

Vijayan Vs. State of Kerala

Vijayan Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/728097

Court : Kerala

Decided On : Sep-01-2005

Reported in : 2005(4)KLT389

Judge : K.K. Denesan, J.

Appeal No. : W.P.No. 20990 of 2005

Appellant : Vijayan

Respondent : State of Kerala

Advocate for Def. : K.I. Abdul Rasheed, Government Pleader

Advocate for Pet/Ap. : T.G. Rajendran, Adv.

Judgement :

K.K. Denesan, J.

1. Challenge is against Ext.P1. Petitioner while working as Illrd Grade Overseer in Special Building Section No. II, P.W.D. Medical College Section, Kozhikode has been transferred as per Ext. P1 dated 29-6-2005 passed by the 2nd respondent-Chief Engineer to I & P Roads Sub Division, Kozhikode in the open vacancy. In the normal course, petitioner cannot have any grievance against the order of transfer evidently for the reason that the transfer is from one building to another building in the very same station. The grievance of the petitioner arises on the

ground that it is stated in Ext. P1 that the 2nd respondent received allegations against Asst. Engineer and Overseer of Medical College Section, Kozhikode and therefore the impugned order of transfer had to be issued.

2. It is the definite case of the petitioner that no show cause notice or any other communication was served on him affording opportunity to say anything regarding the allegation referred to in Ext.P 1. Counsel for the petitioner submits that if the petitioner keeps quiet after receiving Ext. P1, it will be construed as acceptance of the allegations raised against him; and at a later point of time that can be used against him as a conduct hampering or blocking enjoyment of service prospects otherwise due and entitled for. It will also have adverse effect on the reputation of the petitioner. In short, it is an observation casting stigma on him and therefore the petitioner cannot shut his eyes and leave Ext. P1 unchallenged as though it is an innocuous observation made in a transfer order.

3. Government Pleader was directed to get instructions as to whether any proceedings are pending against the petitioner in respect of the allegations that are referred to in Ext. P1 order. Govt. Pleader submits that so far no such proceedings have been taken.

4. The impugned order was passed on 29-6-2005. If Ext. P1 order is not interfered with to the extent allegations have been made against the petitioner in that order, it may be used against the petitioner in future and it will remain as stigma cast on him. If facts warrant casting such a stigma, there is nothing wrong in passing appropriate orders in accordance with law. But allegations of this nature made in a transfer order which on the face of it appears to be innocuous and that too without giving opportunity for the Government servant concerned to say anything against such allegations, is not proper exercise of the administrative power. If situations warrant, transfer of government servants can be ordered in public interest. However, if allegations against the Government servant are made to appear on the face of the transfer order, it will amount to casting stigma on him, ex parte. After recording the allegations against the employee in the very transfer order, the authorities cannot be heard to say that the order is innocuous and the employee may ignore such ex parte condemnation. I therefore, feel that those portions in

Ext. P1 which have got the effect of casting stigma on the petitioner, ex parte, shall be expunged from Ext. P1. Writ Petition is therefore allowed directing the deletion of those portions in Ext. P1 which refer to allegations against the Asst. Engineer and Overseer of Medical College Section Office, Kozhikode. However, I make it clear that, no interference is called for, so far as the transfer ordered as per Ext. P1 is concerned. Writ Petition is allowed to the extent stated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com