

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 11384 of 2015 (W)

PETITIONER:

**JOSEPH SEN K. ROBIN, S/O. K.J.ROBIN,
AGED 22 YEARS, KIZHUPPILLIL HOUSE,
MAMPILLYPARAMBU ROAD, MAROTTICHUVADU,
EDAPPALLY P.O, KOCHI - 682 024.**

**BY ADVS.SRI.D.SREEKUMAR
SRI.TONY PETTAH**

RESPONDENT(S):

- 1. THE DIRECTOR, INSTITUTE OF HUMAN
RESOURCE DEVELOPMENT (IHRD)
PRAJO'E TOWERS, VAZHATHAKADU,
THIRUVANANTHAPURAM - 695 014.**
- 2. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 3. COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
REPRESENTED BY ITS REGISTRAR,
COCHIN UNIVERSITY P.O, KOCHI - 682 022.**
- 4. THE PRINCIPAL, MODEL ENGINEERING COLLEGE,
BMC P.O, THRIKKAKARA. ERNAKULAM, PIN - 682 021.**
- 5. REYNA GEORGE, THIRD YEAR STATEMENT B.TECH (EEE),
COLLEGE OF ENGINEERING CHANGANNUR,
RESIDING AT PARAPPULLY HOUSE, KADUPPASSERY P.O,
THRISSUR DISTRICT - 680 698.**

**R1 & R4 BY SRI.V.A.MOHAMMED, SC
R2 BY GOVERNMENT PLEADER SRI.SAIDALAVI
R3 BY ADV. SRI.MILLU DANDAPANI
R5 BY ADV. SRI.JOLLY JOHN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: TRANSFER ORDER IN FAVOUR OF PETITIONER BY 3RD RESPONDENT
DATED 28.1.2014.
- EXT.P2: JUDGMENT IN WP(C) NO.8436/2014 HIGH COURT OF KERALA
DATED 18-6-2014.
- EXT.P3: JUDGMENT IN W.A.NO.1374/2014 HIGH COURT OF KERALA
DATED 3-12-2014.
- EXT.P4: NOTICE ISSUED BY 1ST RESPONDENT TO PETITIONER
DATED 5.1.2015.
- EXT.P5: PROCEEDINGS BY THE 1ST RESPONDENT DATED 30-3-2015.
- EXT.P6: TRUE COPY OF THE ORDER NO.DA1/8947/2013/HRD DATED 10.9.2013
ISSUED BY THE 1ST RESPONDENT.
- EXT. P7: TRUE COPY OF THE LETTER NO.AC.A4/COLLEGE TRANSFER/2013
DATED 28.9.2013 ISSUED BY THE JOINT REGISTRAR(ACADEMIC)
- EXT.P8: TRUE COPY OF THE CHELAN ISSUED BY THE COCHIN UNIVERSITY OF
SCIENCE AND TECHNOLOGY DATED 27.1.2014.
- EXT.P9: TRUE COPY OF THE CHELLAN OF THE STATE BANK OF TRAVANCORE
INFAVOUR OF THE MODEL ENGINEERING COLLEGE.

RESPONDENT(S)' EXHIBITS:

- EXT. R5(A) : TRUE COPY OF THE ADMINISTRATIVE PROCEDURE GUIDELINE, FOR
THE PROCESS OF COLLEGE TRANSFERS, ISSUED BY CUSAT
DATED 28.9.2013.
- EXT. R5(B) : TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT
DATED 8.4.2005 TO GOVERN THE INTERCOLLEGIATE TRANSFER OF
STUDENTS.
- EXT. R5(C) : TRUE COPY OF REQUEST FILED BEFORE THE 1ST RESPONDENT ON
30.9.2013 FOR PERMISSION FOR GRANTING NOC.
- EXT. R5(D) : TRUE COPY OF THE REQUEST LETTER DATED 24.11.2013 SUBMITTED
BY 5TH RESPONDENT'S FATHER PRAYING FOR THE REQUIRED
DIRECTIONS TO THE 1ST RESPONDENT.
- EXT. R5(E) : TRUE COPY OF THE RESPONSE PROVIDED BY THE 1ST RESPONDENT
TO THE REQUEST LETTER OF THE 5TH RESPONDENT
DATED 12.11.2013.
- EXT. R5(F) : TRUE COPY OF THE SANCTION LETTER WITH THE DIRECTIONS TO
BOTH THE COLLEGES ISSUED ON 10.1.2014.

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- EXT. R5(G) :** TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DATED 13.1.2014.
- EXT. R5(H) :** TRUE COPY OF THE ORDER DATED 28.1.2014 SANCTIONING THE TRANSFER OF PETITIONER BY THE 3RD RESPONDENT.
- EXT. R5(I) :** TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT.
- EXT. R5(J) :** THE TRUE COPY OF THE APPLICATION OF THE PETITIONER DATED NIL FOR TRANSFER.
- EXT. R5(K) :** THE STATEMENT FILED BY THE 1ST RESPONDENT IN WP(C)8436/2014.
- EXT. R5(L) :** THE TRUE COPY OF THE JUDGMENT OF HON'BLE HIGH COURT OF KERALA DATED 18.6.2014 IN WRIT PETITION(CIVIL) 8436/2014.
- EXT. R5(M) :** A TRUE COPY OF THE JUDGMENT DATED 3.12.2014 IN WRIT APPEAL NO.1374/2014.
- EXT. R5(N) :** A TRUE COPY OF THE COMMUNICATION DATED 13TH JANUARY 2015, NUMBERED AS DA1/113640/2013/HRD ISSUED BY THE 1ST RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.11384 of 2015

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Dated this the 27th day of July, 2015

JUDGMENT

The petitioner is aggrieved by the decision taken by the first respondent in transferring him back to the College of Engineering, Chengannur by cancelling the transfer given to him one year ago and transferring the fifth respondent in his place in violation of the transfer regulation of the Cochin University and, that too, at the fag end of the 4th semester when University Examinations have been commenced.

2. The petitioner is a third year student in the fourth respondent college under the first respondent for B.Tech Degree (EEE). The petitioner originally was studying in the College of Engineering, Chengannur, which is also under the first respondent. The petitioner alleges that his residence is far away from the College of Engineering, Chengannur and the stay in the hostel is not conducive to the financial position of his parents. Therefore, when a vacancy arose in the fourth respondent college, in B.Tech, the petitioner applied for transfer to the said college to continue his

studies. When he applied, he was the sole applicant. Therefore, all the authorities considered his request in his favour and processed the application granting no objection; it is alleged.

3. It is further alleged that the petitioner's family is very poor. His father is a factory employee and is the sole breadwinner for the family. The paternal uncle of the petitioner, who is a mentally retarded person, is also looked after by the petitioner and his father. His father cannot meet the hostel expenses, especially when huge expenditure is required for the medical treatment of his brother.

4. The petitioner further alleges that at the time of submitting the application for transfer, there was no other application by any other person, including the 5th respondent, for transfer. The petitioner obtained necessary sanction and NOC from the concerned authorities and respondents 1 to 4 after due consideration of the application concurrently sanctioned the transfer as per Ext.P1 order. The petitioner joined the college under the respondent university for second semester and continued his studies. Now the petitioner completed the 4th semester and its examination has already been commenced.

5. When the fifth respondent came to know of the transfer of the petitioner to the respondent college, he challenged the same before this Court in W.P(C) No.8436 of 2014 and this Court after hearing all the parties dismissed the writ petition upholding the transfer allowed to the petitioner by Ext.P2 judgment. The matter was taken in an intra court appeal by the fifth respondent which was disposed of by the Division Bench vide Ext.P3 judgment with a direction to consider the application filed by the fifth respondent and also to pass appropriate orders in the matter. However, the first respondent without applying the mind passed Ext.P5 cancelling the transfer of the petitioner without assigning any valid reason. It is with this background, the petitioner has come up before this Court.

6. Though the first respondent, who entered appearance, were given sufficient opportunity to file counter affidavit, no counter affidavit is seen filed.

7. The third respondent filed counter affidavit stating that the petitioner, a first year B.Tech (Electrical & Electronic Engineering) student of College of Engineering, Chengannur requested for a college transfer to Model Engineering College. It was also stated

that he has furnished no objection certificate from both colleges.

8. As per the norms of the respondent university, the request for college transfer is considered with the consent of the Principal of both the colleges and the Vice Chancellor is the competent authority to sanction the same. It was also contended that an application in respect of the fifth respondent for collegiate transfer is not received by the third respondent university; it is contended

9. The fifth respondent has filed a detailed counter affidavit. Along with the counter, they have produced Exts.R5(A) to R5(N) in support of their contentions. They contended that she had submitted Ext.R5(c) request dated 30th September, 2013 before the first respondent for issuing a direction to the colleges since the rules of the IHRD state that no objection certificate can be issued only after getting sanction from the first respondent. It was also stated that she has given application as per the guidelines in Ext.R5 (A) only if the first respondent issues a direction to both the colleges to issue no objection certificates for the fifth respondent.

10. The definite case of the fifth respondent is that even after the due date, the first respondent had not provided any reply. Her case is that the first respondent had issued a letter to the

petitioner, who is a student having rank lower than her, directing both colleges, i.e., the college where the fifth respondent was studying and the college to which the fifth respondent wanted a transfer, to issue NOC to the petitioner. The fifth respondent narrated the circumstances under which the NOC was issued. The petitioner challenged the same in another writ petition before this Court and it ultimately culminated in the judgment of a Division Bench in W.A No.1374 of 2014. Copy of the judgment is produced as Ext.R5(M). It was contended that it was on the basis of the direction of the Division Bench that the present impugned order has been passed and, therefore, it does not call for an interference.

11. I have heard the learned counsel for the petitioner, the learned standing counsel for the first respondent, the learned standing counsel for the respondent university and the learned counsel for the fifth respondent.

12. It is crucial to note that in the first round of litigation initiated at the instance of the fifth respondent culminated in a judgment of a Division Bench of this Court. It is relevant to note that though the Division Bench, while considering the matter, did not go into the validity of the comparative claims of the petitioner

and the fifth respondent. The Division Bench thought it proper to leave it open to be decided by the first respondent. Therefore, a clear direction was given to the first respondent to consider the claim of the petitioner as well as the fifth respondent on the basis of the rules and regulations and to take a proper decision in the matter after hearing both sides. A time limit was also fixed. A reading of the impugned order would reveal that this exercise has not been done by the first respondent.

13. The learned counsel for the petitioner submitted that the Director, who was in charge, passed the impugned order in a hasty manner to avoid contempt. In the impugned order, the history of the case is narrated and ultimately by a single line order, the previous decision giving transfer to the petitioner is annulled without assigning any reason. Actually, this was not the intention of the Division Bench of this Court. There is not even a single line in the impugned order to show that the comparative merits of the claim of the petitioner and the fifth respondent were considered in the light of the existing rules and regulations. Therefore, this Court is of the view that the matter requires a re-look the first respondent.

In the result, the writ petition is disposed of quashing Ext.P5 and directing the first respondent to reconsider the issue in the light of the following observations made by the Division Bench in Ext.R5(M) judgment:-

“Accordingly, we direct the 1st respondent to consider the claim of the petitioner as well as the 4th respondent in accordance with the rules and regulations and take a proper decision in the matter after hearing the affected parties, within a period of four weeks from the date of receipt of a copy of the judgment.”

This shall be done within a period of three weeks from the date of receipt of a copy of this judgment. Till that, the existing state of affairs shall continue.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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