

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936**

**WP(C).No. 11342 of 2011 (P)**  
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**PETITIONER :**  
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**MANAGING DIRECTOR,  
M/S.JULLUNDUR MOTOR AGENCY (DELHI) LIMITED,  
458-1/16, SONA ROAD  
OPPOSITE NEW COURT, GURGAON  
HARYANA, REPRESENTED BY POWER OF ATTORNEY HOLDFER  
RADHAMANI P.C., ASSISTANT MANAGER,  
JULLUNDUR MOTOR, AGENCY  
KOTTAYAM.**

**BY ADV. SRI.P.RAMAKRISHNAN**

**RESPONDENT(S) :**  
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- 1. COMMERCIAL EMPLOYEES ASSOCIATION (AITUC)  
COURT ROAD, KOZHIKODE - 673 001.**
- 2. THE LABOUR COURT,  
KOZHIKODE - 673 001.**

**R1 & R2 BY GOVT. PLEADER SRI. MANOJ KUNJACHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-03-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**Mn**

**...2/-**

**APPENDIX**

**PETITIONER'S EXHIBITS :**

**EXT.P1 : COPY OF CLAIM STATEMENT DATED 9/1/2008.**

**EXT.P2 COPY OF REPLY STATEMENT DATED 30/4/08 SUBMITTED BY THE  
PETITIONER.**

**EXT.P3 COPY OF AWARD DATED 22/11/2010 IN ID NO. 16/07.**

**RESPONDENT'S EXHIBITS : NIL**

**//TRUE COPY//**

**P.S. TO JUDGE**

**Mn**

**K. Vinod Chandran, J.**

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W.P.(C)No.11342 of 2011

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Dated this the 3<sup>rd</sup> day of March, 2015.

**JUDGMENT**

1. The justifiability of a transfer was referred for adjudication to the Labour Court, Kozhikode. The Labour Court, by the impugned order, found that, the workman was not transferable and that, the entire incident, which led to his transfer, was ill-motivated. The Labour Court, finding the transfer to be not justifiable, directed that, the workman shall be continued in the Kozhikode branch and if the same is closed, he shall be posted in the Kottayam branch. A compensation of Rs.25,000/- was awarded.
2. The Union, which espoused the cause of the workman, has not appeared, despite notice. The brief facts to be noticed are that; the management, having detected a mis-appropriation in the branch at Kozhikode, filed a criminal complaint. Investigation was carried on

and the workman herein was also found to have been involved in such mis-appropriation. The workman was arrayed as an accused and he later took bail on 17.10.2005.

3. The workman was transferred from Kozhikode to Chennai, by order dated 7.11.2005. The workman challenged the said transfer, on the ground that, the same was ill-motivated, since, the bail conditions specifically provided that, he shall not leave the jurisdiction of the court and he has to remain within Kozhikode itself. However, later on, the inclusion of the workman, as an accused, was found to be bad. By Ext.W5, produced before the Labour Court dated 9.11.2007, the Additional Director General of Police had informed the workman that, he has been removed from the array of accused and the enquiry was initiated against the Circle Inspector of Police, who was involved in the investigation.
4. The management contends that, despite the workman, having been removed from the array of accused, he did not join the Chennai

branch, on transfer. It is also contended that, the evidence before the Labour Court, indicated that, the workman had obtained an alternate employment and he admitted to working as an Accountant, in another establishment.

5. The issue dealt with by the Labour Court, on the question of justifiability of transfer was, whether the petitioner occupied a transferable job or not. As stated by the learned counsel for the management, the petitioner did not have a claim that, he was in a transferable job. However, a reading of the evidence would indicate that, the management had, through their witnesses, specifically contended that, there was a standing order in existence, which made the workman's post transferable and also that, his appointment letter, specifically provided that, he is transferable. However, no document was produced to substantiate the same, neither the appointment letter nor the standing order. Hence, despite the workman, having not specifically claimed that he was not appointed to a transferable post,

the management had failed to substantiate their specific contention that, the petitioner's job was transferable. This Court does not find any reason to interfere with the award.

6. However, with respect to the relief portion, the workman was directed to join at Kozhikode or Kottayam, if the Kozhikode branch is closed. On that aspect, this Court is of the opinion that, the Labour Court exceeded its brief, especially since, it was a categorical admission of the workman that he was already engaged in an alternate employment. Hence, the maximum, that could be granted to the workman, was compensation with respect to the severance of employment, which was effected as on 7.11.2005. The workman is admitted to have been engaged from 1.4.2002. Hence, the workman would be entitled to half month's pay of every completed year of service as on 7.11.2005, the date of his transfer, under the Industrial Disputes Act, 1947. The workman is also entitled to a further compensation of Rs.50,000/-, which, according to this Court, would

serve the interest of justice, especially on the admitted fact that, the workman is employed elsewhere, after the transfer was effected by the management.

Writ petition is partly allowed modifying the award as above. No costs.

**K. Vinod Chandran, Judge.**

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