

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 31897 of 2015 (J)

PETITIONER:

P.O.JOY, ASSISTANT I, GUJARAT CO-OPERATIVE
MILK MARKETING FEDERATION LTD., POTHYIL,
NEAR VAZHAKULAM, ALUVA, ERNAKULAM DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. THE MANAGING DIRECTOR, GUJARAT CO-OPERATIVE
MILK MARKETING FEDERATION LTD., AMUL DAIRY
ROAD, ANAND, GUJARAT - 388 001.
2. THE GENERAL MANAGER, GUJARAT CO-OPERATIVE
MILK MARKETING FEDERATION LTD., 104 GN,
CHETTY ROAD, III FLORR, T.NAGAR, CHENNAI-600 017.
3. THE CHIEF GENERAL MANAGER, GUJARAT CO-OPERATIVE
MILK MARKETING FEDERATION LTD., AMUL DAIRY ROAD,
ANAND, ANAND P.O., GUJARAT-388 001.

BY ADVS. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH

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

APPENDIX IN WPC 31897/2015

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE ORDER DATED 23.6.2008

EXT. P2 TRUE COPY OF THE JUDGMENT DATED 12.8.2008 IN WPC 24267/2008

EXT. P3 TRUE COPY OF THE AWARD IN ID NO.4/2009 DATED 18.7.2011

EXT. P4 TRUE COPY OF THE ORDER DATED 19.12.2011

EXT. P5 TRUE COPY OF THE JUDGMENT DATED 20.9.2012

EXT. P6 TRUE COPY OF THE ORDER DATED 11.3.2013

EXT. P7 TRUE COPY OF THE SUMMONS DATED 6.11.2012

EXT. P8 TRUE COPY OF THE AWARD DATED 30.11.2012

EXT. P9 TRUE COPY OF THE ORDER DATED 14.10.2015

EXT. P10 TRUE COPY OF THE E-MAIL DATED 10.6.2008

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.31897 of 2015 J

Dated this the 11th day of November, 2015

JUDGMENT

The petitioner, working as Assistant-I in the first respondent Federation, has a very tempestuous relationship with his employer. On an earlier occasion when he was subjected to reversion, the petitioner approached this Court by filing W.P.(C)No.17856/2014, which was only after much prior litigation before this Court as well as the Labour Court earlier.

2. When W.P.(C)No.17856/2014 had been pending consideration, the petitioner once again approached this Court by filing the present writ petition. This time he has assailed Exhibit P9 order, which he terms as an order of transfer.

3. The gravamen of the submissions made by the learned counsel for the petitioner is that all along the

petitioner has been victimised and has been subjected to very discriminatory treatment. When the petitioner chose to challenge the action of the first respondent on the grounds, inter alia, of mala fides and victimisation in W.P.(C)No. 17856/2014, yet again the Management subjected the petitioner to one more transfer. According to the learned counsel, mala fides are writ large on the face of Exhibit P9 order of transfer. It ex facie reeks of malice.

4. The learned counsel for the respondent Federation, on the other hand, has submitted that the petitioner cannot invoke Article 226 of the Constitution in the face of the fact that the respondent Federation, which is not an instrumentality of the State, has not violated any statutory provision. According to him, as to the maintainability of the writ petition, vis-a-vis private entities, the law is well settled, for a learned Larger Bench of this Court in **Association of Milma Officers and another v. State of Kerala and others** (ILR 2015 (1) Kerala 861) has

categorically held that the writ petition is maintainable only in the event when there is a statutory infraction.

5. The learned counsel has further submitted that Exhibit P9 has been misconstrued by the petitioner as an order of transfer though, in fact, it is not. In elaboration of his submissions, the learned counsel has submitted that the petitioner, along with three other employees from Hyderabad and Chennai, has been sought to be sent on deputation for a limited period to Ludhiana for the purpose of launching a particular product of the respondent Federation.

6. The respondent Federation, as can be seen from the counter affidavit, has gone on record categorically stating that Exhibit P9 is not an order of transfer and that the petitioner has been deputed to serve at Ludhiana only for a limited period. When a specific query has been put to the learned counsel as to the duration, he has submitted that it will not exceed two months.

7. In the facts and circumstances, since the Federation was categorical in its submission that the petitioner has not been transferred, but sought to be sent on deputation for a limited period, I am of the considered opinion that the substratum of Exhibit P9 stands removed. In this context, this Court expressly records the submission of the learned counsel for the respondent Federation that the petitioner will not be kept at Ludhiana for more than two months.

8. Thus, as soon as the purpose is served, say the produce is launched; the upper limit being two months, the petitioner shall be reverted to his present place of posting, i.e. Aluva, State of Kerala.

9. The learned counsel for the respondent Federation has submitted that though initially the petitioner was to have reported on 26.10.2015, now, in view of the fact that the product launch has been postponed, the petitioner is required to report on 16.11.2015.

10. It is further observed that all the issues—the jurisdiction, mala fides, the factum of malice, as well as the merits of the matter, concerning the petitioner's reversion and also denial of promotion as have been espoused in W.P. (C)No.17856/2014, have been left open.

With the above observation, the writ petition stands disposed of.

Dama Seshadri Naidu, Judge

tkv