

Muktha K Nair Vs Airports Authority Of India

Court: High Court Of Kerala

Date of Decision: Jan. 28, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Kerala High Court Act, 1958 " Section 5(i)

Hon'ble Judges: Anil K.Narendran, J; Muralee Krishna S., J

Bench: Division Bench

Advocate: Thomas Abraham, Merciamma Mathew, Aswin.P.John, R.Ananthapadmanaban, Paul Baby, Swathy A.P., Thara Elizabeth Thomas, Sabu George., P.B.Subramanyan, Manu Vyasana Peter, P.B.Krishnan

Final Decision: Dismissed

Judgement

Muralee Krishna, J.

1. This writ appeal is filed under Section 5(i) of the Kerala High Court Act, 1958, by the petitioner in W.P.(C)No.36194 of 2024, challenging the

judgment dated 13.01.2025 passed by the learned Single Judge, whereby the writ petition filed by the appellant under Article 226 of the Constitution of

India seeking various reliefs by way of writ of certiorari and mandamus against Ext.P4 transfer order by which she was transferred from

Thiruvananthapuram International Airport to Calicut International Airport, was dismissed.

2. The appellant joined service as a Junior Assistant on 22.05.2006 at Calicut International Airport, on compassionate grounds. She was transferred to

Thiruvananthapuram in the year 2009. At present, she has been serving as Senior Superintendent in the HR Department at Thiruvananthapuram

International Airport. According to the appellant, she has been living with her aged parents who are suffering from various ailments. She submitted

Ext.P2 representation before the 4th respondent Regional Executive Director, Airports Authority of India on 18.06.2024 seeking her retention at

Thiruvananthapuram International Airport. Since no action was taken in Ext.P2, she again submitted Ext.P3, a fresh representation dated 03.07.2024

before the 4th respondent for the very same purpose. Despite submitting Exts.P2 and P3 representations, as per Ext.P4 order dated 26.09.2024, the

appellant has been transferred to Calicut International Airport. Again, the appellant submitted Ext.P5 representation before the 4th respondent seeking

her retention at Thiruvananthapuram International Airport till 31.07.2025. As per Ext.P7 order dated 09.10.2024, the 5th respondent Assistant General

Manager (HR), rejected the request of the appellant. Being aggrieved, the appellant approached this Court by filing W.P.(C) No.36194 of 2024. After

considering the pleadings and materials on record and the submissions made at the Bar, the learned Single Judge dismissed the writ petition holding

that when no post is available to accommodate her and six persons senior to her have been retained therein, the appellant cannot compel the Airports

Authority to retrain her at Thiruvananthapuram International Airport, which has been taken over by a private company. The learned Single Judge

further held that the appellant was transferred to the nearest airport, and since she holds a transferable post, she can be transferred and posted at any

of the airports under the Airports Authority of India.

3. Heard the learned counsel for the appellant and the learned counsel appearing for the Airports Authority of India.

4. The learned counsel for the appellant argued that the appellant's transfer was ordered in violation of Ext.P6 AAI transfer policy. The learned

counsel relied on clauses 4.6, 4.18, 7.1 and 10.1 in Ext.P6 transfer policy, claiming them to be in favour of the appellant.

5. On the other hand, the learned counsel appearing for the Airports Authority of India would submit that Thiruvananthapuram International Airport

has been taken over by a private company, and at the time of taking over, an option was given to the employees either to work under Airports

Authority of India or under the new private company. The appellant chose to work under the Airports Authority of India. There are only 6 posts of

Senior Superintendent (HR) available under the Airports Authority of India at Thiruvananthapuram International Airport. Therefore, six persons who

are senior to the appellant holding the post of Senior Superintendent (HR) have been retained at Thiruvananthapuram International Airport. There is

no further post available with the Airports Authority of India to accommodate the appellant at Thiruvananthapuram International Airport. Moreover,

none of the clauses relied on by the appellant in Ext.P6 transfer policy is applicable to her.

6. It is trite that whether an employee is to be transferred to a different division, etc, are matter for the employer to consider, depending upon the

administrative necessities. The power to transfer an employee in a transferable service is within the prerogative of the employer. It is the employer

who knows best where an employee should be deployed for an effective discharge of his or her duties for the establishment. The inconveniences

caused to the employee and his family consequent to the transfer are not sufficient to interfere with the orders of transfer. Generally, the Court

exercising writ jurisdiction under Article 226 of the Constitution of India would not interfere in the orders of transfer of an employee issued by the

employer, for administrative reasons, as it will adversely affect the smooth functioning of that institution. The circumstance under which the Court can

interfere with the orders of transfer is laid down by the Apex Court as well as this Court in several judgments.

7. In *Union of India v. S.L. Abbas* [(1993) 4 SCC 357] the Apex Court held thus:

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of

any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by

the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having

regard to the exigencies of administration.”

(emphasis supplied)

8. In *National Hydroelectric Power Corporation Ltd v. Shri Bhagwan* [(2001) 8 SCC 574] the Apex Court held thus:

“It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever

at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an

incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome

of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such

orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed

in the interest of administrative exigencies of the service concerned.”

(emphasis supplied)

9. In *Pubi Lombi v. State of Arunachal Pradesh and others* [2024 SCC Online SC 279] the Apex Court held thus:

“15. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the

person against whom allegations are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding

a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not permissible by the Courts in

exercising of the jurisdiction under Article 226 of the Constitution of India.”

(emphasis supplied)

10. This Court in *Mayadevi M.P and another v. Canara Bank and others* [2015 (4) KHC 874] held that an order of transfer cannot be interfered with

in a proceedings under Article 226 of the Constitution of India, in the absence of any specific allegation of mala fides or at least a prima facie proof of

vitiating circumstances influencing that order of transfer. It is far too late in the day to assert that, this Court in exercise of its jurisdiction under Article

226 of the Constitution of India can interfere with an order of transfer of an employee as if it is sitting in appeal over such an order issued by the

employer. The scope of judicial review in this area is very limited. Unless mala fides or oblique motives are specifically pleaded or can necessarily be

inferred from the proof of facts, this Court cannot interfere with an order of transfer of an employee. Therefore, a mere assertion in the writ petition

that, the orders of transfer are 'vitiating by extraneous considerations and imbued with mala fides', cannot therefore sound in realms of mala fides or

extraneous considerations or oblique motives. The concept being basically different, this Court cannot even draw an inference that the order of

transfer issued by the employer is vitiated by mala fides or on extraneous considerations or with oblique motives, unless it is specifically pleaded in the

writ petition with reliable materials, which are sufficient to draw an inference of any vitiating circumstances influencing such an order of transfer.

11. Again, in *Nixy James v. Kerala State Road Transport Corporation* [2023 (3) KLT 893], this Court held that the law is too well settled that transfer

is an incidence of service and the employee has no legal right in this regard. It is also well settled that, unless the orders of transfer are vitiated by

statutory violations or mala fides, Courts should be loathe to interfere with them.

12. The appellant is claiming violation of Ext.P6 transfer policy in Ext.P4 order of transfer by which she was transferred from Thiruvananthapuram

International Airport to Calicut International Airport. She claims that the said transfer order is issued in violation of clauses 4.6, 4.18, 7.1, and 10.1 in

Ext.P6 transfer policy.

13. As per clause 4.6 of Ext.P6 transfer policy, except in cases of transfer to tenure station, officers and staff shall not normally be transferred from

one station to another station in the region before he/she completes a minimum period of three years at that station and from one region to another

region before he/she completes five years in that region. The appellant was transferred to Thiruvananthapuram International Airport in the year 2009

and, since then, she has been working therein. She is not transferred to another region. Hence clause 4.6 of Ext.P6 is not applicable to the appellant.

14. As per clause 4.18, the executives posted in normal stations should be transferred out only on competition of at least minimum three years. The

said clause is also not applicable to the appellant for the reason stated above.

15. As per clause 7.1, persons who are within 3 years of reaching the age of superannuation shall be posted as far as possible in or nearer to their

hometown, provided a request is received from the concerned official for posting to hometown/opted station. The cutoff date for determining 3 years

will be taken as 31st March. Admittedly, the Thiruvananthapuram International Airport is now taken over by a private company.

There is no dispute that only six posts of Senior Superintendents (HR) are available in Thiruvananthapuram Airport under the Airports Authority of

India after the taking over of the Airport by a private company. Six persons senior to that of the appellant who are working in that post were retained

at the Thiruvananthapuram International Airport. Hence, the respondents were not able to give the benefit of clause 7.1 of Ext.P6 to the appellant. A

reading of clause 7.1 would make it clear that the benefit under that clause can be given only to the extent possible, and it is not possible in the case of

the appellant, for the aforesaid reason.

16. Clause 10.1 of Ext.P6 says that Children Education Ground (CEG) exemption from transfer may be given to an employee if his/her son/daughter is

studying in the final year of high school, Senior Secondary, 10th/12th of the final 10+2 system of a recognized Board and higher studies with reference

to first-year admission process in Graduation. This concession would be available subject to a maximum of 2 CEG exemption in the service of an

official and further subject to the condition that the official applies at least three months in advance, supported by a certificate from the authority of the

recognized institution and he certifies that he has not availed this concession earlier. In the case of the appellant, the said clause is also not applicable.

17. The appellant though says that her transfer was ordered in violation of Ext.P6 transfer policy, from the above discussion, it is clear that none of the

clauses relied by her in Ext.P6 transfer policy can be said as violated while transferring her from one Airport to another Airport in the same region.

Moreover, as said above, there is no vacancy in the present Airport wherein she has been working to accommodate her, overlooking the seniority of

six other persons working therein in the very same posts. In such circumstances, we find no sufficient reason to say that Ext.P4 transfer order was

issued in violation of any statutory provision or it is vitiated by malafides.

18. Having considered the pleadings and materials on record and the submissions made at the Bar, we find no sufficient grounds to interfere with the

impugned judgment of the learned Single Judge.

In the result, the writ appeal fails and accordingly stands dismissed. The pending Interlocutory Application stands closed.