Engineer, merely because he is entitled to some sort of protection as per the guidelines relating to the officers. The stagnation in a particular station is one of the matters which is normally treated to be excluded by the administrative exercise of transfer. We do not see any vested right in any employee, even belonging to the category of Scheduled Castes and Scheduled Tribes, to claim any indefeasible right to continue in a particular station without taking into consideration the total period he had continued to work in that station in the category of workers as also in the category of officers. The paramount interest is that of the establishment and not the employee concerned. There is no illegality or error of jurisdiction committed by the learned single Judge in that regard warranting intervention in an intra-court appeal.

8. In so far as the second argument is concerned, suffice it to note that no transfer or posting or retention of any particular employee is pointedly challenged in the writ petition with any such employee having been arrayed among the respondents in the writ petition from which this appeal arises. Leaving aside that, we would say that the grounds on which the particular employee or employees had applied for protection or had been granted protection are not matters for judicial scrutiny in the case in hand. Transfer and posting and also protection from transfer and posting on the basis of guidelines are essentially matters to be dealt with on individual basis and not on class basis. The plea made is an omnibus one. It does not generate any ground for intervention in this appeal.

9. The guidelines issued by KSEB in relation to the employees and the guidelines as regards the officers to the period of retention of SC/ST employees are essentially in pari materia. They have to be read conjunctively and cannot be

read disjunctively, so as to hold that an employee is entitled to separate period of five years each in both categories in the same station even in one go. For the aforesaid reasons, this writ appeal fails and it is dismissed in limine.

At this stage, learned Senior Counsel for the appellants requested that this judgment may not stand in the way of any of the appellants approaching the superior authorities in KSEB. What we and the learned single Judge have rendered are judicial decisions. Executive actions without disturbing the judicial decisions, are essentially permissible in the realm of administration. If any executive authority oversteps that; perilous, cannot but be, the consequences. Let all concerned stand reminded of that.