

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WA.No. 1760 of 2015 () IN WP(C).12870/2015

(AGAINST THE ORDER/JUDGMENT IN WP(C) 12870/2015 of HIGH COURT OF KERALA
DATED 16-07-2015)

APPELLANT(S)/RESPONDENTS IN WPC 2 TO 5 & PETITIONER:

1. KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,
K.S.R.T.C FORT, THIRUVANANTHAPURAM 695 023.

2. THE MANAGER IN CHARGE OF EXECUTIVE DIRECTOR
(ADMINISTRATION),
THE KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVANFORT, THIRUVANANTHAPURAM - 695 023.

3. THE DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION
CHENGANNUR - 689 121.

4. THE DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION
MAVELIKKARA - 690 101.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

RESPONDENT(S)/PETITIONER IN IST R1, 6, 7 & 8 IN WPC:

1. SMT. V.R.SHYLAJA, AGED 45 YEARS
W/O.P.M.RADHAKRISHNAN
WORKING AS SUPERINTENDENT(AUDIT)
KERALA STATE ROAD TRANSPORT CORPORATION
PIN - 689 532.

2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO
THE GOVERNMENTSC/ST DEVELOPMENT,
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

3. SMT.JAYA.S. MAMMEN,
SUPERINTENDENT KERALA STATE ROAD TRANSPORTCORPORATION
CHENGANNUR - 689 121.

4. SMT.SUNITHA KURIAN
SUPERINTENDENT
KERALA STATE ROAD TRANSPORT CORPORATION
CHENGANNUR - 689 121.

5. SMT.SHEELA MOL JOSEPH,
SUPERINTENDENT (AUDIT),
KERALA STATE ROADTRANSPORT CORPORATION
CHENGANNUR - 689 121.

R1 BY ADV. SRI.N.UNNIKRISHNAN
GOVT.PLEADER SRI. VIJU THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-8-2015, THE
COURT ON 14/10/2015 DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHN,
SUNIL THOMAS, JJ.**

W.A. No. 1760 of 2015

Dated this the 14th day of October , 2015

JUDGMENT

Sunil Thomas, J.

This writ appeal is at the instance of the second respondent the Kerala State Road Transport Corporation, which challenges the order of the learned Single Judge in W.P. (C) No.12870/2015.

2. The writ petitioner was appointed as a Lower Division Clerk in KSRTC on 18/6/1989 at Vizinjam depot, on a compassionate appointment. Thereafter, she served in various stations and ultimately after her promotion as Superintendent in 2011, on her request, she was transferred to Chengannur on 10/9/2012. While so, by Ext.P2 memorandum dated 3/11/2014, she was relieved of her duties at that unit and directed to report at Mavelikkara depot which was challenged in the writ proceeding.

3. It was contended that she was only relieved from her station at Chengannur, though there was no specific transfer as evident from Ext.P3 memo dated 28/20/2014. According to her, it was in violation of clause 11 (a) of Ext.P4 Government Order as well as Ext.P5 agreement. Her precise contention was that Ext.P2 order of transfer violated Ext.P4 Government Order and Ext.P5 agreement. It was further contended that it was ultra vires and discriminatory in so far as the 6th and 7th respondents, who have been working in the same station since 2006 and 2008 respectively, were permitted to continue there and she, who joined that depot in 2012, was again transferred. Her case was also that transfer was untimely, since in normal circumstance, transfers are effected in April. Further contention taken up was that she, being a member of a scheduled caste community, was entitled to the protection in wage revision agreement.

4. The KSRTC contested her claim and grounded its case on the basis of the strength adjustment. This was found against by the learned Single Judge who, by the impugned order, quashed Ext.P2 which enabled the writ petitioner to be retained at Chengannur, as a superintendent.

5. This is challenged by the Corporation. Heard both sides and examined the records.

6. Essential facts were not denied by the Corporation. It was admitted that she was posted at Chengannur with effect from 10/9/2012 whereas the 6th and 7th respondents were there since 2006 and 2008 respectively. The justification of the Corporation was that the transfer was effected to maintain the strength, since rules did not permit more officers at the same depot. Regarding her claim for protection under the SC & ST, it was answered by contending that the protection permitted was for a maximum period of five years, which benefit she had already availed of. Another defence set up by the Corporation was that the respondents 6 and 7 enjoyed the protection from transfer, being nominees of the trade unions, in the light of Exts.P10 and P11. The learned Single Judge correctly held that the protection could not enure beyond a period of one year. 6th and 7th respondents had admittedly enjoyed the protection. Evidently, the Corporation had no valid explanation as to why the petitioner, who joined depot in 2012, should be transferred retaining respondents 6 and 7 who had been in the depot since

long. The learned single Judge was hence justified in holding that the Corporation acted malafide in discriminating the petitioner as against the respondents 6 and 7 who enjoyed the trade union support.

On an evaluation of the entire facts, it is evident that the findings of the learned Single Judge is grounded on strong factual basis and sound legal principles. There was substantial reason for holding that she was discriminated against and that there was indication of arbitrariness. No ground for interference is made out by the appellant and consequently, the impugned order is not liable to be interfered. The writ appeal fails and is dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

