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Court : Karnataka

Decided On : Dec-30-2014

Judge : N.K. Patil & the Honourable Mrs. Justice Rathnakala

Appeal No. : Writ Petition No. 55637 of 2014 (S-KAT)

Appellant : K.N. Rajappa

Respondent : State of Karnataka Represented By its Additional Chief Secretary to Government and Others

Judgement :

(Prayer: This Writ Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India, Praying To Quash The Impugned Order Dated:26.11.2014 Passed By The Karnataka Administrative Tribunal, Bangalore In Application No.6403/2014 Vide Ann-A And Consequently Uphold The Transfer Order Dated 20.08.2014 Vide No.57/2014-15 Vide Ann-A2 In Ann-B, Etc.)

1. Aggrieved by the order dated 26th November 2014 passed in Application No.6403/2014 by the Karnataka Administrative Tribunal at Bangalore (hereinafter referred to as 'the Tribunal'), this writ petition is filed invoking Articles 226 and 227 of the Constitution of India. The Tribunal vide its order dated 26.11.2014 allowed the said application filed by the fourth respondent herein and quashed the transfer

order dated 20.8.12014 passed by the second respondent in transferring the fourth respondent herein and posting writ petitioner, with a further direction that fourth respondent herein shall continue as Deputy Range Forest Officer at Kaggalipura Range and the writ petitioner herein has taken charge, he shall hand over the charge to fourth respondent herein and go back to his earlier place if it is vacant or he may seek an alternative posting.

2. Sri.C.M.Nagabhushana, learned Counsel appearing for the petitioner submits that the writ petitioner works as a Deputy Range Forest Officer, Development Authority, Parisara Bhavan, Bangalore.

He was transferred to the place of fourth respondent on 20.8.2014 and the fourth respondent challenged the said order before the Tribunal on the ground that he was not given any posting. An interim order was granted on 3.9.2014 by the Tribunal in view of the said submission, subsequently, he was given a posting vide order 9.10.2014 but he did not take charge of the said posting but applied for leave with a malafide intention. The Tribunal despite taking note of the fact that the writ petitioner was not shown any place, passed the impugned order, which has resulted in injustice to him. The fourth respondent has challenged the transfer order as premature but for the last fifteen years, he is working at Bangalore only in various postings; he was working at Water Shed Development Department from 2010 and completed three years' term. The transfer order was passed with prior approval of the Hon'ble Chief Minister in compliance of clause 9(b) of the Transfer Guidelines dated 7.6.2013. Overlooking these aspects of the matter, the Tribunal passed the impugned order, quoting on an order passed in previous case in Application No. 1490/2012, which had no semblance to the facts on hand. Since fourth respondent is transferred within Bangalore, virtually it is not a transfer at all. The Tribunal has passed a non-speaking order, hence, it is not legal and is liable to be quashed.

3. Per contra, Sri.S.V.Narasimhan, learned Counsel appearing for the fourth respondent submits, in view of the order dt.9.12.2012, he was transferred from Watershed Development Department to Kaggalipura Range, Kengeri Section. Accordingly, he reported to duty on 10.2.2012. Before completion of his tenure at

Kaggalipura Range, he was transferred vide order dated 20.8.2014, by posting the petitioner in his place with an instruction to the Chief Conservator of Forests, Bangalore to issue alternative posting to him; the Deputy Range Forest Officer's post is a Group-C post, the tenure of stay for a Group-C official is three years as per the Government Order dt. 4.5.2014 and 20.5.2014, rightly the Tribunal had allowed his application on the ground of premature transfer and continued him at Kaggalipura range.

4. On our direction, the learned Government Pleader has produced the original records pertaining to the transfer. We have noticed that the transfer order in question was not an isolated case but one among transfer of other Group-C employees. The Tribunal disagreeing with the contention of the writ petitioner that Kaggalipura Range falls under saw mill section as per the Government Order dated 28.1.2014 and the Deputy Range Officer can be posted to a Saw Mill Range for a period of two years only, upholds the contention of the fourth respondent that Kaggalipura Range does not come under saw mill; being a Group-C employee, the applicant is liable to work for three years, that is upto 2005 and thereby passed the impugned order. Now we have noticed that even if the transfer of the fourth respondent was a premature transfer, it is passed on the prior approval of the Hon'ble Chief Minister in public interest. During the pendency of the application, fourth respondent was transferred to Anekal Wildlife Range at Bannerghatta National Park Division. Hence his first contention that without posting him to a vacant post the order of transfer is not legal, etc., does not hold water any more. When the transfer order in question is in accordance with the transfer guidelines and is passed in the public interest, the Tribunal by quoting its own previous order pertaining to a case, which has no semblance to the present case, has trespassed its own jurisdiction.

5. It is now well settled by recent decisions of the Apex Court that Courts or Tribunals cannot sit in appeal over administrative decisions of transfer of government officials. The transfer is an incidence of service. The order of transfer can be challenged only on two grounds viz., its being in violation of statutory rules or its malafide (vide (1) AIR 1992 SC 2444 - Union of India and Ors. -vs- S.L.Abbas; (2) 1995, SCC 666 - State of Madhya Pradesh and another -vs-

S.S.Kaurav and Ors.; (3) AIR 1993 sc 1236 - Rajendra Roy -vs- Union of India). In the present case, there is no allegation of malafide intention nor the transfer is shown to be contrary to any statutory rules.

Accordingly, the Writ Petition is allowed.

The order passed by the Karnataka Administrative Tribunal dated 26th November 2014 in Application No.6403/2014 is hereby quashed.

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