
(2010) 12 KL CK 0018
In the High Court Of Kerala
Case No : Writ Petition (C) No. 31697 of 2010

Sunil Kumar

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2011) 1 ILR (Ker) 676 : (2011) 1 KLT 442

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : A. Dinesh Rao, for the Appellant; Suman Chakravarthy and K.R. Rija and A J. Varghese, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The Petitioner belongs to a Scheduled Caste Community. He is a native of Thiruvananthapuram. The Petitioner was appointed as Junior Laboratory Assistant in the Medical College, Thiruvananthapuram on 7.2.2005. While working in the Medical College, Thiruvananthapuram, the Petitioner was transferred to the Dental College, Kottayam, as per Ext. P1 order dated 29.3.2010. Jayakumar, the third Respondent, who was working in the Medical College, Kottayam, was transferred to the Medical College, Thiruvananthapuram, as per Ext. P1 order of transfer. The Petitioner is aggrieved by Ext. P1 order of transfer and also Ext. P16 order dated 24.9.2010 passed by the Government rejecting the representation submitted by the Petitioner objecting to the transfer.

2. The contention of the Petitioner is that he being a person belonging to Scheduled Caste, he can be replaced only by another Scheduled Caste candidate. The third Respondent does not belong to a Scheduled Caste. It is therefore contended that Ext. P1 order, in so far as it relates to the Petitioner, is contrary to the guidelines for transfer issued by the Government.

3. G.O.(P) 15/89/P & ARD dated 22.5.1989 (Ext. P4) was issued by the Government providing the guidelines for transfer of Government employees. Ext.

P4 was issued updating the earlier Government Orders issued in that regard. 0.2(b) of the guidelines provides that no employee who has completed three years of service in a particular station need necessarily be transferred unless there is a claimant who has worked for three years in an outside station to be provided there, or unless a transfer of the existing incumbent has become necessary in public interest. Clause 11 of the guidelines provides for transfer relating to Scheduled Caste and Scheduled Tribe employees and persons belonging to other preferential categories. The order of priority among the different categories of employees are shown in category Nos. 1 to 7, of which the first category is SC/ST employees. Clause 11(a) provides thus:

11(a). Employees who are physically handicapped, relatives of Jawans, Inter-caste married and Scheduled Castes/Scheduled Tribes shall not ordinarily be transferred until they complete 5 years of duty/service in a station/district. A transfer in such cases should be resorted to only to provide employees belonging to categories who have got preferential claim for transfer. Such transfer should be resorted to only to provide employees belonging to the same priority category; i.e., a transfer of employee of inter-caste marriage should be resorted to only to provide another employee of inter-caste marriage and so on.

4. Sri. Dinesh Rao, the learned Counsel for the Petitioner, submitted that the plain meaning of Clause 11(a) is that a person belonging to SC/ST shall not be transferred before he completes five years in a particular station except in the case of exigencies of service or on the ground of dire necessity of transferring that employee and in such a case, such transfer should be to accommodate another person belonging to the same category. The counsel submitted that even after such a person in the preferential category completes five years in a station, then also, he can be transferred only to accommodate a person belonging to the same category.

5. The learned Government Pleader as well as the learned Counsel appearing for the third Respondent submitted that the interpretation sought to be placed by the learned Counsel for the Petitioner on Clause 11(a) is untenable and that a person belonging to a preferential category does not have an indefeasible right to remain in the same station after the expiry of five years of service in that station.

6. On a consideration of the various provisions in the guidelines, I am not inclined to accept the contentions put forward by the Petitioner. Clause 11 provides for preference to the seven categories of persons, namely, SC/ST, physically handicapped, inter-caste married employees, Ex-Servicemen, relatives of Jawans, sons, daughters and spouses of freedom fighters and parents of mentally retarded children. Clause 11(a) provides a protection to such categories of persons to continue to work for a period of five years in a particular station. He shall not ordinarily be transferred until he completes five years of duty/service in a station/district. He can be transferred within five years only to accommodate employees belonging to the categories who have got preferential claim for transfer. The clause also provides that such transfer should be resorted

to only to accommodate employees belonging to the same priority category. An example is also provided in the clause. Clause 11(a) does not contemplate any situation after completion of five years of duty/service by a candidate belonging to the preferential category in a particular station. After the expiry of five years of service in a particular station, a candidate belonging to the preferential category cannot claim any protection against transfer. He does not have any indefeasible right to continue to work in the same station, only on THE ground that he belongs to a preferential category. Transfer is an incidence of service. However, the guidelines provide for certain benefits to persons belonging to SC/ST and other categories of persons who are placed in a disadvantageous position when compared to others. That does not confer any right on a candidate belonging to the preferential category to continue to work in the same station, even after the expiry of five years. Such a person cannot contend that he can be displaced, even after five years of service in a station, only by a person belonging to the same preferential category. After the completion of five years of service in a particular station, a person belonging to a preferential category can be transferred even to accommodate a person not belonging to a preferential category. In other words, a person belonging to a preferential category as provided in Clause 11 ceases to be a person belonging to that category after the expiry of five years of service in that station and his position becomes the same as that of a general candidate. The expression "such transfer" occurring in Clause 11(a) would make the position abundantly clear that Clause 11(a) of the guidelines does not relate to transfer of a person belonging to the preferential category, who had more than five years of service in a particular station.

For the aforesaid reasons, I am not inclined to accept the challenge against Ext. P1 order of transfer and Ext. P16 order passed by the Government. The Writ Petition fails and it is accordingly dismissed.