

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WP(C).No. 12526 of 2015 (M)

PETITIONERS : -

1. K.S SURESH, AGED 43 YEARS,
S/O.SUKUMARAN, THAKKUCHIRAPUTHENPURAYIL,
PERUMBAVOOR P.O., MOOVATTUPUZHA, ERNAKULAM DISTRICT.
2. K.I.VARGHESE, AGED 51 YEARS,
S/O.ISSAC, KADALIPARAMBIL HOUSE,
VELIYANAD POST, PEPPATHI, ERNAKULAM-682 313.

BY ADVS.SRI.KOSHY GEORGE
SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

RESPONDENTS : -

1. KERALA STATE CO-OPERATIVE CONSUMERS FEDERATION LIMITED,
GANDHI NAGAR, ERNAKULAM-682 020,
REPRESENTED BY ITS MANAGING DIRECTOR.
2. THE MANAGING DIRECTOR.,
KERALA STATE CO-OPERATIVE CONSUMERS FEDERATION LIMITED,
GANDHI NAGAR, ERNAKULAM-682 020.

R1-R2 BY ADV. SRI.RAJU JOSEPH (SR.)
R1-R2 BY ADV. SRI.K.T.PAULOSE, SC, CONSUMER FED

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

- EXT.P1 : TRUE COPY OF THE AGREEMENT DATED 29/4/2003 EXECUTED BETWEEN THE UNIONS AND THE 1ST RESPONDENT WITH ITS ENGLISH TRANSLATION.
- EXT.P2 : TRUE COPY OF THE CIRCULAR DATED 26/5/2003 ISSUED BY THE 1ST RESPONDENT WITH ITS ENGLISH TRANSLATION.
- EXT.P3 : TRUE COPY OF THE MEMORANDUM OF SETTLEMENT EXECUTED BETWEEN THE UNIONS AND THE 1ST RESPONDENT WITH ITS ENGLISH TRANSLATION.
- EXT.P4 : TRUE COPY OF THE ORDER DATED 27/3/2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS.

RESPONDENTS' EXHIBITS : -

- EXHIBIT R1(a) : TRUE COPY OF THE G.O. (MS) No. 103/2002/TD DATED 15.07.2002.
- EXHIBIT R1(b) : TRUE COPY OF THE TRANSFER ORDER ISSUED BY KERALA STATE BEVERAGES CORPORATION DATED 03.03.2015.
- EXHIBIT R1(c) : TRUE COPY OF THE ENGLISH VERSION OF EXHIBIT R1(b).
- EXHIBIT R1(d) : TRUE COPY OF THE TRANSFER ORDER ISSUED BY KERALA STATE BEVERAGES CORPORATION DATED 18.03.2015.
- EXHIBIT R1(e) : TRUE COPY OF THE ENGLISH VERSION OF EXHIBIT R1(d).
- EXHIBIT R1(f) : TRUE COPY OF THE ORDER ISSUED BY THE MANAGING DIRECTOR SHOWING THE NATURE OF DUTY ASSIGNED TO THE PETITIONER.
- EXHIBIT R1(g) : TRUE COPY OF THE ORDER ISSUED BY THE MANAGING DIRECTOR SHOWING THE NATURE OF DUTY ASSIGNED TO THE PETITIONER.
- EXHIBIT R1(h) : TRUE COPY OF THE MEMO ISSUED TO BOTH OF THEM.
- EXHIBIT R1(i) : TRUE COPY OF THE REPLY GIVEN BY THE 1st PETITIONER DATED 04.01.2015.
- EXHIBIT R1(j) : TRUE COPY OF THE ENGLISH VERSION OF EXHIBIT R1(J).
- EXHIBIT R1(k) : TRUE COPY OF THE EXPLANATION.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 12526 of 2015

Dated this the 08th day of July, 2015

JUDGMENT

Briefly stated, the petitioners, working in the liquor shops maintained by the first respondent Federation, have assailed Exhibit P4 through which they have been transferred from their respective shops to the beverage section of Head Office. Initially, on the oral observation of this Court that this Court would consider the application expeditiously provided they reported to duty, the petitioners in compliance thereof have joined in the Head Office pursuant to Exhibit P4 transfer order.

2. Upon the respondent Federation filing a detailed counter affidavit, both the learned counsel have advanced elaborate arguments on the issue of the justifiability of Exhibit P4, especially in the face of Exhibits P1 and P3 service agreements, as well as Exhibit P2 office

memorandum.

3. The learned counsel for the petitioners has strenuously contended that in terms of Exhibits P1 and P3 service agreements, the petitioners shall be continued to work in the shops to which they have been allotted owing to the abolition of private liquor vending licences in 2002. The learned counsel has especially placed much emphasis on Clause 8 and 9 of Exhibit P1 service agreement. He has also drawn my attention to Exhibit P2 circular, through which Exhibit P1 service agreement is said to have been accepted by the first respondent.

4. In elaboration of his submissions, the learned counsel would contend that Section 18 of Industrial Disputes Act mandates that any agreement that has been entered into by the management and the workmen shall be honoured by both the parties. It is the specific contention of the learned counsel that once the petitioners have to be transferred from the shops, they will lose the service benefit of being the members of Kerala Abkari Workers Welfare Fund Board.

5. Per contra, the learned Senior Counsel for the respondent Federation has submitted that Exhibits P1 to P3 read compendiously would not lead to any inference that the petitioner could not be transferred. The first respondent as the employer is not prevented from transferring the petitioners in the interest of administration.

6. The learned Senior Counsel has also made elaborate submissions concerning the invalidity of Exhibits P1 and P3; according to the learned Senior Counsel, they do not have the necessary Government approval as a pre-condition. Be that as it may, eventually the learned Senior Counsel, on instructions, has submitted that even on transfer the petitioners would not suffer any prejudice, and that they continue to be the members of the Kerala Abkari Workers Welfare Fund Board.

7. Heard the learned counsel for the petitioners and the learned Senior counsel for the respondents, apart from perusing the record.

8. There is no cavil concerning the settled proposition of law that transfer is an unavoidable incidence of service. Even when a statute or service regulations are silent on the

aspect, the said right of transfer on the part of the employer is presumed to be inherent. As such, I am inclined to accept the contention of the learned Senior Counsel for the first respondent that Exhibits P1 to P3 cannot be read to mean that there is any absolute embargo on the power of the employer from transferring his employees, especially in the interest of administration. It is, however, equally well settled that once a statute expressly mandates a particular procedure of transfer, it cannot be violated. Equally well settled is the principle of law that if the transfer results in any prejudice to the employees, especially in terms of service benefits, it is punitive in nature and cannot be countenanced.

9. In the present instance, the learned Senior counsel has specifically gone on record saying that the transfer is in the interest of administration, that the petitioners have been transferred to a nearby place and that their transfer would not dis-entitle them to the membership of the Kerala Abkari Workers Welfare Fund Board.

In the facts and circumstances, obviating the need of discussion on all other decisions raised by the respective

counsel for the parties on either side, this Court is of the opinion that the petitioners challenge against Exhibit P4 cannot be sustained. As a result, the writ petition is dismissed, making it clear that the transfer effected through Exhibit P4 shall not be to the prejudice of any of the service benefits of the petitioners. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-