

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

SATURDAY, THE 4TH DAY OF DECEMBER 2015/14TH AGRAHAYANA, 1937

WP(C).No. 34355 of 2015 (T)

PETITIONER(S):

**S.SALINI, AGED 42 YEARS
ASSISTANT PROFESSOR (ELECTRONICS ENGINEERING)
COLLEGE OF ENGINEERING, ATTINGAL
THIRUVANANTHAPURAM DISTRICT
RESIDING AT"CHIRATH". TC 5/1947(7), AMBALAMUKKU
KOWDIAR P.O**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. INSTITUTE OF HUMAN RESOURCES DEVELOPMENT (IHRD)
REPRESENTED BY ITS DIRECTOR, PRAJOE TOWERS
VAZHUTHACAUD, THIRUVANANTHAPURAM - 695 014.**
- 3. DIRECTOR
INSTITUTE OF HUMAN RESOURCES DEVELOPMENT (IHRD)
PRAJOE TOWERS
VAZHUTHACAUD, THIRUVANANTHAPURAM - 695 014.**
- 4. SOBHIRAJ N
ASSISTANT PROFESSOR (ELECTRONICS ENGINEER)
COLLEGE OF ENGINEERING, KALLOOPPARA
PATHANAMTHITTA 689 583.**

CONTD .. 2 ..

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**Addl.5. SHEEJA P.GEORGE
ASSISTANT PROFESSOR (ELECTRONICS ENGINEERING)
COLLEGE OF ENGINEERING, ATTINGAL
THIRUVANANTHAPURAM DISTRICT.**

**Addl.6. JISHARAJ
ASSISTANT PROFESSOR (ELECTRONICS ENGINEERING)
COLLEGE OF ENGINEERING, ATTINGAL, THIRUVANANTHAPURAM**

**(ADDL. R5 & R6 ARE IMPEADED AS PER ORDER DATED 18.11.2015 IN
IA.16689/2015)**

**RADDL.6 BY ADV. SRI.S.D.ASOKAN
R5 BY ADV. SRI.S.MOHANDAS
R BY GOVERNMENT PLEADER SMT. A. LOWSY
R BY SRI.V.A.MOHAMMED, SC, IHRD**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-12-2015, ALONG WITH W.P.(C) NO. 34583 OF 2015 THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 34355 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P-1: TRUE COPY OF THE DRAFT PROPOSAL FOR GENERAL TRANSFER
2015-16 IN RESPECT OF VARIOUS CATEGORIES OF EMPLOYEES
UNDER IHRD (NO.EB/1212/2015/HRD/DATED 16.7.15**

**EXT.P-2: TRUE COPY OF CIRCULAR NO.EA3/9306/2015/HRD DATED 16.9.2015
ISSUED BY THE 3RD RESPONDENT**

**EXT.P-3: TRUE COPY OF THE ORDER NO.EA3/9306/2015/HRD DATED
11.11.2015 OF THE 3RD RESPONDENT**

EXT.P4 COPY OF ORDER NO. EA3/5400/2010/HRD DATED 18.6.10.

EXT.P5 COPY OF ORDER NO. EA3/5400/2010/HRD DATED 14.5.10.

RESPONDENT(S)' EXHIBITS

**EXT.R5(A) COPY OF LETTER DATED 19.09.15 ISSUED BY THE PUBLIC
INFORMATION OFFICER OF COLLEGE OF ENGINEERING,
ATTINGAL**

**EXT.R5(B) COPY OF REPRESENTATION DTD. 18.09.15 SUBMITTED TO THE
3RD RESPONDENT BY THE 5TH RESPONDENT.**

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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**W.P.(C) Nos.34355 of 2015 - T and
34583 of 2015 - W**

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Dated this the 04th day of December, 2015

J U D G M E N T

The petitioner in W.P.(C) No.34355 of 2015 is aggrieved with her transfer to Karunagappally from Attingal. The petitioner was transferred in lieu of the 4th respondent, who had been accommodated at Attingal for reason of his option and the preferential claim he had, on the basis of the inter-caste marriage he entered into, which is permissible under the norms. The petitioner hence, aware of the fact that the petitioner could not validly challenge the transfer of the 4th respondent has impleaded additional respondents 5 and 6, who are said to be seniors to the petitioner at Attingal.

2. According to the petitioner, the petitioner joined Attingal on 24.06.2010 as per Ext.P4. The additional 5th

respondent joined Attingal on 21.05.2010 and has been continuing there uninterruptedly. The additional 6th respondent joined Attingal on 06.06.2008 and also had been continuing uninterruptedly at Attingal. On the above contention, the petitioner claims that the petitioner has to be preferred for retention in Attingal, since she is the junior-most in that station. The petitioner relies on clause (9)(a) of the transfer norms of the I.H.R.D, to contend that when options are exercised, persons who have longest continuous service in a station should be considered for transfer and the others retained.

3. The additional 5th respondent has two contentions, one that the petitioner had been continuing in Attingal from 2006 and that the additional 5th respondent is entitled to preference since, the additional 5th respondent also has entered into an inter-caste marriage. Considering the latter contention first, the norms provide for a preference by clause 14, which is

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extracted hereunder:-

As far as possible, Inter-caste married couples will
be provided with posting in the Home District

4. It is to be noticed that such preference for inter-caste married couples is to be made only when it is possible and there cannot be any mandate that inter-caste married couple should not be transferred at all in their entire service. This Court is fortified in taking such view by an unreported decision of this Court in W.P.(C) No.31697 of 2010 dated 06.12.2012, wherein considering a similar clause applicable to the Government service, it was held so:-

After the expiry of five years of service in a particular station, a candidate belonging to the preferential category cannot claim any protection against transfer. He does not have any indefeasible right to continue to work in the same station, only on the ground that he belongs to a preferential category. Transfer is an incidence of service. However, the guidelines provide for certain benefits to persons belonging to SC/ST and other categories of persons who are placed in a disadvantageous position when compared to others. That does not confer any right on a candidate belonging

to the preferential category to continue to work in the same station, even after the expiry of five years. Such a person cannot contend that he can be displaced, even after five years of service in a station, only by a person belonging to the same preferential category. After the completion of W.P.(C) No.31697 of 2010 five years of service in a particular station, a person belonging to a preferential category can be transferred even to accommodate a person not belonging to a preferential category. In other words, a person belonging to a preferential category as provided in clause 11 ceases to be a person belonging to that category after the expiry of five years of service in that station and his position becomes the same as that of a general candidate. The expression "such transfer" occurring in clause 11(a) would make the position abundantly clear that clause 11(a) of the guidelines does not relate to transfer of a person belonging to the preferential category, who had more than five years of service in a particular station.

5. Hence, the additional 5th respondent cannot claim continuance beyond the period prescribed under the norms. As per the norms, two years is the period prescribed for transfer of a person, and admittedly the additional 5th respondent has continued in Attingal for the last five years.

6. However, the second contention of the 5th

respondent is that the petitioner has a longer service in Attingal, ie., from 2006 onwards. The petitioner refutes that and submits that she had been transferred once to Karunagappally from Attingal and had been transferred back by Ext.P4 and since the norms specifically speak of continuance of service, the present incumbency of the petitioner can be taken only from 24.06.2010.

7. Ext.P4 transfer was subsequent to Ext.P5. Ext.P5 is a transfer order dated 14.05.2010, wherein, the petitioner was transferred from Attingal to Karunagappally. It is also pertinent that at the time of issuance of the transfer order, the educational institution was on a vacation. Immediately on the re-opening, on two open vacancies arising in Attingal both the petitioner and one Senthil Nivas D.S, who had been transferred from Attingal were accommodated in the said open vacancies. In such circumstance, the petitioner's continuous service has to be taken from the date of her initial appointment to Attingal in 2006.

8. The further contention of the petitioner is based on clause 9(b), wherein, there is a stipulation that employees who have put in longer service outside the station, will be given the first priority. The petitioner contends that even option for retention has to be considered on the basis of the above clause. The petitioner is said to have 8 years outside service while the additional 5th respondent has 14 years outside service, which is disputed by the petitioner. The additional 6th respondent has only 2 years outside service. W.P.(C) No.34583 of 2015 is also filed by one another Assistant Professor in Attingal, who also challenges his transfer on a similar contention; of the additional respondents 5 and 6 in W.P.(C) No.34355 of 2015 having lesser outside service. He also asserts his claim to be retained in Attingal, since he has more outside service.

9. In such circumstance, it is appropriate that the balancing considerations be looked into by the Director, the 3rd

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respondent herein, who would consider the rival claims on the basis of the representations made by the two petitioners and the respondents in both the writ petitions, within a period of one month from the date of receipt of a certified copy of this judgment. The petitioners and the respondents shall make a representation within two weeks from today.

The writ petitions would stand disposed of. No Costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/05/12/2015

// true copy //

P.A to Judge.