

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937**

**WP(C).No. 18627 of 2015 (C)**  
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**PETITIONER(S):**  
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**K.S.INDIRA, AGED 57 YEARS,  
RUBBER BOARD REGIONAL OFFICE  
KOTHAMANGALAM-PIN-686 691.(RESIDING AT 'LAKSHMI NIVAS'  
KARUKADOM P.O., KOTHAMANGALAM, ERNAKULAM DISTRICT  
PIN-686 691.)**

**BY ADVS.SRIT.R.MOHANAKUMAR  
SRI.S.ANIL KUMAR (CHERTHALA)**

**RESPONDENT(S):**  
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- 1. RUBBER BOARD  
COLLECTORATE P.O., KOTTAYAM-686 002.**
- 2. THE CHAIRMAN,RUBBER BOARD,  
COLLECTORATE P.O., KOTTAYAM-686 002.**
- 3. THE DEPUTY RUBBER PRODUCTION COMMISSIONER  
RUBBER BOARD REGIONAL OFFICE, CLASSIC TOWERS  
KOTHAMANGALAM, PIN-686 691.**

**R1,2,3 BY ADV. SRI.V.ABRAHAM MARKOS  
R1 BY ADV.SRI.BINU MATHEW  
R1 BY ADV.SRI.TOM THOMAS (KAKKUZHIYIL)  
R1 BY ADV.SRI.ISAAC THOMAS  
R1 BY ADV.SRI.NOBY THOMAS CYRIAC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**

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**EXHIBIT P1 A TRUE COPY OFFICE ORDER NO 3/23/2012/EST DATED 17-04-2012 COLLECTED FROM THE RUBBER BOARD WEBSITE**

**EXHIBIT P2 A TRUE COPY OF OFFICE ORDER NO 3/23/2013/EST DATED 29-01-2013 OF THE RESPONDENT BOARD**

**EXHIBIT P3 A TRUE COPY OF OFFICE MEMORANDUM NO 3/23/(2)/2012/EST DATEWD 31-12-2012 OF THE RUBBER BOARD**

**EXHIBIT P4 A TRUE COPY OF SUBMISSION DATED 26-02-2015 OF THE PETITIONER ADDRESSED TO 1ST RESPONDENT**

**EXHIBIT P5 A TRUE COPY OF REPRESENTATION DATED 26-03-2015 OF THE PTITIONER ADDRESSED TO THE 2ND RESPONDENT**

**EXHIBIT P6 A TRUE COPY OF SUBMISSION DATED 15-06-2015 OF THE PETITIONER SUBMITTED TO THE DEPUTY SECRETARY(RP)**

**RESPONDENT(S)' EXHIBITS:**

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**EXHIBIT R1(A): COPY OF THE COMPLAINT DATED 6.6.2015 FILED BY SMT.ANNAKUTTY, SWEEPER TO THE CHAIRMAN, RUBBER BOARD.**

**EXHIBIT R1(B): COPY OF REPORT DATED 10.6.2015 FILED BY THE CONTROLLING OFFICER, KOTHAMANGALAM (DY RPC) RO, KOTHAMANGALAM BEFORE THE SECRETARY, RUBBER BOARD, KOTTAYAM.**

**EXHIBIT R1(C): COPY OF THE OFFICE NOTE CONTAINING THE REPORT.**

**EXHIBIT R1(D): COPY OF MINUTES OF THE STAFF MEETNG HELD ON 30.01.2015.**

**EXHIBIT R1(E): COPY OF TRANSFER ORDER DATED 19.6.2015 ISSUED BY THE DEPUTY SECRETARY (P&A) OF THE RUBBER BOARD, KOTTAYAM.**

**EXHIBIT R1(F): COPY OF COMPLAINT DATED 8.7.2015 FILED BY REEJA JOSEPH (JUNIOR ASSISTANT GRADE I) AND VINITHA KRISHNAN (JUNIOR ASSISTANT GRADE 1) BEFORE THE DEPUTY RUBBER PRODUCTION COMMISSIONER.**

**//TRUE COPY//**

**P.S. TO JUDGE**

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

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**W.P.(C).NO.18627 OF 2015 (C)**  
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**Dated this the 17<sup>th</sup> day of August, 2015**

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

The petitioner is employed with the respondent Rubber Board as Section Officer. In the writ petition, she is aggrieved by Ext.P7 order, whereby, while working in the Regional Office, Kothamangalam, she was transferred and posted to the Excise Duty Division of the respondent Board at Kottayam. It is the case of the petitioner that Ext.P7 order of transfer is punitive in nature inasmuch as the said order of transfer was issued pursuant to a complaint preferred against the petitioner by another casual worker and without conducting any enquiry proceedings to establish any guilt on the part of the petitioner.

2. In a counter affidavit filed by the respondents, it is stated that the petitioner was transferred based on the reports received from the petitioner's Controlling Officer, namely, the Deputy Rubber Production Commissioner, Regional Office, Kothamangalam and the Deputy Secretary (RP), Rubber Production Department, who was the

Liaison Officer of SC/ST Employees of the Rubber Board, about the unpleasant and un-peaceful atmosphere in the office due to the arrogant nature of the petitioner. It is stated that it was based on the above reports that the petitioner was transferred for the smooth functioning of the Regional Office at Kothamangalam. It is categorically stated that the transfer order was not in lieu of a punishment, but only to ensure the smooth functioning of the administration. The counter affidavit also discusses the various acts of indiscipline committed by the petitioner, and for which, it is stated that the Secretary of the Board has referred the matter to the Vigilance Officer, and on the basis of the investigation report of the Vigilance Officer, further disciplinary proceedings are contemplated against the petitioner.

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

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the averments in the counter affidavit clearly suggest that the reason for transfer of the petitioner, was to ensure the smooth functioning of the Regional

Office of the respondent Board. Be that as it may, I find that the decision to transfer the petitioner was taken based on reports obtained from the Controlling Officer of the petitioner, as also from the Liaison Officer for SC/ST employees under the respondent Board. It is apparent that a unilateral decision regarding the guilt of the petitioner, in the matter of acts of indiscipline that are alleged to have been committed by her, has been taken by the respondent without conducting a formal enquiry or disciplinary proceedings. In fact, in the counter affidavit filed by the respondents, it is stated that the matter has been referred to the Vigilance Officer and the respondents contemplate taking disciplinary action against the petitioner after receipt of the report of the Vigilance Department. Taking note of the said averments in the counter affidavit, I am of the view that the transfer of the petitioner, that is impugned in this writ petition, cannot but be viewed as one that is punitive in nature insofar as it seeks to punish the petitioner and transfer her against her will to the Head Office at Kottayam. In my view, a punitive transfer that is ordered, without first establishing the guilt on the part of the employee through a formal disciplinary proceedings conducted against the said employee, cannot be legally sustained since such an order of transfer cannot be said to be one that is passed in the exigencies of service. It

is relevant, in this connection, to note the decision of the Supreme Court in **Somesh Tiwari v. Union of India and Others - [(2009) 1 SCC (L&S) 411]**, where the principle has been succinctly stated, in paragraph 16, as follows:

**16.** Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

Although counsel for the respondent Board would rely on a decision of this court in **Dinamony v. Dt. Supdt. of Police, Kollam - [1994 (1) KLT 326]**, I find that the facts in the said case are clearly distinguishable inasmuch as in that case, the employer had not contemplated any disciplinary proceedings against the petitioner, and it was found that the intention for transferring the petitioner was not to punish the petitioner but only to keep the petitioner away from the

office in the interests of administration. Since, in the said case, there was no proceedings initiated against the petitioner as a prelude to punishing the petitioner, the facts of the said case are clearly distinguishable from the facts in the instant case. Resultantly, I am of the view that, Ext.P7 order of transfer, impugned in the writ petition, cannot be legally sustained. I accordingly quash Ext.P7 order, and allow this writ petition by directing the respondent Board to retain the petitioner at the Regional Office, Kothamangalam from where she was transferred pursuant to Ext.P7 order. I make it clear that nothing in this judgment shall stand in the way of the respondent Board from either initiating or continuing disciplinary proceedings against the petitioner, in accordance with law, for the alleged acts of misconduct that is stated to have been committed by her, as borne out from the averments in the counter affidavit filed by the respondent Board.

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

prp