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Court : Kerala

Decided On : Aug-17-2011

Judge : C.T. Ravikumar

Appeal No. : W.P.(C).No.17734 of 2011 (N)

Appellant : Jayan C. Das

Respondent : State of Kerala, Represented by the Additional Chief Secretary to Government and Others

Judgement :

The petitioner was provisionally appointed as Assistant Public Prosecutor Grade-II in the Judicial First Class Magistrate's Court, Alappuzha as per Ext.P1. Based on Ext.P1, the Director of Prosecution (Administration) issued Ext.P2 order regarding charge arrangements. On the strength of Exts.P1 and P2, the petitioner took charge on 16.6.2011. While continuing as such, his provisional appointment was terminated as per Ext.P3. As per Ext.P3 the fourth respondent who is a regular incumbent in the post of Assistant Public Prosecutor Grade-I was transferred from Judicial First Class Magistrate's Court, Kayamkulam and posted to Judicial First Class Magistrate's Court, Alappuzha and consequently, the provisional appointment of the petitioner was terminated. This Writ Petition has been filed, in the said circumstances, mainly with the prayer to quash Ext.P3 and to issue a writ

of mandamus commanding the respondents to permit the petitioner to continue at Alappuzha as though Ext.P3 was not issued.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader. Ext.P1 would reveal that the appointment of the petitioner was effected for 179 days from the date of joining duty under 9 of the Kerala State and Subordinate Services Rules (for short 'the KS and SSR'). In fact, under Rule 9(a)(i) of the said Rules. It was stated thereunder that the petitioner would be automatically relieved from the post on expiry of the above period or when a permanent hand joins duty in the post whichever is earlier. As already noticed, the fourth respondent is a permanent hand and his application for transfer to Alappuzha was favourably considered by the competent authorities. It is thus obvious that the termination of the petitioner is the inevitable consequence of the transfer of a permanent hand. Indisputably, Rule 32 of Part II of KS and SSR empowers the appointing authority to effect transfer and posting of a member of a service. That right cannot be called in question by a temporary appointee under Rule 9(a)(i) of Part II KS and SSR. The petitioner being a temporary appointee under Rule 9(a)(i) of Part II of KS and SSR, cannot legally contend that the power to transfer should have been issued in a particular manner to avoid termination of his temporary appointment. In the decision in **State of M.P v. Dharam Bir** reported in **(1998) 6 SCC 165**, the Hon'ble Apex Court held that a post held by a temporary appointee could be treated as vacant for the purpose of regular promotion. I am of the view that if such a post can be treated as vacant for the purpose of regular promotion, there can also be no legal impediment in effecting transfer and posting against such a vacancy under Rule 32 of Part II of the KS and SSR. As already noticed hereinbefore, the right of the petitioner to continue in the aforesaid post on the strength of Ext.P1 was for a period of 179 days or till a permanent hand joins duty whichever is earlier. Therefore, the petitioner cannot claim for continuance by throwing challenge against Ext.P3. In the circumstances, I do not find any reason to interfere with Ext.P3. There is no merit in the Writ Petition. Accordingly, it is dismissed.