

(2022) 11 KL CK 0320
In the High Court Of Kerala
Case No : Writ Petition (C) No. 29135 Of 2022

Tiji Joseph

APPELLANT

Vs

Kerala Water Authority Represented By Its Managing Director,
Jalabhavan, Thiruvananthapuram 695033

RESPONDENT

Date of Decision : 28-11-2022

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2022) 11 KL CK 0320

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Elvin Peter P.J., Gouri Balagopal, K.R.Ganesh, Abhijith.K.Anirudhan,
Sreelekshmi A.S., Anu Joseph, P.M.Johny

Final Decision : Dismissed

Judgement

Anu Sivaraman, J

1. This writ petition is filed seeking the following reliefs :-

“(i) Issue a writ of certiorari calling for the records leading to Exhibits P8 & P8(a) and quash the same to the extent it transfers the petitioner from his present station at Public Health Division Thodupuzha to Public Health Sub Division, Peermade, Idukki and post the 4th respondent in the place of the petitioner at Public Health Division Thodupuzha.

(ii) Issue a writ of mandamus or any other writ, order or direction directing the 2nd and 3rd respondents to permit the petitioner to continue at Public Health Division Thodupuzha till he completes 5 years.

(iii) Declare that Exts.P8 & P8(a) orders to the extent it transfers the petitioner from Public Health Division Thodupuzha is absolutely illegal, unfair, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and the same is vitiated by malice in law.”

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Kerala Water Authority.

3. It is submitted by the learned counsel for the petitioner that the petitioner being a District Secretary of a recognised Trade Union was entitled for protection in terms of Ext.P2 transfer guidelines. It is submitted that without considering his request for retention at the present station, the petitioner was transferred out by Ext.P8. It is submitted that though the petitioner had submitted Ext.P7 request before the respondents specifically seeking a retention at the present station exercising the exemption from transfer, the same was not considered.

4. A counter affidavit has been placed on record by respondents 1 to 3 specifically stating that the petitioner had requested for an exemption from general transfer of UD Clerk for the year 2022-2023. It is stated that if he is being transferred, he had requested for transfer to the WSP Sub Division, Pala or P.H.Circle, Muvattupuzha in the existing vacancies. It is submitted by the learned counsel for respondents 1 to 3 that there was no vacancy at Pala or Muvattupuzha, which was the reason why the petitioner was accommodated at P.H.Sub Division, Peermade. It is further submitted in the counter affidavit that the petitioner has completed three years at the P.H.Sub Division, Thodupuzha. Further, it is submitted that Serial No.62 in Ext.P8, one Purushan V.K. had requested transfer from P.H.Sub Division, Thodupuzha to P.H.Sub Division, Muvattupuzha and that the said request had also to be considered since the said person belonged to the SC/ST community. It is further submitted that the 4th respondent had completed three years at Muvattupuzha and had sought transfer to Thodupuzha since he belonged to Idukki and the petitioner was transferred out to accommodate the said person.

5. A detailed reply affidavit has also been placed on record, wherein it is specifically contended that there was no person who had a better claim for exemption from transfer and that the petitioner had been transferred only to accommodate the 4th respondent who had completed three years at Muvattupuzha. It is further stated at paragraph 9 as follows :-

"9. The respondents would contend that Sri.Purushan, who is a member of SC/ST requested transfer from P.H. Sub Division, Thodupuzha to P.H. Sub Division, Muvattupuzha. Since he is entitled to get first priority, the Purushan was given transfer to P.H.Circle, Muvattupuzha. However, it may be noted that Sri.Purushan was transferred from P.H. Sub Division, Thodupuzha to P.H. Circle, Muvattupuzha. Therefore, the post which was occupied by Sri.Purushan in P.H. Sub Division, Thodupuzha is still lying vacant and the petitioner could be accommodated in the post of U.D. Clerk which is lying vacant due to the transfer and posting of Sri.Purushan in the office of the P.H. Sub Division, Thodupuzha. It is respectfully submitted that the 4th respondent has been appointed in P.H. Division, Thodupuzha. Sri.Purushan has been transferred from P.H. Sub Division, Thodupuzha to P.H. Circle, Muvattupuzha. Admittedly, even now a post of U.D. Clerk is lying vacant in P.H. Sub Division, Thodupuzha. Hence the 4th respondent

could be transferred and posted at P.H. Sub Division, Thodupuzha and the petitioner can be retained in the same post at P.H. Division, Thodupuzha in the light of protection granted in Exts.P2 to P4.”

6. Having considered the contentions advanced, I notice that Ext.P7 request made by the petitioner was specifically for exemption from transfer in terms of the guidelines and only in case transfer becomes essential, he sought for a transfer to Pala or Muvattupuzha. Therefore, the contention that there were no vacancies to accommodate the petitioner at Pala or Muvattupuzha as a reason for transferring him out to Peermade cannot be sustained. Since the petitioner had specifically sought a protection from transfer in terms of Ext.P2 and since it is specifically pleaded that there is an existing vacancy at Thodupuzha itself as evidenced from Ext.P10, I am of the opinion that the petitioner's request for retention at Thodupuzha is liable to be considered, taking note of Ext.P2.

There will, accordingly, be a direction to the respondents to take up the request of the petitioner for a reposting to Thodupuzha in the existing vacancy in terms of the preference which he enjoys by reason of the transfer guidelines as evidenced by Ext.P2. Appropriate orders shall be passed within a period of two weeks from the date of receipt of a copy of this judgment.