

LEGALFOXES LAW TIMES

CASE COMMENT ON SAIKUTTAN.O.N VS KERALA STATE ELECTRICITY BOARD & OTHERS

By Vishnuprababalakrishnan

Name of the Case : Saikuttan.O.N vs Kerala State Electricity Board ..

Citation : Tuesday, the 11th day of august 2020

Year of the Case : 2020

Petitioner : Saikuttan.o.n
(employee code 1052776), driver - grade-I,
KSEB electrical division, cherthala-688 524,
Alappuzha.

Respondent : 1.Kerala state electricity board ltd
represented by chairman and managing
director, Kerala state electricity board,
Vaidyuthibhavan, Thiruvananthapuram.
2.TYhe chairman and managing director
Kerala state electricity board ltd.,
Vaidyuthi bhavan, Thiruvananthapuram.
3.Board of directors

represented by the company secretary
Kerala state electricity board ltd.,
Vaidyuthi bhavan, Thiruvananthapuram.
4.chief engineer (hrm)
Vydyuthibhavanam, Pattom,
Thiruvananthapuram-695 004.

Bench/Judges : The Honourable Mr.Justice C.S.Dias

Acts involved : Constitution of India, POSCH Act

Important sections:

The scope of judicial review in matters relating to transfer posting of the employees and under [Article 226](#) of the Constitution of India is well settled in a host of judicial pronouncements by the Hon'ble Supreme Court

This is a case commentary of the infamous **Saikuttan.O.N vs Kerala State Electricity Board**. It was in this case that matters relating to transfer and posting of the employees under [Article 226](#) of the Constitution of India. It was a landmark judgment in Indian history and a turning point for the starting disciplinary actions or removing the employee from that location and is clearly proved the transfer is not punishment to the employee.

INTRODUCTION:

Employee transfers are a type of lateral forces that involves changing the employment of an employee without changing their compensation or their duties. This type of internal mobility involves moving a person from one position to another, typically at a different site, division, or unit. The following lists the main causes of employee transfers.

1. Certain occupations call for the transferred individuals to possess specific competencies, skills, and expertise.
2. Additionally, it starts when there are disputes between coworkers or between superiors and subordinates.

Transfers can improve skills, increase employee satisfaction, improve employer-employee relations, and correct poor placement, among other things.

BACKGROUND OF THE CASE:

1. Section 12 of the POSCH Act, criminalizes consensual During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to
 - a. transfer the aggrieved woman or the respondent to any other workplace; or
 - b. grant leave to the aggrieved woman up to a period of three months; or
 - c. grant such other relief to the aggrieved woman as may be prescribed.

The first ever challenging to the scope of judicial review in matters relating to transfer and posting of the employees under [Article 226](#) of the Constitution of India is well settled in an host of judicial pronouncements by the Hon'ble Supreme Court. The HONARABLE court said that [Shilpi Bose and Others v. State of Bihar and Others](#) [(1991) Supp 2 SCC 659] the Hon'ble Supreme Court observed as follows:

" In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons" and also a government employee who holds a transferable post is not guaranteed the right to stay in that location; rather, he is subject to relocation. His legal rights are not violated by any transfer orders issued by the appropriate authority. Even if a transfer order is passed in defiance of executive directives or orders, the courts typically shouldn't intervene with the order; instead, the affected party should contact the higher authorities in the Department. There will be full anarchy in the Administration and it won't be in the public interest if the courts keep interfering with daily transfer orders made by the government and its subordinate entities.

The next milestone of the disputes related to transfer of employees The Division Bench of this Court in [Gopinathan M. and Another v. State of Kerala and Others](#) [2014(4) KHC 315] has in paragraph 11 held as follows:

Therefore, the employer would be free to take whatever corrective actions are allowed by law to address the situation's needs if the service of an employee at a specific location was found to be unsatisfactory for any reason, such as starting disciplinary proceedings or transferring the employee elsewhere. If the employer decides that simply transferring the employee would serve the administration's interests and orders that transfer, the employee need not necessarily receive any punishment as a result of the transfer order. Therefore, the contention raised by the learned counsel for the petitioners that, an order of transfer based on certain complaints alleged to have been made against the employees would W.P.(C)No.12087/2020 ..27.. render the transfer a punitive transfer can only be rejected."

FACTS:

Since 2003, the petitioner has held a position as a Grade 1 Driver at Kerala State Electricity Board's Electrical Division in Cherthala. The petitioner had appealed the High Court's transfer ruling in the suit.

The respondent, the Electricity Board, maintained that the transfer order was issued as a result of a complaint made by the petitioner's controlling officer, a senior female officer, who claimed that the petitioner was careless and harassing in his behaviour toward her and several other female employees. The POSH Act-established Internal Complaints Committee was still considering this issue. As a result, the transfer order was issued under Section 12 of the POSH Act as a temporary solution.

ISSUES:

The scope of judicial review in matters relating to transfer and posting of the employees under [Article 226](#) of the Constitution of India is well settled in an host of judicial pronouncements by the Hon'ble Supreme Court and section 12 of the Sexual Harassment of women at workplace (Prevention, Prohibition and redressal) Act 2013.

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RELATED QUESTIONS:

1. What does section 12 of POSCH act speaks about?
2. Is transfer to the employee is a punishment to him
3. Does the court has power to rewrite the transfer for the Government servant?

RELATED CASES:

The above legal proposition has been reiterated by the Hon'ble Supreme Court in [State of M.P. and Another v. S.S.Kourav and others](#) [(1995) 3 SCC 270], wherein, it is laid down thus:

The Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. By moving the officials to the appropriate locations, the Courts or Tribunals are not anticipated to obstruct the operation of the administrative system. The

administration must make the right choice, and that decision must stand unless it is tainted by bad faith or extraneous consideration that has any factual base.

JUDGEMENT:

The High Court made it very clear right away that the law regarding the transfer of employees is clear and settled and that the transfer of employment is an incidence of service. Courts are not required to interfere with such transfer orders unless they are made illegally or are made in bad faith, according to the High Court. Therefore, the High Court's consideration of only one issue was whether or not the petitioner's move was justified and the court further added that do not perceive any reason to interfere with the orders made by the fourth respondent regarding the document, especially given that the petitioner has been ordered to be retained in his domicile district and that he has been posted to an office that is only 20 kilometres from his current office.

CONCEPTS HIGHLIGHTED:

The Internal Complaints Committee of the Board is currently reviewing the aforementioned complaint. The fifth respondent is the target of the process that is responsible charge. It is disputed whether or not the complaint brought forth by the fifth and sixth respondents before the second respondents. The fourth respondent came to the opinion that it is advised that the petitioner be transferred to another office in the interest of the Board during the Internal Complaints committee's investigation of the complaint (Exhibit-P2 representation and Exhibit-P5 argument notes). The aforementioned activity, which complies with Section 12 of the Act, cannot be claimed to be tainted by mala fides because the aforementioned route is legal. Therefore, according to me, the Exhibit.P4 order of transfer which is a speaking order is not vitiated with mala fides.

CRITICAL ANALYSIS:

The recent court initiatives to promote gender equality and the significance of the POSH Act are once again brought up in this case. In this instance, the High Court upheld the POSH Act's provisions without debating the sexual harassment complaint's legal merits. It is important to note that the POSH Act's definition of "work place" is highly comprehensive and includes not just public and government organisations but also the private sector, unorganised sectors, and a "living place or a house." The term "Employer" has a similarly broad definition, and each

Employer is subject to the mandatory "obligations" set forth in Section 19 of the POSH Act. These obligations include developing a sexual harassment policy and holding regular awareness events to educate staff members about the POSH Act's provisions.

REFERENCES:

1. <https://indiankanoon.org/doc/94264171/>
2. <https://businessjargons.com/employee-transfer.html>
3. <https://www.serein.in/legal-insights/2021/4/22/saikuttan-on-vs-kerala-state-electricity-board-ltd-and-ors>

