

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 33124 of 2015 (M)

PETITIONER(S):

1. **GEORGE THOMAS AGED 47 YEARS,
S/O.LATE P.TTHOMAS, PULIKUZHIAL HOUSE, MANATHANA P.O,
KANNUR 670 674.,
OFFICE ADDRESS: HDR 774,
ALOY, IRB HDR, RAMAVARMAPURAM,
THRISSUR 680 631.**
2. **GANESAN T.S, AGED 46 YEARS,
S/O.LATE SREEDHARAN K, THAYYIL HOUSE, BUDHANOOR P.O.,
ALAPPUZHA 689 510, OFFICE ADDRESS, HDR 774,
ALOY, IRB HDR, RAMAVARMAPURAM
THRISSUR 680 631.**
3. **ASHOK KUMAR R, AGED 50 YEARS,
S/O.S.RAGHAVAN, SATHIMANDIRAM, NALLILA P.O.,
KOLLAM 691 515, OFFICE ADDRESS, HDR 774,
ALOY, IRB HDR, RAMAVARMAPURAM
THRISSUR 680 631.**

**BY ADVS.SRI.SHABU SREEDHARAN
SRI.S.VIJAYAN
SRI.K.P.UNNIKRISHNAN (ELOOR)
SRI.P.R.VIBHU
SRI.T.S.PRASANNAKUMAR
SRI.K.V.PREMSANKAR
SMT.RESHMA ABDUL RASHEED**

RESPONDENT(S):

1. **STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY
IN CHARGE OF HOME AND VIGILANCE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
2. **STATE POLICE CHIEF,
POLICE HEAD QUARTERS, VELLAYAMBALAM,
THIRUVANANTHAPURAM 695 010.**

WP(C).No. 33124 of 2015 (M)

**3. COMMANDANT, I.R.B,
OFFICE OF THE COMMANDANT, I.R.B HQR, RAMAVARMAPURAM,
THRISSUR 680 631.**

R1 TO R3 BY ADV. GOVERNMENT PLEADER SMT.M.J.RAJASREE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF THE ORDER DATED 27.1.14 ISSUED BY DEPUTY
COMMANDANAT (ESTABLISHMENT) MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA.**

**EXHIBIT P2. TRUE COPY OF THE ORDER IN GO(RT)NO.2429/2015/HOME DATED
26.9.15 ISSUED BY IST RESPONDENT.**

**EXHIBIT P3. TRUE COPY OF THE MESSAGE DATED 15.10.15 ISSUED BY THE 3RD
RESPONDENT.**

**EXHIBIT P4. TRUE COPY OF THE PROCEEDINGS ISSUED BY HONOURABLE STATE
ELECTION COMMISSION KERALA DATED 21.9.15.**

**EXHIBIT P5. TRUE COPY OF THE REPRESENTATION DATED 17.10.15 SUBMITTED BY
IST PETITIONER BEFORE IST RESPONDENT.**

**EXHIBIT P6. TRUE COPY OF THE REPRESENTATION DATED 17.10.15 SUBMITTED BY
THE 2ND PETITIONER BEFORE THE IST RESPONDENT.**

**EXHIBIT P7. TRUE COPY OF THE REPRESENTATION DATED 17.10.15 SUBMITTED BY
THE 3RD PETITIONER BEFORE THE IST RESPONDENT.**

**EXHIBIT P8. TRUE COPY OF THE OM NO.6/8/2009 ESTT.(PAY II) DATED 17.6.10 ISSUED
BY THE MINISTRY OF PERSONNEL PUBLIC GRIEVANCES AND
PENSIONS, GOVERNMENT OF INDIA.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

AD

K.VINOD CHANDRAN, J.

W.P.(C).No.33124 of 2015

Dated this the 21st day of December, 2015

JUDGMENT

The petitioners along with certain others were deputed to India Reserve Battalion, Kerala by Ext.P1 on 27.01.2014. The petitioners are aggrieved with Ext.P2 order by which repatriation is made to their parent force being the Border Security Force (BSF).

2. The petitioners approached this Court challenging Ext.P2 dated 26.09.2015, on the ground that they have been repatriated to the parent department without following the guidelines at Ext.P8. The specific reliance placed is on paragraph 9 of the guidelines, which is extracted hereunder:

“Premature reversion of deputationist to parent cadre.

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure.

However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned."

3. The petitioners were granted an interim order on 30-10-2015, since; when the repatriation order was passed Ext: P4 order of the State Election Commission bringing in the Model Code of Conduct as a pre-cursor to the elections to the Local Self Government institutions had come into force

4. The learned Government Pleader submits that there is no reversion effected and they are merely repatriated to the very same post they were occupying in the BSF. It is also contended by the State in a detailed counter affidavit that, the conduct of the petitioners was unbecoming of members of a disciplined force and that the rules applicable to the Kerala Police being the Kerala

Police Departmental Inquiries Punishment & Appeal Rules 1958 (KPDIP & A Rules 1958) is applicable only to the Kerala Police Service and the Kerala Police Subordinate Service. The petitioners having been deputed from the BSF cannot be proceeded against for any misconduct by the State.

5. The petitioners also have not been alleged with any misconduct but only acts of indiscipline, which has also been stated clearly in the counter affidavit. The petitioners were found to be in the habit of consuming liquor in the barracks, while on election duty in the State of Maharashtra and the petitioners had not reported for duty on the day on which, they were directed to; after their return from Maharashtra.

6. The learned Counsel for the petitioners submit that, they had taken one day leave after they returned from Maharashtra, where they were sent on election duty and this cannot be put against them.

7. The counter affidavit however, would indicate that, the Indian Reserve Battalion in which the petitioners were members, returned on 20.10.2014 and they were let off, for rest, with direction to report for duty on 25.10.2014 at 10.00hrs. The petitioners, members of a disciplined force, without sanction failed to report on the day specified and reported a day later. The said act of indiscipline hence is admitted. In such circumstances, this Court does not find any reason to continue the interim stay of Ext.P2 especially in the context of three months having now elapsed and the petitioners having been continued in the Battalion, under the Kerala Police, for three months after the notice.

8. It is to be specifically noticed that the order permitting deputation, ExtP:-1 itself by clause 2 speaks of premature repatriation, non grounds of unsuitability, exigency of service or any unforeseen factor. This would not be an action causing any consequence or prejudice to the deputationist, since he would merely be repatriated to

the parent force, where he would occupy the very same post, from which he was deputed. No allegation of violation of principles of natural justice could be raised, since it is not a penal action and does not entail any civil consequences. The requirement of notice in ExtP:-8, is only a prescription; so as to permit the deputationist to arrange his affairs; as also his parent department, to post him to a suitable position. The interim order also was only by reason of the Model Code Of Conduct having come into force. The petitioners would be repatriated to the parent department as on 26.12.2015, on completion of three months from Ext:P-2 order.

The writ petition is dismissed. No costs

Sd/-
K.VINOD CHANDRAN
JUDGE

AD/21/12/15