

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 28156 of 2015 (T)

PETITIONER(S):

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

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

RESPONDENT(S):

- 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 COCHINDEVASWOM
BOARD
THRISSUR - 680 020.**
- 3. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEVASWOM DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**

**R1,R 2 BY ADV. SRI.G.RAJAGOPAL, SC, COCHIN DEVASWOM BOARD
R BY SRI.KRISHNA MENON, SC, COCHIN DEVASWOM BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE JUDGEMENT DATED 21.7.2015 IN WPC
16029/2015**
- EXT.P-2: TRUE COPY OF THE REPRESENTATION DATED 4.8.2015**
- EXT.P-3: TRUE COPY OF THE TERMS AND CONDITIONS OF THE SERVICE OF
THE TEMPLE EMPLOYEES DATED 29.3.2012**
- EXT.P-4: TRUE COPY OF THE ORDER DATED 4.9.2015 ISSUED BY THE 2ND
RESPONDENT**
- EXT.P-5: TRUE COPY OF THE ORDER DATED 12.8.2015 ISSUED BY THE 2ND
RESPONDENT**
- EXT.P6 COPY OF THE REPRESENTATION DATED 22.09.15**
- EXT.P7 COPY OF ORDER DTD. 25.09.15**

RESPONDENT(S)' EXHIBITS

- ANNEXURE I TRUE PHOTOCOPY OF THE STATEMENT WITH ANNEXURES
FILED BY THE FIRST AND SECOND RESPONDENTS IN W.P.
(C) NO. 16029 OF 2015**

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.28156 of 2015 - T

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Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner is aggrieved with the orders passed at Exts.P4 and P7. The petitioner admittedly was posted as a Santhi at Upadeva Temple of Sree Vadakkumnatha Temple at Thrissur on 08.05.2014. While the petitioner was continuing there, the petitioner and one Santhi at Ashtamichira were mutually transferred. The petitioner challenged the same contending that he had not completed the tenure of three years; as per Ext.P3 norms and that the transfer order was punitive, for reason of ill-will, the officials harboured against the petitioner. Lending credence to the contention of the petitioner, the Board filed a counter affidavit raising allegations of misconduct against him. However, no proceedings were taken with respect to that.

2. This Court having considered the matter elaborately, passed Ext.P1 judgment. From the averments in the counter affidavit itself, this Court found that the transfer definitely is punitive in nature, since allegations of misconduct were raised and no proceedings were said to have been initiated against the petitioner. It was also contended by the Board that the transfer of the petitioner was only by reason of there being an allegation and a disciplinary action pending against the Santhi at Ashtamichira.

3. In any event, this Court found that the petitioner's transfer as discernible from the order and the averments made in the counter affidavit, was not proper and directed consideration of the petitioner's case on the basis of any administrative exigencies, if existing. The petitioner was before the Board seeking compliance of Ext.P1 judgment, pursuant to which Ext.P4 was passed.

4. Ext.P4 but for stating facts with respect to the transfer and the writ petition filed, does not disclose any

administrative exigencies, which alone could have justified the transfer of the petitioner, as has been clearly directed in Ext.P1. The findings in Ext.P4 is that since appointments have been made in all the Temples, where the petitioner had requested for transfer, the petitioner can only be transferred to one Keezhedam Ramanchira Temple under the Poonkunnam Devaswom.

5. The statement of the Board filed in the instant writ petition discloses that after the mutual transfer was stayed by this Court, no appointments were made to the vacant post of Santhi at Upadeva Temple of Sree Vadakkumnatha Temple. It was only after Ext.P4 was passed, one Surya Prakash was transferred from Peruvanam Temple and posted to Sree Vadakkumnatha Temple on 07.09.2015. Hence despite the statement of the Board at Ext.P4 that there was no vacancy available in the places, where the petitioner had requested for a transfer, there was a vacancy existing in the Sree Vadakkumnatha Temple, in which none else was posted as on the date of passing

of Ext.P4 order.

6. The direction in Ext.P1 was to consider whether the petitioner should be displaced from his present posting at the Sree Vadakkumnatha Temple. This Court directed that it should be considered whether any administrative exigency exist. Hence if there was no administrative exigencies for transferring the petitioner from Sree Vadakkumnatha Temple, there is no reason, why he could not have been accommodated in that place itself.

7. Admittedly, even at the earlier point of time, the transfer of the petitioner was necessitated not because of any allegations against him, since the learned Standing Counsel asserts that the issue of allegations were raised only for reason of the petitioner asserting that he had an un-blemished service. The mutual transfer is said to have been effected only for the reason of shifting one Ajith Namboothiri, the Santhi at Ashtamichira Temple to Sree Vadakkumnatha Temple. It is also evident from the counter affidavit that the said person was accommodated elsewhere. Therefore that reason also does not

survive.

8. As on the date of passing of Ext.P4 order, the vacancy of Santhi at the Upadeva Temple of Sree Vadakkumnatha Temple remained vacant. There is absolutely no reason stated in Ext.P4 as to why the Board required the transfer of the petitioner from Sree Vadakkumnatha Temple and nor could any reason be stated since the earlier transfer is said to be necessitated to accommodate Ajith Namboothiri. That has been done out without cause for displacement of the petitioner. The petitioner also had not completed the three year tenure as stipulated in Ext.P3 at, clause 9.13. Clause 9.13 indicates the normal tenure of a person in a Temple as three years, pursuant to which term alone, each employee would be entitled to request for three preferable postings which, the Board could deviate from, again only on administrative exigencies.

9. It is also submitted by the petitioner that there are three other Santhis in Sree Vadakkumnatha Temple having tenure of more than three years. Hence, as of now, this Court

does not find any administrative exigency in transferring the petitioner especially when he has not completed even half of the normal tenure as stipulated in the transfer norms. The petitioner has to be accommodated in the post and continued as Santhi at Upadeva Temple of Sree Vadakkumnatha Temple. The Board could make adjustments of the person already posted after Ext.P4 was passed or continuing even before; after hearing the said employees.

10. The learned Standing Counsel for the Board prays that the matter may be sent back for consideration of the Board. It is to be seen that when the above writ petition was filed, again this Court passed an interim order dated 18.09.2015, wherein the petitioner was directed to be accommodated as Santhi at Upadeva Temple of Sree Vadakkumnatha Temple, if the said position is lying vacant. The Board on the basis of such interim order, again transferred the petitioner purportedly to a Temple near the petitioner's residence by Ext.P7. Now the said order is said to be supported by the Board on the contention that the

petitioner had earlier requested for a transfer to Temple near his residence. The learned Counsel for the petitioner submits that in fact such a transfer was requested, long back, since then his mother was in her death-bed and now she is no more, having died almost an year back.

11. It is to be noticed that immediately on Ext.P4 order being passed, one another person was appointed to the vacant post, which this Court can deem only to be an attempt to frustrate the remedies of the petitioner. This Court on a reading of Exts.P4 and P7 is constrained to observe that no remand could be made, since this Court finds that the authority is incapable of making any proper consideration, at least in the case of the petitioner. The orders passed disclose that the allegation of ill-will against the petitioner is justified. Clouded by such extraneous factors, the authority has given a complete go-by to the principles of reasonableness and fairness governing such consideration even by an administrative authority.

12. The writ petition would stand allowed, directing

the petitioner to be posted back to the post, which he was holding as Santhi at Upadeva Temple of Sree Vadakkumnatha Temple, within a period of one week from the date of receipt of a certified copy of this judgment.

The writ petition would stand allowed.

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

SB/20/11/2015

// true copy //

P.A to Judge.