

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 21871 of 2015 (H)

PETITIONER:

**AMBIKA P.K AGED 41 YEARS
JUNIOR SUPERINTENDENT, COLLEGE OF ENGINEERING, PERUMON
KOLLAM (RESIDING AT T.C.NO.91/2143, SARAS
MAVARTHALA ROAD, KARIKKAKOM.P.O, THIRUVANANTHAPURAM).**

BY ADV. SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS:

**1. THE DIRECTOR
CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION(CAPE)
CO-BANK TOWERS, VIKAS BHAVAN.P.O.
THIRUVANANTHAPURAM-695 033.**

**2. SHAMIM F.H
JUNIOR SUPERINTENDENT
CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION(CAPE)
HEAD OFFICE, CO-BANK TOWERS, VIKAS BHAVAN.P.O.
THIRUVANANTHAPURAM-695 033.**

**R1 BY ADV. SRI.V.KRISHNA MENON, SC, CO.OP.ACADEMY OF
PROFESSIONAL EDUCATION
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PROFESSIONAL EDUCATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 05.12.2008.
- P2- TRUE COPY OF THE ORDER DATED 06.03.2013 ISSUED BY THE 1ST RESPONDENT.
- P3- TRUE COPY OF THE RELEVANT EXTRACT OF THE SENIORITY LIST.
- P4- TRUE COPY OF THE PROCEEDINGS DATED 22.04.2013.
- P5- TRUE COPY OF THE ORDER DATED 16.05.2014.
- P6- TRUE COPY OF THE ORDER DATED 02.03.2015 PROMOTING PETITIONER.
- P7- TRUE COPY OF THE LETTER ISSUED BY THE CONCERNED DOCTOR IN THIS REGARD.
- P8- TRUE COPY OF THE REPRESENTATION PREFERRED BY THE PETITIONER ALONG WITH THE ENDORSEMENT MADE BY THE VICE CHAIRMAN.
- P9- TRUE COPY OF THE PROCEEDINGS DATED 19.03.2015.
- P10- TRUE COPY OF THE ORDER ISSUED IN THIS REGARD.
- P11- TRUE COPY OF THE PROCEEDINGS DATED 09.07.2015.
- P12- TRUE COPY OF THE PROCEEDINGS ISSUED IN THIS REGARD DATED 10.07.2015.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 21871 of 2015 (H)

Dated this the 22nd day of September, 2015

J U D G M E N T

The controversy is very limited insofar as the petitioner, who is said to be undergoing a fertility treatment, seeks continuance in the Head Office in Thiruvananthapuram itself, to which an admitted junior of the petitioner, the 2nd respondent, has been posted. The 2nd respondent, despite notice, does not appear before this Court.

2. The brief facts are that the petitioner was appointed as Office Assistant on 20.02.2002 in the Engineering College at Kidangore. The petitioner was promoted as Grade I Office Assistant on 5.12.2008 in the very same college. The petitioner was then transferred to the Head Office at Thiruvananthapuram and while continuing there, was promoted as Junior Superintendent and transferred to Engineering College, Kidangore. The

petitioner, hence, submitted a representation, produced at Ext.P8, to retain her at Head Office itself at least for one year, so as to enable her to continue the treatment.

3. On a consideration of Ext.P8, as directed by the Minister, Ext.P9 was issued by the Director, the 1st respondent herein, permitting her continuance in the Head Office by order dated 19.3.2015. Subsequently, the petitioner has been transferred by Ext. P11; which she challenges on the ground that since, once, humanitarian consideration was shown to her, she ought to have been retained in the post, at least for one year.

4. Though the petitioner cannot claim any legal right to continue, the petitioner having been allowed a retention in Thiruvananthapuram, itself, it is only proper that the petitioner be continued for at least one year from 19.3.2015, the date of Ext.P9 Order.

5. The learned counsel for the 1st respondent also submits that the 2nd respondent is a person who had been serving in far away places and had been transferred to Thiruvananthapuram, his home station, on a request made by him. It is also submitted that the 2nd respondent has assumed office. The petitioner is said to have been continued in the Head Office itself on a working arrangement as per the Interim Order. But, however, considering the fact that the petitioner had been allowed to be retained, it is only proper that the petitioner be continued. The 1st respondent shall also consider the posting of the 2nd respondent at a nearby station.

6. The further difficulty pointed out by the 1st respondent was that the petitioner, on the ground of the treatment, is refusing to carryout assignments of the post of Junior Superintendent in the Head Office, which includes extensive tours to the various stations all over the State.

The learned counsel for the petitioner was specifically asked to take instruction on the above aspect on the last hearing day. The learned counsel comes back with the undertaking that the petitioner would take up any assignment which is allotted to her and also expresses her willingness to go on tour.

7. In such circumstance, it is made clear that the petitioner would be retained at the Head Office for a period of one year from 19.03.2015 and if at all, her treatment fructifies and is unable to undertake the assignments given by the 1st respondent, she would definitely have to take leave and in such circumstance the petitioner would not have any lien on the post in the Head Office. On rejoining duty the petitioner would have to concede to the orders of posting passed by the 1st respondent.

8. The petitioner shall be retained for a period of one year from 19.3.2015 on the petitioner submitting an undertaking before the Director that any assignment offered to her in the course of the said retention, would be taken up and carried out by her. If the petitioner proceeds on leave, since it has been clearly directed that there would be no lien, the 1st respondent would be entitled to post any person to the said post.

Writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE