

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 21025 of 2015 (C)

PETITIONER(S):

**MATHEW.M.P. , AGED 55 YEARS
S/O.LATE PHILOPOSE, WORKING AS DARUGHTSMAN, GRADE 1
P.H CIRCLE, ALAPPUZHA.**

**BY ADVS.SRI.RAJU JOSEPH (SR.)
SRI.E.HARIDAS
SRI.J.JULIAN XAVIER**

RESPONDENT(S):

- 1. THE MANAGING DIRECTOR, KERALA WATER AUTHORITY
VELLAYAMBALAM, THIRUVANANTHAPURAM 695 010.**
- 2. DEPUTY CHIEF ENGINEER
KERALA WATER AUTHORITY, HEAD QUARTERS, VELLAYAMBALAM
THIRUVANANTHAPURAM 695 010.**

**ADDL.R3 RAJAPPAN E.K, WORKING AS DRAFTSMAN GRADE-I
KERALA WATER AUTHORITY, JENNURM PROJECT CIRCLE
KOCHI**

**(ADDL.R3 IS IMPEADED AS PER ORDER DTD. 12.08.2015 IN I.A
NO.10529/15)**

R1-R2 BY ADV. SRI.MILLU DANDAPANI, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE REPRESENTATION DATED 16.4.15.**
- EXHIBIT P2. COPY OF THE ORDER DATED 14.6.95 ISSUED BY THE 1ST RESPONDENT.**
- EXHIBIT P3. COPY OF THE PETITION DATED 9.6.15 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P4. COPY OF THE PETITION DATED 3.7.15 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P5 COPY OF THE REPRESENTATION WHICH IS RECEIVED BY THE 2ND RESPONDENT ON 15.7.15**
- EXHIBIT P6 COPY OF THE ORDER DTD. 15.7.15 ISSUED BY THE 2ND RESPONDENT**
- EXHIBIT P7 COPY OF THE ORDER DTD. 29.7.15 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P8 COPY OF THE REPRESENTATION FILED BY THE PETITIONER DTD. 5.10.15 BEFORE THE 2ND RESPONDENT**
- EXHIBIT P8(A) COPY OF THE POST RECEIPT**
- EXHIBIT P9 COPY OF THE ORDER NO KWA/JB/E4(B)/10583/2015 DTD. 29.10.15 ISSUED BY THE 1ST RESPONDENT.**
- EXHIBIT P10 COPY OF THE SUSPENSION ORDER DTD. 16.5.13**
- EXHIBIT P11 COPY OF THE ORDER DTD. 15.7.13 REINSTATING THE PETITIONER INTO SERVICE**
- EXHIBIT P12 COPY OF THE REPRESENTATION DTD.31.8.15 FILED BY THE PETITIONER TO THE CHIEF ENGINEER.**

WP(C).No. 21025 of 2015 (C)

RESPONDENT(S)' EXHIBITS:

**ANNEXURE R1(A) COPY OF THE ORDER NO. KWA/JB/E6(B1)/2132 DATED
15.07.2013 PASSED BY THE 2ND RESPONDENT.**

**ANNEXURE R1(B) COPY OF THE MEMO OF CHARGES NO.KWA/JB/E6(B1)/
2132/2013 DATED 03.10.2013.**

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.21025 of 2015 - C

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Dated this the 04th day of November, 2015

J U D G M E N T

The petitioner is concerned with a request made for transfer, produced as Ext.P1, in which the petitioner raises a reasonable expectation, that he would be promoted as Draftsman Gr.I and seeks a transfer to the Tripunithura Water Supply Division or to the Kaloore Water Works Sub Division, on such promotion.

2. The petitioner, true to his expectation, was promoted immediately thereafter and he also gave a further application, produced at Ext.P4 dated 03.07.2015, for transfer as requested, since he was posted as Draftsman Gr.I in Alappuzha. The petitioner also approached this Court with a request for consideration of Ext.P4 pointing out that a vacancy existed at Thrikkakara. Obviously, the petitioner pointed out the said

vacancy since, there was no vacancy at Kaloore and Thripunithura as requested by him in Ext.P1. On 27.07.2015, the respondents appeared and contended that the Draftsman Gr.I post in Thrikkakkara is abolished and hence, there could be no transfer to the said post.

3. While the writ petition was pending, the petitioner was transferred to Thodupuzha, which was stayed by this Court by an interim order dated 12.08.2015. The petitioner had been continuing in Alappuzha, when he noticed a retirement vacancy in Water Works Section-I, Vyttila, which was pointed out in the writ petition and this Court by order dated 16.10.2015 directed the Deputy Chief Engineer, the 2nd respondent herein to consider Ext.P8 representation filed along with I.A No.14551 of 2015. The said representation though directed to be considered by the Deputy Chief Engineer was considered by the Managing Director himself and rejected as per Ext.P9, which is produced along with I.A No.16090 of 2015.

4. A reading of Ext.P9 would indicate that the petitioner's transfer request was rejected only since there was said to be a vigilance case, pending against him and though he was suspended from service by order dated 16.05.2013, he had been reinstated in service subject to the condition that he will be posted outside the District or Circle.

5. The learned Senior Counsel for the petitioner submits that the proceedings in the writ petition would itself indicate that the respondent authorities are behaving with deliberate ill will to put the petitioner to prejudice and see to it that the petitioner does not get a preferential transfer as is stipulated in Ext.P2 norms. It is also submitted that there was no reason why the Deputy Chief Engineer did not consider the representation especially since, it was the Deputy Chief Engineer, who heard the petitioner in compliance with order dated 16.10.2015. The very fact that the Managing Director had intervened in the matter indicates the malafides, is the

contention.

6. The learned Counsel for the respondent authority argues on the basis of the statement filed and produce Annexures R1(a) and R1(b) to contend that the petitioner's reinstatement by order dated 15.07.2013 produced as Annexure R1(a) is specifically on the condition that the petitioner would not be posted inside the District or Circle. The memo of charges issued to the petitioner as on 03.10.2013 is also produced as Annexure R1(b).

7. The further contention raised by the respondent is that Ext.P2 stipulates that general transfer of employees would be made in April or May and the request for transfer should be received on or before 1st March of every year. It is also contended that the norms clearly stipulated by clause (4) that one would have a claim for posting to a particular place, only in the case of the incumbent in the said post having continued for more than three years. The further priority claimed by the

petitioner is said to be only relevant, when there are other persons applying for transfer to the very same post. It is also contended that the norms of the KWA though obeyed in practice, is objected to by the unions.

8. The contention raised by the respondent authority, that the norms which were issued, way back in 1995, on the basis of discussion held on 25.05.1995, though obeyed in practice, is objected to by the unions, is only to be noticed to be rejected. The respondent having issued norms and not having modified the same, are obliged to follow it in the case of transfers effected of the employees.

9. The next contention is with respect to the general transfers being carried out in April or May. The petitioner at that point of time had not been promoted as Draftsman Gr.I and it was only expecting a promotion and he made the application at Ext.P1 on 16.04.2015. The petitioner was then promoted and hence he claimed a preferential treatment, only on account of

the fact that he was retiring on 31.03.2016. The priority for considering the request of transfer would not depend upon any other applications being made and cannot be declined for reason only of there being only one application. A single application would also have to be considered independently, especially when the applicant has a priority as per the norms. If there are more than one then necessarily consideration would have to be made, preferring those first in order of priority as per Ext.P2 norms. An employee retiring within two years is given the first priority as per Ext.P2 norms. Clause (4) of the norms is a prohibition only for transfer of employee into a post, in which the incumbent has not completed three years.

10. In the present case, there is no such contingency, since the petitioner is seeking a transfer to the vacancy at Water Works Section-I, Vyttila, which has occurred on retirement and is kept vacant by reason of the interim order passed by this Court. It is also very evident that there is no other application for

transfer to the said post.

11. A look at the proceedings, would clearly indicate that the petitioner is being deliberately kept away from getting a posting in the preferred location. The enquiry, which has been initiated against the petitioner is for the following reasons as disclosed in the memo of charges.

You are seen lazy in discharging the official duties and you are not available in office at emergency condition. You often sometimes threaten Smt.Deepa Paul, Assistant Engineer, Section No,III in the pretext of having good hold at higher ups.

The negligence of duty and misbehavior to higher officer on your part warrants disciplinary action against you.

12. A reading of the charges would indicate that there is no charge raised against the petitioner, which would require that the petitioner be kept out of the District of Circle. Earlier, when the petitioner was suspended, even prior to the charges being issued, the petitioner was before this court with a writ petition numbered as W.P.(C) No.14316 Of 2013, in which there

was a direction issued to consider the application filed for revocation of his suspension expeditiously. It is only in compliance with the said direction that AnnexureR1(a) order dated 15.07.2013 has been passed. Subsequently, but for issuing a memo of charges on 03.10.2013, no further proceedings has been taken against the petitioner.

13. The learned Standing Counsel for the respondent authority would submit on instruction that further proceedings are taken. However, there is no explanation as to why the further proceedings were not placed on record. On the basis of a suspension issued, almost two years back, on charges of lethargy in discharge of duties and misbehavior to higher officials, the petitioner, who is about to retire is denied a preferential treatment, which is evident from the norms for transfer. It is also to be noticed that despite this Court having passed an order dated 16.10.2015, directing the Deputy Chief Engineer to consider a representation, the Managing Director himself

intervened and passed an order by-passing the authority conferred with the power; to transfer. It is also to be specifically noticed that the Managing Director did not hear the petitioner and it was the Deputy Chief Engineer, who heard the petitioner. This Court is inclined to accept the contention of the petitioner that there is an amount of ill will against him actuated by extraneous considerations and there is a deliberate attempt to deny him a rightful claim. In such circumstance, Ext.P9 cannot be sustained and the same is set aside.

14. The further contention of the respondent authority is that the petitioner's native place is at Thodupuzha and he had been given a preferential treatment by a transfer to Thodupuzha. This Court is unable to countenance such a contention, since Ext.P2 norms does not speak of a preferential posting to the native place. The priority for requesting transfer conferred on a person retiring within two years is to request a preferential posting and that is what has been requested by

Ext. P-1 and the subsequent requests to be accommodated in Ernakulam, where he permanently resides.

For all the above reasons, the writ petition is to be allowed and the petitioner is directed to be posted to Vyttila Water Works section-I as Draftsman Gr.I, where the post is kept vacant, within a period of ten days from the date of production of the certified copy of this judgment.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/04/12/2015

// true copy //

P.A to Judge.