

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 442 OF 2014**

Mrs. Jayashree A. Hegde
Wife of Mr. Arvind Hegde
Aged 37 years
r/o Ramnath Waddo,
Near Ramnath Temple,
Gaongiri, Majali, Karwar

....Petitioner

Versus

1. Mr. Ashok Padwalkar
56 years, son of
Mr. Kusta Padwalkar
r/o Flat No. 6,
Nagarsekhar Building
Chawdi, Canacona, Goa.

2. State Of Goa
Through The Chief Secretary
Secretariat, Assembly Complex
Porvorim, Bardez, Goa,.

3. The Chief Electrical Engineer
Having his office at Department of Electricity
3rd Floor, Vidyut Bhavan,
Panaji, Goa.

.... Respondents.

Mr. E. O. Mendes with Gina Almeida Advocates for the Petitioner.

Mr. N. Pai, additional Government Advocate for Respondents no.2, 3.

CORAM: N. M. JAMDAR, J.

DATE: 26 FEBRUARY, 2015.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith.

2. Respondents have been already served.

By the order dated 17 February, 2015, the matter was posted for final disposal. The learned counsel for the petitioner submits that the advocate for the respondent no.1 in the Trial Court has given an endorsement on the notice that he has no authority to represent the respondent. The communication is taken on record.

3. By this petition, the petitioner challenges the order dated 3 April, 2014, passed by the learned District Judge, Panaji, rejecting the application filed by the petitioner under Order 1, Rule 10 of the Code of Civil Procedure seeking her deletion from the array of parties in the suit instituted by respondent no.1.

4. The respondent no.1 is employed with the Department of Electricity in the State of Goa as an Assistant Engineer. He was posted at Canacona. An order of transfer

came to be issued to the respondent no.1, which was challenged by respondent no.1 by filing a civil suit in the Court of District Judge, Panaji.

5. By the interim order, the order of transfer of respondent no.1 has been stayed by the learned District Judge. In the suit, the petitioner has been joined as party defendant. The respondent no.1 has averred in the plaint that since he took some administrative action against the petitioner, the respondent no.1 was transferred.

6. An application was moved by the petitioner seeking a deletion as no relief is prayed for against her. This application has been rejected by the impugned order by the learned District Judge on the ground that the transfer has been effected because he had issued certain office orders to the petitioner and therefore, she was a proper party.

7. I have heard the learned counsel for the petitioner. The respondent no.1, inspite of various opportunities has not remained present. The averments made in the petition have not been controverted.

8. The petitioner is also an employee in the department of Electricity. She is working as a Clerk. The petitioner has no authority as regards the order of transfer. Allegation of the respondent no.1 that because he took some action against the petitioner, the department transferred the petitioner. What the respondent no.1 has given is the reason

for transfer, but he has not stated that the petitioner had any authority to transfer him. The allegations of the respondent will be dealt with by the department. If necessary the department may choose to examine the petitioner, but since no relief is prayed for against the petitioner, there is no need to join her in the suit. The petitioner is a Government servant and because she is needlessly joined in the suit, her duties are affected as she has to attend the dates in the suit.

9. I find absolutely no warrant to continue the petitioner in the suit as a party defendant. The respondent no.1 has not bothered to appear in the petition and stay of transfer order has continued.

10. The petition deserves to be allowed. Accordingly rule is made absolute in terms of prayer clause "a". The application filed by the petitioner dated 27 August 2013 is allowed. No order as to costs. Interim order granted in this petition stand vacated. The learned Additional Government Advocate states that the respondent-department will place the order on the file of the learned Judge.

N. M. JAMDAR, J.

Ap/-