

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. 20579 of 2015 (V)

PETITIONER(S):

**SHIJL.C.R, AGED 38 YEARS
OMEPARAMBIL HOUSE, VYTTILA P.O., ERNAKULAM
COCHIN - 682 019, NOW WORKING AS DRIVER
VEGETABLE AND FRUIT PROMOTION COUNCIL(KERALAM)
MYTHRI BHAVAN, NEAR DOORADARSHAN KENDRA, KAKKANADU
KOCHI - 682 037.**

**BY ADVS.SRI.BABU CHERUKARA
SRI.P.A.SALIM
SMT.ROSAMMA MATHEW
SRI.ANZAR BASHEER
SRI.SEVI VARGHESE
SRI.PRATHEUSH.M.ANAND**

RESPONDENT(S)/RESPONDENTS:-:

- 1. THE CHIEF EXECUTIVE OFFICER
VEGETABLE AND FRUIT PROMOTION COUNCIL(KERALAM)
MYTHRI BHAVAN, NEAR DOORADARSHAN KENDRA, KAKKANADU
KOCHI - 682 037.**
- 2. DIRECTOR (A & F)
VEGETABLE AND FRUIT PROMOTION COUNCIL(KERALAM)
MYTHRI BHAVAN, NEAR DOORADARSHAN KENDRA, KAKKANADU
KOCHI - 682 037.**

**R1,R2 BY ADV. SRI.S.M.PRASANTH, SC, VEGETABLES & FRUITS
PROMOTION COUNCIL**

**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

EXHIBIT P1. TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM PAIN AND PALLIATIVE CARE SOCIETY THRISSUR DATED 04.07.2015.

EXHIBIT P2. TRUE COPY OF THE JOINING DUTY REPORT OF THE PETITIONER DATED 31.03.2015.

EXHIBIT P3. TRUE COPY OF THE APPLICATION DATED 23.03.15 WITH MEDICAL CERTIFICATE DATED 01.04.2015.

EXHIBIT P4. TRUE COPY OF THE INTIMATION OF THE 2ND RESPONDENT DATED 16.06.2015.

EXHIBIT P5. TRUE COPY OF THE REPRESENTATION JOINING REPORT OF THE PETITIONER 19.06.2015.

EXHIBIT P6. TRUE COPY OF THE REPRESENTATION DATE 06.07.15.

EXHIBIT P7. TRUE COPY OF THE TRANSFER AND POSTING ORDER DATED 13.02.2007.

EXHIBIT P8. TRUE COPY OF THE RELIVING ORDER DATED 16.02.2009.

EXHIBIT P9: COPY OF THE ORS DER NO.VFPCK/06/HR/TRANSFER AND POSTING DATED 13.7.2015 ISSUED BY THE CHIEF EXECUTIVE OFFICER.

RESPONDENT(S)' EXHIBITS:

EXHIBIT R1(A): COPY OF THE CHAPTER VI OF THE STAFF REGULATIONS.

EXHIBIT R1(B): COPY OF THE AGENDA DATED 19.5.2015.

EXHIBIT R1(C): COPY OF RELIEVING ORDER DATED 13.7.2015.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.20579 OF 2015 (V)

Dated this the 17th day of August, 2015

J U D G M E N T

The petitioner, who is working in the 1st respondent's office as a driver, is aggrieved by Ext.P9 order of transfer, whereby, he has been transferred and posted to Idukki. In the writ petition, Ext.P9 order is impugned inter alia on the ground that, on account of the said transfer, the petitioner will be put to serious prejudice and hardship inasmuch as the petitioner has to look after his ailing mother, and on account of this, the petitioner will not be able to stay away from Ernakulam in connection with his work. It is also submitted that there are other drivers working in Ernakulam who hail from Kothamangalam and Perumbavoor, which are nearer to Idukki, and hence the respondents can easily accommodate the said persons at Idukki in lieu of the petitioner.

2. A counter affidavit has been filed on behalf of the respondents. Therein, it is stated that, the petitioner, who has been working as a driver with effect from 1.1.2006 on regular basis, had sought leave without allowance for a period of one year with effect

from 1.12.2012 stating it to be for the purposes of attending the treatment of his ailing mother. The leave that was sought for by the petitioner was sanctioned limiting it to 120 days. Thereafter, on expiry of the said period of leave on 30.3.2013, the petitioner once again sought one year's leave. This leave was also sanctioned to the petitioner. Thereafter, the petitioner once again submitted an application for leave for one more year stating that he required the leave for the purposes of attending to his ailing mother. This leave was also sanctioned. Thus, in all, the petitioner had availed leave of 28 months between 2012 and 2015. When his last leave period expired on 31.3.2015, the petitioner was informed by the respondents to rejoin duty. However, the petitioner submitted another application for further leave. This time however, the respondents were of the view that they could not afford to have the absence of a driver for such a long period as there was a shortage of drivers. The petitioner then rejoined duty at Ernakulam. It was thereafter that, by Ext.P9 order, the petitioner was transferred to Idukki and a relieving order was also issued to him, which is impugned in the writ petition.

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

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that the challenge in the writ petition, against Ext.P9 order of transfer, must necessarily fail. The averments in the counter affidavit of the respondents would clearly indicate that the petitioner was on continuous leave between 2012 and 2015 for a period of almost 31 months. It was thereafter that he reported for duty pursuant to a rejection of his application for further leave. It is the case of the respondents that, in the meanwhile, while the petitioner was on leave, and to take care of the interim period, the respondents had deployed another driver in place of the petitioner at Ernakulam and therefore the vacancy that existed now was in Idukki where the petitioner was deployed by Ext.P9 order. The sole ground on which the transfer is impugned in the writ petition is that the petitioner would be put to great inconvenience if the transfer order is implemented and the petitioner would have to leave his ailing mother in order to take up his responsibility at Idukki. I am not impressed with the said submission of counsel for the petitioner inasmuch as it is not in dispute that the petitioner was on leave for almost 31 months from the organisation, and the present arrangement has been resorted to by the respondents

solely in the interests of administration. Inasmuch as there is no mala fides in the issuance of Ext.P9 order, or any violation of the guidelines while issuing the said order, I am of the view that Ext.P9 order of transfer cannot be interfered with. Resultantly, the writ petition, in its challenge against Ext.P9 order fails, and is accordingly dismissed.

Counsel for the petitioner would submit that the petitioner may be permitted to approach the respondents for a consideration of his case for a re-transfer to Ernakulam sometime in the future. Taking note of the said submission of counsel for the petitioner, I make it clear that if the petitioner submits an application for re-transfer to Ernakulam, after completing a reasonable period of at least three months service in Idukki, then the respondents shall consider the case of the petitioner and take an appropriate decision in the matter, in accordance with law.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp