

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

SATURDAY, THE 31ST DAY OF MAY 2014/10TH JYAISHTA, 1936

WP(C).No. 8589 of 2013 (W)

PETITIONER :

**MR.WILSON T.THOMAS,
MERA 103(1), KAPPIL ROAD LANE, CHALAKUZHAY ROAD,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695 071.**

BY ADV. SMT.INDU SUSAN JACOB

RESPONDENT(S):

- 1. GENERAL MANAGER,
PERSONNEL ADMINISTRATION DEPARTMENT,
INDIAN OVERSEAS BANK, CENTRAL OFFICE, CHENNAI,
PIN-600 002.**
- 2. REGIONAL MANAGER,
INDIAN OVERSEAS BANK, REGIONAL OFFICE,
THIRUVANANTHAPURAM, PIN-695 001.**

**R1 & R2 BY SRI.P.B.SURESH KUMAR,SENIOR ADVOCATE
SRI.LEO GEORGE,SC,INDIAN OVERSEAS BANK
SRI.K.N.SASIDHARAN NAIR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-05-2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:- TRUE COPY OF THE CERTIFICATE DTD DECEMBER 2004 ISSUED BY ANNA TECHNOLOGICAL UNIVERSITY
- EXT.P2:- TRUE COPY OF THE LETTER DTD 23/1/2003 ISSUED BY IST RESPONDENT
- EXT.P3: TRUE COPY OF THE COMMUNICATION DTD 27/09/2004
- EXT.P4:- TRUE COPY OF THE COMMUNICATION DTD 25/7/2009
- EXT.P5:- TRUE COPY OF THE CERTIFICATE OF MERIT DTD 9/1/2010
- EXT.P6:- TRUE COPY OF THE COMMUNICATION DTD 26/7/2008 ISSUED BY THE IST RESPONDENT
- EXT.P7:- TRUE COPY OF THE COMMUNICATION DTD 03/04/2009 ISSUED BY IST RESPONDENT
- EXT.P8:- TRUE COPY OF THE COMMUNICATION DTD 23/11/2010 ISSUED BY THE IST RESPONDENT BANK
- EXT.P9:- TRUE COPY OF THE COMMUNICATION DTD 29/1/2011
- EXT.P10:- TRUE COPY OF THE CERTIFICATE DTD 13/3/2012
- EXT.P11:- TRUE COPY OF THE CERTIFICATE DTD 20/7/2012
- EXT.P12:- TRUE COPY OF THE GO NO.302/33/2/87-SCT(A)DTD 15/2/1988 ISSUED BY GOVERNMENT OF INDIA MINISTRY OF FINANCE 21
- EXT.P13:- TRUE COPY OF THE MEMO DTD 20/11/2012
- EXT.P14:- TRUE COPY OF THE REPLY DTD 3/12/2012
- EXT.P15:- TRUE COPY OF THE REPRESENTATION DTD 13/8/2012
- EXT.P16:- TRUE COPY OF THE JUDGMENT DTD 13/12/2012 WPC NO. 29811/12
- EXT.P17:- TRUE COPY OF THE ORDER DTD 31/1/2013
- EXT.P18:- TRUE COPY OF THE DISCHARGE SUMMARY DATED 27/08/2013 ISSUED BY THE INSTITUTE OF NEUROLOGY GOVERNMENT HOSPITAL, CHENNAI

WP(C)NO.8589/2013

**EXT.P19:- TRUE COPY OF THE DISABILITY CERTIFICATE DATED 01/08/2013
ISSUED BY THE STANDING DISABILITY ASSESSMENT BOARD OF THE
KANYAKUARY GOVERNMENT MEDICAL COLLEGE HOSPITAL,
NAGARCOIL**

RESPONDENT(S)' EXHIBITS:

**EXT.R1(A) TRUE COPY OF THE RELEVANT PAGE OF THE WEBSITE OF THE
GOVERNMENT OF INDIA, MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT DATED NIL**

/TRUE COPY/

P.A.TO.JUDGE

sts

P.N.RAVINDRAN, J.
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W.P.(C)No.8589 of 2013
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Dated this the 2nd day of June, 2014

ORDER

The petitioner, who, it is now admitted, is a person with disability, entered service in Bharat Overseas Bank Ltd. While he was working in the Ernakulam Branch of Bharat Overseas Bank, it merged with the Indian Overseas Bank. One of the conditions subject to which he was absorbed in the service of the Indian Overseas Bank is that he is liable to be transferred and posted anywhere in India.

2. After the two banks merged and the petitioner became an employee of Indian Overseas Bank, he was transferred and posted in Kaniyapuram Branch in Thiruvananthapuram region. While he was working in that branch, he was promoted from Junior Management Scale - I to Middle Management Scale - II and transferred to Nadakkavu Branch in Nagercoil Region. After joining duty in the Nadakkavu Branch, the petitioner submitted Ext.P15 representation dated 13.8.2012 relying on Ext.P12 letter dated 15.2.1988 issued by the Ministry of Finance, Government of India

and sought a transfer back to Thiruvananthapuram region. He thereafter filed W.P.(C)No.29811 of 2012 in this Court on 11.12.2012 wherein he sought the following reliefs:-

- "i) To issue a Writ of Mandamus or any other appropriate Writ, order or direction directing 1st Respondent to take action on Exhibit P13 in the light of Exhibit P12.*
- ii) To issue a Writ of Mandamus or any other appropriate Writ, order or direction to direct the 1st respondent to post Petitioner within the Thiruvananthapuram Region in the light of Exhibit P10, Exhibit P11 and Exhibit P12."*

3. Before the said writ petition was filed, the Deputy General Manager of the Indian Overseas Bank at Chennai issued Ext.P13 memo dated 20.11.2012 calling upon the petitioner to explain why disciplinary action should not be initiated against him for the reason that he had attempted to exert pressure and influence on the bank in the matter of his transfer back to Thiruvananthapuram region. Upon receipt of the said letter, the petitioner submitted Ext.P14 letter dated 3.12.2012 in reply wherein he stated as follows:-

"Your kind reference is invited to Central Office memo PAD/Sup/1 dated 20.11.2012 alleging me of bringing a VIP reference for transfer back to Trivandrum Region. In this regard I may be permitted to furnish the following:

I was promoted to MM II grade in the recently conducted promotion process from our Kaniyapuram branch of Trivandrum region. I am a physically handicapped person with 50% disability. The handicap was resultant of an accident that occurred to me. Further I am having moderate spino cerbellar degeneration motor incoordination. Because of all these I was

expecting retention in Trivandrum region itself. I had submitted medical certificate from medical Board stating my physical handicap as 50%. I was given to understand that as per the placement policy of our bank related to Physically Handicapped others will be retained in the same (Trivandrum) region. I learned that the guidelines from ministry of banking/Personnel of GOI also direct Banks to accommodate Physically Handicapped others.

I had taken up the matter with recognised officers' association (IOBOA) in the same centre even on promotion. However I was posted to out Nagercoil Region.

Due to my handicap as mentioned above it was very inconvenient and difficult for me to undertake the posting. Whether to take up assignment had become a discussion in my family circle, non considering my genuine ground for my retention also was discussed. However I had decided to join our Nagercoil Region hoping that somehow I will manage.

But suffering was beyond what I anticipated. Various health problems had copped up and I had to be on leave on a number of occasions. My health had deteriorated again I had represented citing matters in detail and requesting transfer to Trivandrum.

My own Brother is an active politician and holds senior party post. May be observing my health problems and keeping in mind the denial of eligibility of getting retained as Physically Handicap employee as per Government of India directive he might have brought the matter before some layer of authority for intervention. I am unaware of any such initiatives. On my own I had not brought in any VIP interference.

*However I sincerely regret for the inconvenience caused to the bank in this regard and request your good office to kindly accept my explanations.
Expecting your kind attention."*

In that letter he stated that his brother is an active politician and he might have interfered in the matter. He also expressed regret. The employer bank did not pursue the matter further.

4. W.P.(C)No.29811 of 2012 came up for consideration before this Court on 13.12.2012. After hearing learned counsel on both sides, it was disposed of by Ext.P16 judgment delivered on 13.12.2012 with a direction to the first respondent bank to consider Ext.P15 representation (produced and marked as Ext.P13 in the said writ petition) and pass appropriate orders thereon in accordance with law and taking note of Ext.P12 communication issued by the Ministry of Finance, Government of India. Pursuant thereto, the General Manager of Indian Overseas Bank, Chennai, considered Ext.P15 representation dated 13.8.2012 and rejected it. He thereafter communicated his decision to the petitioner by Ext.P17 letter dated 31.1.2013. The said letter is under challenge in this writ petition wherein the petitioner seeks the following reliefs:-

- "i) *To issue a Writ of Mandamus or any other appropriate Writ, order or direction setting aside Exhibit P-17.*
- ii) *To issue a Writ of Mandamus or any other appropriate Writ, order or direction to direct the 1st respondent to post Petitioner within the Thiruvananthapuram Region in the light of Exhibit P10, Exhibit P11 and Exhibit P12."*

Relying on Ext.P12 letter sent by the Ministry of Finance, Government of India and Ext.P10 certificate dated 13.3.2012 issued

by Sree Chitra Tirunal Institute for Medical Sciences and Technology, Thiruvananthapuram and Ext.P11 disability certificate issued by the Medical Board of District Hospital, Kozhenchery, it is contended that the petitioner is a person with disability and therefore, the decision evidenced by Ext.P17 is liable to be set aside and the petitioner transferred back to Thiruvananthapuram region.

5. This writ petition was presented on 25.3.2013. It came up for admission hearing before me on 26.3.2013. On that day, learned standing counsel appearing for the respondents took notice and the writ petition was adjourned to 10.4.2013 with a direction to the respondents to file statement/counter affidavit on or before 9.4.2013. When the writ petition came up for hearing on 11.4.2013 it was adjourned to 12.4.2013. On that day, a statement dated 12.4.2013 was filed on behalf of the respondents wherein the respondents reiterated the grounds set out in Ext.P17 letter. After hearing learned counsel on both sides, I passed the following interim order on 12.4.2013:-

"After hearing learned counsel appearing for the petitioner, learned standing counsel appearing for the respondents and going through the pleadings, I am of the opinion that the first respondent should sympathetically consider the petitioner's grievance and give him a posting preferably in Thiruvananthapuram Corporation limits itself.

I accordingly direct that in the event of the petitioner submitting an appropriate representation before the first respondent

along with a copy of this order, the first respondent shall within one week from the date of receipt of the representation, issue orders posting the petitioner in one of the branches of the Indian Overseas Bank within Thiruvananthapuram Corporation limits."

6. The respondents carried the matter in appeal by filing W.A.No.941 of 2013. After hearing learned counsel on both sides, a Division Bench of this Court allowed the appeal by judgment delivered on 22.10.2013 and set aside the interim order passed by me on 12.4.2013 on the ground that by that interim order the main relief sought in the writ petition has been granted. In the meanwhile, pursuant to the directions issued by the bank, the petitioner appeared before the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai on 23.8.2013. There, he underwent a series of tests during the period from 23.8.2013 to 27.8.2013 after he was admitted as an inpatient. The petitioner was subjected to examination in the Institute of Neurology attached to that Hospital which issued Ext.P18 discharge summary with a provisional diagnosis to the effect that he suffers from familial spino-cerebellar ataxia. The discharge summary also discloses that the Institute of Neurology had assessed the petitioner's disability as 48%. The fact that the petitioner was referred to the Medical Board and the Medical Board found him to be a person with disability is not in dispute.

7. I heard Smt.Indu Susan Jacob, learned counsel appearing for the petitioner and Sri.K.N.Sasidharan Nair, learned counsel appearing for the respondents. Smt.Indu Susan Jacob, learned counsel appearing for the petitioner contended relying on Ext.P12 letter sent by the Ministry of Finance, Government of India, to public sector banks and financial institutions as also Ext.P18 discharge summary and the findings therein that the petitioner has now been found to be a person with disability and therefore, he is entitled to the benefits flowing from Ext.P12 letter. The learned counsel contended that the petitioner is therefore entitled to have his transfer to Nagercoil region cancelled and posted in the Thiruvananthapuram region. Per contra, Sri.K.N.Sasidharan Nair, learned counsel appearing for the respondents submitted that Ext.P15 representation was filed after the petitioner joined duty at Nadakkavu Branch in Nagercoil Region, that the representation was addressed to the first respondent as who has his office at Chennai, that it was rejected at Chennai and therefore, as the entire cause of action arose after the petitioner was transferred to Nagercoil region and no part of the cause of action arose within the local limits of the territorial jurisdiction of this Court, this Court has no jurisdiction to entertain the writ petition. The learned counsel also contended that at the time the order of transfer was issued, there was no material

before the transferring authority to come to the conclusion that the petitioner is a person with disability.

8. I have considered the submissions made at the Bar by the learned counsel appearing on either side. I have also gone through the pleadings and the materials on record. It is not now in dispute that the petitioner is a person with disability. Ext.P18 establishes the said fact. Consequently, it has to be necessarily held that the policy set out in Ext.P12 should apply to him. It is stated in Ext.P12 that even on promotion, persons with disability should not normally be transferred if a vacancy exists in the same branch/office, town/city. The respondents have not pleaded or proved that no vacancy existed in Thiruvananthapuram region to accommodate the petitioner at the point of time when he was transferred on promotion. They have no case that as on today no vacancy exists. I therefore find no reason why the petitioner who is found to be a person with disability should not be accommodated in Thiruvananthapuram region.

9. I shall next consider whether there is any merit and force in the contention of the respondents that this Court has no territorial jurisdiction to entertain the writ petition. The records disclose that the petitioner had earlier moved this Court by filing W.P.(C)No.29811 of 2012 wherein he had inter alia sought a

direction to the very same respondents to take action on Ext.P15 representation (Ext.P13 in that writ petition) in the light of Ext.P12 letter. No objection was taken at that point of time to the maintainability of the writ petition in this Court. The respondents submitted to the jurisdiction of this Court and did not object to the maintainability of the writ petition in this Court. With the result, the writ petition was disposed of by judgment delivered on 13.12.2012 with a direction to the first respondent herein to consider Ext.P15 representation (Ext.P13 in that writ petition) and pass appropriate orders thereon in the light of Ext.P12 letter and other relevant materials, within one month from the date of receipt of a copy of the judgment. The said direction was complied with, the petitioner's request for transfer was considered and it was rejected and the decision communicated to him by Ext.P17 letter dated 31.1.2013. As the respondents had waived their objection to the jurisdiction of this Court in the first instance, I am of the opinion that they cannot at this stage of the proceedings, be heard to contend that this Court has no jurisdiction to entertain the writ petition. The respondents who did not in the first instance object to the jurisdiction of this Court and waived their objection to the jurisdiction of this Court, cannot in my opinion be permitted at this stage after this Court's direction has been complied with, to contend that the petitioner

should move the High Court of Tamil Nadu seeking redressal of his grievances.

10. On the merits also, I am of the opinion that the said contention is without any merit. The petitioner was constrained to submit Ext.P15 representation relying on Ext.P12 letter on account of the fact that he was transferred from Kaniyapuram Branch in Thiruvananthapuram region to Nadakkavu Branch in Nagercoil region. His contention in Ext.P15 representation was that the transfer is in violation of the norms set out in Ext.P12. It was the transfer from Thiruvananthapuram region to Nagercoil region that gave rise to the request for a re-transfer. That request was rejected by the impugned letter. It is the petitioner's transfer from Thiruvananthapuram region to Nagercoil region in violation of the stipulations in Ext.P12 letter that gave rise to the complaint against the transfer on the ground that it violates the norms set out in Ext.P12. In such circumstances, by no stretch of imagination can it be said that no part of the cause of action for the instant writ petition arose within the territorial limits of the jurisdiction of this Court namely in the State of Kerala. The cause of action for the instant writ petition is not merely the rejection of the petitioner's request for transfer. The very transfer of the petitioner constitutes an integral part of the cause of action. I accordingly overrule the

contention raised by the respondents that this Court has no territorial jurisdiction to entertain the writ petition.

For the reasons stated above, I allow the writ petition, set aside the decision evidenced by Ext.P17 and direct the respondents to forthwith transfer the petitioner back to Thiruvananthapuram region by giving him appropriate posting in one of the branches in that region, expeditiously and in any event within two weeks from the date on which the petitioner produces a copy of this judgment before the first respondent. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

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