

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).NO. 16029 OF 2015 (C)

PETITIONER(S) :

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K.V.PARAMESWARAN NAMBOOTHIRI AGED 57 YEARS  
S/O. K.P.VASUDEVAN NAMBOOTHIRI  
RESIDING AT KOVOORMANA, NANDIPULAM P.O., CHENGALUR (VIA)  
THRISSUR DISTRICT - 680 312.

BY ADVS.SRI.M.P.SREEKRISHNAN  
SMT.M.H.BINDU

RESPONDENT(S) :

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1. THE COCHIN DEVASWOM BOARD  
REPRESENTED BY ITS SECRETARY  
OFFICE OF THE COCHIN DEVASWOM BOARD  
THRISSUR - 680 020.

2. THE SPECIAL DEVASWOM COMMISSIONER  
COCHIN DEVASWOM BOARD OFFICE OF THE COCHIN DEVASWOM BOARD  
THRISSUR - 680 312.

3. THE STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT  
DEASWOM DEPARTMENT, GOVERNMENT SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.

R1,R 2 BY ADV. SRI.G.RAJAGOPAL, SC, COCHIN DEVASWOM BOARD  
BY GOVERNMENT PLEADER SMT.LOWSY.A  
R BY SRI.KRISHNA MENON, SC, COCHIN DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 16029 OF 2015 (C)

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APPENDIX

PETITIONER(S) ' EXHIBITS

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P1 - A TRUE OF ORDER DT. 23.5.15.

P2 - TRUE COPY OF THE TERMS AND CONDITIONS OF SERVICE OF THE TEMPLE  
EMPLOYEES DT. 29.3.12.

RESPONDENT(S) ' EXHIBITS:

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EXT.R1(A): TRUE PHOTOCOPY OF ORDER NO:M4.8780/10 DATED 10.02.2012 OF  
THE 2<sup>ND</sup> RESPONDENT.

EXT.R1(B): TRUE PHOTOCOPY OF THE REPORT OF THE ASSISTANT COMMISSIONER,  
THRISSUR GROUP DATED 10.10.2012

EXT.R1(C): TRUE PHOTOCOPY OF THE REPORT DATED 30.03.2013 OF THE  
ASSISTANT COMMISSIONER, THRISSUR GROUP

EXT.R1(D): TRUE PHOTOCOPY OF THE JUDGMENT DATED 13.08.2013 IN W.P.(C).  
NO.17226 OF 2013 ON THE FILES OF THE HONOURABLE HIGH COURT

EXT.R1(E): TRUE PHOTOCOPY OF THE JUDGMENT DATED 18.10.2013 IN W.P.(C).  
NO.25374 OF 2013 ON THE FILES OF THE HONOURABLE HIGH COURT

EXT.R1(F): TRUE PHOTOCOPY OF THE JUDGMENT DATED 20.02.2014 IN W.P.(C).  
NO.3090 OF 2014 ON THE FILES OF THE HONOURABLE HIGH COURT

EXT.R1(G): TRUE PHOTOCOPY OF ORDER DATED 03.05.2014 OF THE 2<sup>ND</sup>  
RESPONDENT.

EXT.R1(H): TRUE PHOTOCOPY OF THE REPORT OF THE GROUP ASSISTANT  
COMMISSIONER, DATED 30.05.2015

//TRUE COPY//

P.A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
**W.P.(C).No.16029 of 2015**

.....  
**Dated this the 21<sup>st</sup> day of July, 2015**

**J U D G M E N T**

The petitioner in the writ petition is serving under Cochin Devaswom Board for the last 27 years. Presently he is serving as a Santhi at Upadeva Temple of Vadakkumnathan Temple, Thrissur. In the writ petition, he is aggrieved by Ext.P1 order of transfer dated 23.05.2015 whereby he has been transferred to the Ashtamichira Temple which, according to the petitioner, is 40 kms away from the residence of the petitioner. The petitioner impugns Ext.P1 order on various grounds. It is his case that the transfer in question has been ordered as a punitive measure taking note of various incidents that occurred in the past for which, although an explanation was sought from the petitioner, the respondent Board had themselves decided not to pursue the matter against the petitioner. It is also pointed out that, the order of transfer has been passed, so as to accommodate the present Santhi working at Ashtamichira Temple against whom also the respondent Board alleges certain acts of indiscipline. The petitioner would also point to the personal inconvenience that is caused to the petitioner on account of the transfer in question and it is

his contention that there are vacancies in nearby temples under the respondent Board to which he can be accommodated.

2. A counter affidavit has been filed on behalf of the respondent Board, wherein reference is made to various proceedings that were initiated against the petitioner to show that the petitioner himself is a person who does not have an unblemished service as claimed by him. It is also pointed out that the Santhi at Ashtamichira Temple, was also transferred by the same order of transfer to Vadakkumnathan Temple to replace the petitioner. Apparently, there were several complaints even against the said Santhi of Ashtamichira Temple and it was under those circumstances that, the respondent Board decided to effect a mutual transfer between the petitioner and the Santhi of Ashtamichira Temple. The respondents would also contend that the transfer being in the exigencies of service, was not liable to be interfered with this Court in exercise of powers of Article 226 of the Constitution of India.

3. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent Board.

4. On a consideration of the facts and circumstances of the case

and the submissions made across the bar, I am of the view that, ordinarily this Court will not interfere with an order of transfer that is passed by an employer in respect of his employees. In matters of transfer, this Court would be loath to interfere save in exceptional circumstances where it is demonstrated that the order of transfer is vitiated by malafides or that it has been issued in violation of any statutory provision or established norms that govern transfer in the respondent Board. In the Instant case, I note from the counter affidavit filed by the respondent Board that the order of transfer is sought to be justified on the basis of various proceedings that were initiated against the petitioner, as also against the Santhi at Ashtamichira Temple. It is trite that, if an order of transfer is punitive in nature, then the said order cannot be passed without first establishing, through disciplinary proceedings initiated against an employee, that the employee has committed the offence or act of indiscipline. Even from the counter affidavit of the respondents, it is clear that although there were proceedings against the petitioner, the said proceedings were subsequently dropped pursuant to the explanation submitted by the petitioner. In that view of the matter, therefore, it would be incumbent upon the respondents to justify the transfer on the ground of exigencies of service, if the order of transfer

is to be legally sustained. There is nothing on the face of the transfer order which would indicate that the transfer was in the exigencies of service. I therefore feel that, the interests of justice would require me to direct the 1<sup>st</sup> respondent Board to consider the case of the petitioner, against Ext.P1 order of transfer, afresh and within a period of three weeks from the date of receipt of a copy of this judgment, after hearing the petitioner. To enable the 1<sup>st</sup> respondent to take a decision in the matter, I direct the petitioner to appear before the 1<sup>st</sup> respondent at 11 am on 04.08.2015. I also make it clear that, till such time as the respondent Board takes a decision in the matter, pursuant to the directions in this judgment, Ext.P1 order of transfer in so far as it relates to the petitioner shall be kept in abeyance.

The writ petition is allowed as above.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

mns