

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 35559 of 2014 (T)

PETITIONER(S):

**NARAYANAN NAMBEESAN, AGED 53 YEARS
VADAKKE PATTATHU HOUSE, PORATHISSERY
IRINJALAKUDA NORTH, THRISSUR DISTRICT.**

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S):

- 1. THE COCHIN DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY.**
- 2. THE SPECIAL DEVASWOM COMMISSIONER
COCHIN DEVASWOM BOARD, THRISSUR.**
- 3. THE ASSISTANT COMMISSIONER
COCHIN DEVASWOM BOARD, THIRUVANCHIKULAM GROUP
KODUNGALLUR.**
- 4. RANJITH WARRIER K.V.
VADAKKE WARRIAM, 'RADHA SADANAM', SMV ROAD
IRINJALAKUDA, THRISSUR DISTRICT.**

**R1 -R3 BY ADV. SRI.KRISHNA MENON, SC, COCHIN DEVASWOM BOARD
R4 BY ADV. SMT.SREEKALA KRISHNADAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1: TRUE COPY OF THE PROCEEDING DATED 24.2.2014 ISSUED BY THE 3RD RESPONDENT.

EXT P2: TRUE COPY OF THE PROCEEDING DATED 14.4.2014 ISSUED BY THE 2ND RESPONDENT.

EXT P3: TRUE COPY OF THE PROCEEDING DATED 5.12.2014 ISSUED BY THE 3RD RESPONDENT.

EXT P4: TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 6.12.2014.

EXT P5: TRUE COPY OF THE PROCEEDING DATED 26.12.2014 ISSUED BY THE 3RD RESPONDENT.

EXT P6: COPY OF THE PAPER CUTTING PUBLISHED IN MALAYALA MANORAMA DATED 13.1.2015.

RESPONDENT(S)' EXHIBITS:

EXT.R4(A): COPY OF MRI SCAN REPORT DATED 18.07.2012.

EXT.R4(B): COPY OF DISCHARGE CARD DATED 9.8.2012.

EXT.R4(C): COPY OF MEDICAL CERTIFICATE.

EXT.R4(D): COPY OF REPRESENTATION SUBMITTED BY THE 1ST RESPONDENT DATED 8.5.2014.

EXT.R4(E): COPY OF ORDER OF THE 1ST RESPONDENT.

EXT.R4(F): COPY OF ORDER OF THE 1ST RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35559 OF 2014 (T)

Dated this the 9th day of June, 2015

J U D G M E N T

The petitioner was appointed as a 'Kazhakam' at Njalikulam Mahadeva Temple, Vellani coming under the jurisdiction of the Cochin Devaswom Board. It is his case that he has been working in the said Temple for more than ten years, and in the temple, there are only two sanctioned posts - one of 'Santhi' and the other of 'Kazhakam'. In the writ petition, he is aggrieved by Ext.P5 order of transfer, whereby, he has been posted as 'Vilakkupidi' at Thiruvanchikulam Temple. Ext.P5 order is impugned inter alia on the grounds that there was no reason that necessitated the transfer of the petitioner from Njalikulam Temple to Thiruvanchikulam Temple, that the said transfer has been necessitated on account of the pressure exerted by the 4th respondent, who sought a transfer from Thiruvanchikulam Temple to Njalikulam Temple so as to pursue his interests in percussional activities in which he is supposedly an exponent. It is the case of the petitioner that the 4th respondent would not have been able to attend functions outside the temple while he was at Thiruvanchikulam Temple, and it is

therefore that he exerted influence on the 3rd respondent to get a transfer to Njalikulam Temple. It is also contended that the 4th respondent is not qualified to be appointed as a Kazhakam, and further that, the 3rd respondent is not competent to issue Ext.P5 order of transfer that is impugned in the writ petition.

2. A statement has been filed on behalf of the 1st respondent, wherein, it is pointed out that both the petitioner and the 4th respondent are daily wage workers. It is pointed out that in all the temples under the Cochin Devaswom Board, it is the usual practice for the kazhakam attached to the temple to discharge the functions of a Vilakkupidi also. The circumstances under which the 4th respondent was appointed as Vilakkupidi at Thirivanchikulam Temple are also narrated in the statement. It is further pointed out that pursuant to Ext.P3 order of transfer of the 4th respondent, he has already joined at Njalikulam Temple.

3. In the reply affidavit filed by the petitioner in response to the statement filed by the Cochin Devaswom Board, the petitioner would vehemently state that the transfer of the 4th respondent has been effected only so as to facilitate the pursuit of his hobby. It is pointed

out that the displacement of the petitioner from the Njalikulam Temple, where he is currently stationed, would result in great prejudice to the petitioner inasmuch as he would have to travel a long distance from his residence to the proposed station in connection with the discharge of his functions. Ext.P6 paper cutting is also produced to fortify the submission that the 4th respondent usually participates in functions outside the temple, where his percussional skills are utilised. According to the petitioner, there are vacancies available in the other neighbouring temples, details of which are mentioned in paragraph 7 of the reply affidavit, and it is his contention that the respondent Board can easily accommodate the petitioner to one of these vacancies and avoid the situation of the petitioner having to travel to Thiruvanchikulam temple in connection with the discharge of his duties.

4. I have heard the learned counsel for the petitioner, the learned Standing counsel for the respondent Board and also the learned counsel appearing for the 4th respondent.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that the

challenge of the petitioner against Ext.P5 order of transfer, must necessarily fail. It is not in dispute that the petitioner is a daily waged worker who has been working for more than ten years as Kazhakam at Njalikulam temple. Ext.P5 order of transfer, which is impugned in the writ petition, merely shows the petitioner as being transferred and posted as Vilakkupidi at Thiruvanchikulam Temple. The said order of transfer does not make any reference to the transfer of the 4th respondent. It is also seen that Ext.P5 order was passed pursuant to the proceedings dated 21.12.2014 of the Special Devaswom Commissioner. The averments in the reply affidavit that there are vacancies available in other Temples to accommodate the petitioner is also vehemently denied by the learned Standing counsel for the respondent Board. In that view of the matter, I do not see any reason to doubt the submission on behalf of the respondent Board, in the statement filed by them, that the transfer of the petitioner was not done in order to accommodate any other person, much less the 4th respondent. It is trite that in matters of transfer, this Court would be loath to interfere in proceedings under Article 226 of the Constitution of India, save in exceptional cases where the transfer is shown to be the result of a mala fide, exercise of power, or where it is shown that there is patent non-compliance with the statutory norms governing

transfer in the organization. In the instant case, I do not find any such instance that would necessitate an interference with Ext.P5 order of transfer. Resultantly, the writ petition fails, and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp