

W.P.(C).No.27982/22

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 1ST DAY OF SEPTEMBER 2022 / 10 TH BHADRA, 1944

WP(C) NO. 27982 OF 2022

PETITIONER:

S.KRISHNAKUMAR
AGED 59 YEARS
S/O.R.SUKUMARAN NAIR,
DISTRICT & SESSIONS JUDGE, KOZHIKODE,
RESIDING AT A1, JUDGES QUARTERS,
CHEROOTY ROAD, KOZHIKODE
PIN - 673032

BY ADVS.
DINESH MATHEW J.MURICKEN
VINOD S. PILLAI
NAYANA VARGHESE
AHAMMAD SACHIN K.

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, STATUE JUNCTION, PALAYAM.P.O,
THIRUVANANTHAPURAM DISTRICT
PIN - 695001
- 2 HIGH COURT OF KERALA
ERNAKULAM, KOCHI,
REPRESENTED BY THE REGISTRAR GENERAL
PIN - 682031

W.P.(C).No.27982/22

2

3 THE REGISTRAR GENERAL
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI
PIN - 682031

4 THE REGISTRAR (DISTRICT JUDICIARY)
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI
PIN - 682031

OTHER PRESENT:

SUNIL KURIAKOSE-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 30.08.2022, THE COURT ON 01.09.2022 DELIVERED
THE FOLLOWING:

ANU SIVARAMAN, J.

=====

W.P.(C).No.27982 of 2022

=====

Dated this the 1st day of September, 2022

JUDGMENT

1. This writ petition is filed by a District and Sessions Judge challenging Exhibit P2 order of transfer in so far as it transfers him as Presiding Officer, Labour Court, Kollam. It is submitted by the learned counsel for the petitioner that the petitioner has only nine months more to retire from service and that he had been posted as District and Sessions Judge, Kozhikode only by Exhibit P1 order dated 8.4.2022. It is stated that the post of Presiding Officer, Labour Court is a post to which appointment has to be made by the Government in its Labour Department in accordance with Section 7 of the Industrial Disputes Act and that the petitioner's consent is required for a deputation as Presiding Officer. It is further contended that Exhibit P4 general transfer norms provide that an officer is entitled to continue in one station for a period of three years and there will be a transfer during the middle of the term only if it is necessary in the

interest of administration or special circumstances necessitating such transfer. It is further contended by the learned counsel for the petitioner that the petitioner has an unblemished service of 27 years and the transfer of the petitioner from the post of Principal District and Sessions Judge for passing a judicial order is completely untenable and unjustified. The learned counsel for the petitioner places reliance on a decision of the Supreme Court in **State of Punjab and others vs. Inder Singh and others** [(1997) 8 SCC 372] to contend that where the deputation is to a different service outside the service where the employee retains lien, such deputation cannot be unilateral and it requires the consent of the persons so deputed.

2. The learned Government Pleader would contend that an order has been passed by the Government on 29.8.2022 appointing the petitioner as Presiding Officer, Labour Court, Kollam in pursuance to Exhibit P2 proceedings.
3. The petitioner is a Judicial Officer working as a Selection Grade District and Sessions Judge and that there is no doubt that the

petitioner is liable to render service anywhere in the State of Kerala. Exhibit P2, which is an order by which four transfers have been effected does not cast any aspersions on the petitioner and that there is no mention in the said order with regard to any judicial orders or to his conduct as a Judicial Officer. The post of Presiding Officer of the Labour Court is a post borne on the cadre of District and Sessions Judges in the State of Kerala and the contention of the petitioner that it is a deputation or a Government appointment which requires a consent from the appointee is completely untenable. Even in case willingness had been obtained on any earlier occasions, that will not support the contention of the petitioner that such consent of the incumbent is legally required for a transfer. As is evident from the impugned order itself, the post of Presiding Officer of Labour Court in the State of Kerala is habitually being filled up by transfer from the Kerala Higher Judicial Service and all that is required is an order of the Government, which has also been issued in this case. The petitioner cannot be said to be prejudiced in any manner by his transfer as a Presiding Officer of the Labour Court, Kollam.

4. The contention raised by the petitioner that Exhibit P4 norms are violated also is not a tenable argument in view of the fact that Exhibit P4 are only transfer guidelines intended as a guidance in effecting transfers, generally and particularly in the matter of general transfers and will not confer any right on the transferred employee to contend that an order passed without strict adherence thereto is prejudicial to such employee. Transfer being a necessary incident of service, an order of transfer to a post borne on the cadre cannot be challenged by an incumbent on the ground that he is in any way aggrieved by it.

5. It is trite law that an order of transfer can be interfered within judicial review only on extremely limited grounds and in extraordinary situation. The exercise of the power of transfer for the proper administration of justice can, by no stretch of imagination, be held to be fettered by the provisions of Exhibit P4 guidelines. The contention that the order was not passed after a meeting of the Full Court is also untenable and Exhibit P2, which is a competent order of transfer cannot be assailed by the petitioner on those grounds and the said contention does not require consideration.

6. The petitioner, who is a member of the Higher Judicial Service cannot be said to be prejudiced in any manner by his posting as Presiding Officer of the Labour Court, which is a post borne on the cadre of District Judge and which is admittedly being filled up by the State Government by appointment of District Judges on the recommendation of the High Court. Being a responsible member of the District Judiciary, the petitioner is expected to render his services wherever he is posted. I fail to see what legal right of the petitioner is infringed by Exhibit P2 order. I am of the opinion that the grounds raised in the writ petition do not justify the grant of any of the reliefs as sought for. The writ petition fails and the same is, accordingly, dismissed.

sd/-

Anu Sivaraman, Judge

sj

APPENDIX OF WP (C) 27982/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER
NO.B1(A)32395/2021 DATED 08.04.2022
ISSUED BY THE 3RD RESPONDENT
- Exhibit P2 TRUE COPY OF THE ORDER NO.B1(A)-67/2022
ISSUED BY THE 3RD RESPONDENT DATED
23.08.2022
- Exhibit P3 TRUE COPY OF THE APPLICATION SUBMITTED
BY THE PETITIONER BEFORE THE 3RD
RESPONDENT DATED 26.08.2022
- Exhibit P4 TRUE COPY OF THE GENERAL TRANSFER NORMS
OF JUDICIAL OFFICERS

True copy

P S to Judge