

Alla Saheb Vs. The State of Karnataka & Ors

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Court : Karnataka Kalaburagi

Decided On : Nov-14-2016

Judge : B.S Patil and B.V.Nagarathna

Appeal No. : WA 200488/2016

Appellant : Alla Saheb

Respondent : The State of Karnataka & Ors

Judgement :

WA No.200488/2016 1 IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE14H DAY OF NOVEMBER, 2016 R PRESENT THE HONBLE MR.JUSTICE B.S.PATIL AND THE HONBLE MRS.JUSTICE B.V.NAGARATHNA WRIT APPEAL No.200488/2016 (S-TR) BETWEEN: Alla Saheb S/o Hussain Saheb Doddamani, Age:

57. years, Occ: Executive Engineer, District Urban Development Cell, Urban Development Administration, Vijayapur - 586 101. APPELLANT (By Shri P. Vilaskumar Marthand Rao, Advocate) AND:

1. The State Of Karnataka Through its Principal Secretary, Department of Urban Development, Vikas Soudha, Dr. B.R. Ambedkar Veedhi, Bengaluru - 01.

2. The Director/Commissioner Municipal Administration, 9th Floor, Vishveshwarayya Tower, WA No.200488/2016 2 3.

4. 5. Dr. B.R. Ambedkar Veedhi, Bengaluru - 01. The Deputy Commissioner Vijayapur - 586 101. The Project Director District Urban Development Cell, Vijayapur - 586 101. Sharanappa C. Oni Executive Engineer, District Urban Development Cell, Belagavi - 577 450. RESPONDENTS (By Shri R.V. Nadagouda, AAG for R-1 to R-3; R-4 is Served but unrepresented, Shri Ameet Kumar Deshpande, Advocate for R-5) This Writ Appeal is filed Under Section 4 of the Karnataka High Court Act, praying to allow the appeal and set aside the order of Learned Single Judge, dated 24.08.2016 passed in W.P.No.204024/2016 by allowing the Writ Appeal filed by appellant and consequently quash the transfer order vide No.E.

136. Bi. Em. E.2016 (Bha-I) dated 18.08.2016 which is at Annexure A in so far as posting of the respondent No.5 in the place of appellant. This appeal coming on for Admission this day, B.S.Patil J., delivered the following: WA No.200488/2016 3

JUDGMENT

1 This writ appeal is filed challenging the order dated 24.8.2016 passed in WP No.204024/2016. The learned single Judge has dismissed the writ petition filed by the appellant as premature and misconceived.

2. The facts involved in the case, briefly stated are that writ petitioner Alla Saheb was working as Executive Engineer, District Urban Development Cell, Vijayapura. He was working there with effect from 6.3.2014. By the order dated 18.8.2016 impugned in the writ petition, petitioner was displaced from his post. The fifth respondent - Sharanappa C Oni was posted to his place as Executive Engineer. Petitioner was required to report to the Head Office awaiting order of posting to any other place.

3. The said order was challenged by the appellant herein inter alia contending that the same was illegal, arbitrary and was the result of colorable exercise of powers. It was specifically alleged that the impugned order of transfer was WA No.200488/2016 4 contrary to the regulations and circular guidelines issued by the Government which were declared by this Court as having statutory force. In other words, the writ petitioner relied on the Government guidelines dated 07.06.2013 which imposed several restrictions and regulated transfer of Government servants.

4. The learned single Judge has dismissed the writ petition at the stage of preliminary hearing. Aggrieved by the same, the present writ appeal has been filed. It is principally urged before us that the learned single Judge has not properly construed the effect and purport of the Judgment of the full bench of this Court in the case of CHANDRU.H.N. VS STATE OF KARNATAKA & OTHERS - 2011(3) KLJ562 and has not referred to or examined the effect of another full bench decision rendered in the case of S.N. GANGADHARAI AH, K.A.S., VS THE STATE OF KARNATAKA, REP., BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS (SERVICES-II) AND ANOTHER - ILR 2015 KAR1955 WA No.200488/2016 5 5. It is also contended by the learned counsel for the appellant that learned single Judge erred in holding that transfer guidelines could not be applied in a straight jacket manner nor it could be held that deviation from the said guidelines was not possible. It was lastly contended by the learned counsel appearing for the appellant that order of the learned single Judge which proceeded on the basis that there was no cause of action for the writ petitioner to approach this Court as there was no order transferring him to any other place but he was only directed to report to the higher authorities was unsustainable.

6. Learned counsel appearing for the 5th respondent - Sharanappa C. Oni, urges that this appeal has been rendered infructuous as a subsequent order has been passed on 5.10.2016 by the State canceling the transfer of the writ petitioner from Bijapur and posting 5th respondent - Sharanappa C. Oni to Tumkur/Chitradurga Urban Development Cell. He further points out that a writ petition has been filed by the 5th respondent - Sharanappa C. Oni challenging the said order dated 5.10.2016 in Writ Petition WA No.200488/2016 6 No.205090/2016 wherein an interim order of stay has been granted and therefore parties have to work out their remedy in the pending writ petition and hence consideration of the present appeal was rendered academic.

7. Learned Additional Government Advocate submits that guidelines issued by the State Government were only directory in nature and they could not bind the State Government because they are not mandatory. He, therefore, urges that the writ appeal deserves to be dismissed.

8. Having heard learned counsel for the parties, we find that there are two full bench decisions on the point with regard to the nature, scope and enforceability of the guidelines framed by the State Government regulating the transfer of government servants.

9. The first judgment on the point is rendered by the full bench in the case of Chandru.H.N. (cited supra). In the said case, the full bench was considering the effect of Government order relating to transfer of Government servants which had come into force from 22.11.2001 as to WA No.200488/2016 7 whether it had statutory force. The full bench having considered the entire matter in detail has held that there were no rules providing for or regulating transfer laying down guidelines for such transfers framed in exercise of powers conferred under the Karnataka State Civil Services Act, 1978 and therefore in the absence of any such rules regulating transfer of government servants and providing guidelines therein the executive order issued on 22.11.2001 in exercise of power under Article 162 of the Constitution relating to transfer of Government servants will have statutory force and can be enforced.

10. The full bench in Chandrus case (cited supra) has placed reliance on the judgment of the Apex Court in the cases of PALURU RAMAKRISHNAIAH VS UNION OF INDIA - AIR 1990 SC166& DR. KRUSHNA CHANDRA SAHU AND OTHERS VS STATE OF ORISSA AND OTHERS - (1995) 6 SCC1 It is thus evident from the above that in Chandrus case the full bench had an occasion to consider the effect of 2001 regulations which had laid down guidelines for transfer of Government servants. WA No.200488/2016 8 11. Later, in a different context the effect of the rules which were framed in the year 2013 in supercession of earlier transfer guidelines fell for consideration before another full bench of this Court in the case of S.N. Gangadharaiah (cited supra). Indeed the said matter was referred to the full bench to consider the following question :- 1) Whether the Rules relating to transfer contained in the KCSR override the Government Order dated 07.06.2013 and whether it is permissible to transfer a Government servant from one office to another office within the same headquarters in exercise of the power conferred in the Government Order dated 07.06.2013?. The Division bench while referring the matter to the full bench had come to the conclusion that definition of

the term transfer contained in KCSR could not be read into the Government Order because Rule 8(49) of the KCSR had no overriding effect on the executive order dated 07.06.2013. It was observed that decision rendered by another Division Bench in the case of K.Ramchandra Vs State of Karnataka WA No.200488/2016 9 and Others required reconsideration. That was how the matter was referred to the full bench.

12. After considering the entire matter at length and examining the effect of the judgment in Chandra H.Ns case, this Court has laid down in Para No.12 of the order that question whether Rules framed by the State Government relating to transfer of Government servants had statutory force, had been already decided by the Full Bench of this Court in Chandrus case (cited supra). This Court further found that although the full bench was concerned with the Government Order dated 22.11.2001 relating to transfer of Government servants which had come into force from 22.11.2001, the subsequent Government Order dated 07.06.2013 being the successor to the earlier Government order and having been issued in the same context and circumstance, the law laid in the judgment of the full bench in Chandrus case had full application to the present Government Order as well. The executive order issued in exercise of power under Article 162 of Constitution of India, it was held, will have statutory force and could be enforced. WA No.200488/2016 10 This view was reiterated and agreed to by the full bench in S.N. Gangadharaiahs case.

13. The full bench, further went on to observe that an executive instruction could make a provision only with regard to a service matter which was not covered by the rules and that such executive instructions could not over ride any provisions of the rule framed under Article 309 of Constitution of India. It was also further reiterated that even when there was a rule framed regulating conditions of service, if there was any gap, the executive power of the State, to issue an order under Article 162 of the Constitution of India could not be denied. In Paras No.18 and 19, the full bench having referred to the decision of the Administrative Reform Committee constituted by the State Government has observed as under :- 18. The Administrative Reform Committee constituted by the State Government went into the entire issue pertaining to transfer of Government servants and the evils

associated with the transfers and recommended several measures. It is pursuant to these recommendations, the WA No.200488/2016 11 Government Order dated 07.06.2013 has been issued to regulate transfers. Therefore, as long as, KCSRs do not provide any mechanism to regulate transfers of Government servants, the State Government was competent to frame rules in exercise of executive powers vested in it. Therefore, the Government Order which provides an independent scheme regulating transfer of Government servants which is not covered under the KCSR, is required to be examined independently and the term transfer as defined in Rule 8(49) of the KCSR will not restrict or regulate the understanding of the term transfer for the purpose of the Government Order.

19. It is also very necessary to notice here that in H.N.Chandrus case a Full Bench of this Court, while dealing with the effect of the Government Order dated 22.11.2001, which contained somewhat similar regulatory measures regulating transfer of the Government servants, has held that the Government Order relating to transfer of a Government servant had statutory force. The present Government Order dated 07.06.2013 contains revised instructions regulating transfer/deputation of Government servants in supersession of the Government Order dated WA No.200488/2016 12 22.11.2011. Therefore, it has to be held that the present Government Order has also got statutory force because it is issued to supplement the KCSRs as regards matters that are not provided in the KCSRs.

14. Ultimately, in para no.20 while answering the question referred for consideration of the full bench, the full bench in S.N.Gangadharaiahs case has ruled, as under :- 20. In the result and for the foregoing, we answer the question referred for consideration of the Full Bench as under: a) The Rules relating to transfer contained in the KSCRs and the definition of the term transfer contained in Rule 8(49) of KCSR have no application for regulating transfer of Government servants as provided in the Government Order dated 07.06.2013. b) Decision of the Division Bench of this Court in the case of K.RAMACHANDRA Vs. STATE OF KARNATAKA & OTHERS rendered in W.P.No.56164/2013 disposed of on 05.12.2013 does not lay down correct law, nor does it consider the decision of the WA No.200488/2016 13 Full Bench in the case of H.N.CHANDRU Vs. STATE OF KARNATAKA & OTHERS(supra) - 2011(3) KLJ562 which was not brought to the notice of the Division Bench. c) Consequently, we hold that posting of a

Government servant from one office to another within the same headquarters, to take up duties of a new post would tantamount to transfer within the meaning of Clause 3 (d) of the Government Order dated 07.06.2013. It is thus evident that even a posting of a Government servant from one office to another within the same head quarters to take up duties would tantamount to transfer within the meaning of Clause 3(d) of the Government order dated 07.06.2013.

15. The entire exercise undertaken by the two full benches of this Court would make it clear that the directives framed from time to time as guidelines regulating transfers by the State Government are not mere guidelines leaving it to the discretion of the State Government either to follow them or WA No.200488/2016 14 not to follow them. It is not as if the said guidelines do not confer any right in favour of the concerned Government servants. The guidelines having been framed in exercise of the executive power of the State conferred under Article 162 of Constitution of India have been held to have statutory force. The two full benches did not stop there. They have further laid down that the said guidelines were enforceable. Enforceability of the guidelines would mean that whenever the guidelines were violated resulting in the rights of any of the Government servants getting affected then they can be enforced in accordance with law. Therefore, they vest the Government servants with necessary rights to make a grievance against violation of the said rules/guidelines framed. That they are, therefore, not directory so that the competent authority can ignore them and exercise its own discretion to either follow it or not. The full bench has kept in mind the purpose behind the constitution of the Administrative Reform Committee by which State Government intended to regulate the entire issue of transfer of government servants and address the evil associated with WA No.200488/2016 15 frequent and indiscriminate transfer. Administrative Reform Committee had issued several recommendatory measures and in pursuance of such recommendatory measures, Government order dated 07.06.2013 has been issued to regulate the transfers.

16. The learned single Judge has held that question raised before the full bench in Chandras case was whether the Government order dated 22.11.2001 could be held to have a statutory force or not with reference to Article 309 and 162 of the Constitution of India and the provisions of Karnataka State Civil Services Act,

1978. Thereafter, after quoting paragraphs 8 and 9 of the judgement of the full bench, the learned single Judge finds that the full bench having held that the government order dated 22.11.2001 had statutory force did not state that the said guidelines had to be complied in a straight jacket manner and therefore it was misconceived to contend that the said guidelines though had statutory force had to be applied in a straight jacket manner and no deviation from them was possible under it in any situation. The Court has declined to interfere with the WA No.200488/2016 16 impugned order on this ground and also by stating that the writ petitioner could not challenge the posting of the 5th respondent because petitioner was not transferred to any other place and hence he did not have any cause of action to assail the order impugned in the Writ Petition.

17. It has to be stated at this stage that the Government Order laying guidelines for transfer does not confer any absolute right in a Government servant to continue in a place for the prescribed period. It has provided several exceptions and has conferred discretion in the competent authorities to effect transfer even before the expiry of the specified period or to extend the period of stay even after the expiry of the specified period of stay in a particular place. The requirement of the rule in that regard is that reasons have to be recorded and prescribed procedure has to be followed including approval to be obtained from the Chief Minister. The purpose and intent of such provision in the rules is to ensure that arbitrary and whimsical exercise of power is not resorted to and the Government servants are not harassed by repeated transfers and displacements. The WA No.200488/2016 17 object was to regulate the discretion. Fact that convenience of continuing the Government servant in a particular place for a specified period will help in discharging his duties efficiently by having grip over the fact situation in the particular place have been also taken into consideration. A perusal of the Government guidelines contained in the Government order makes it clear that sufficient room has been provided in the guidelines to displace persons whose records were not clean, against whom inquiry was initiated and such other similar grounds. Therefore, no straight jacket formula has been provided under the guidelines laying absolute bar for transfer and enabling the Government servants to hang on to the place where he is posted. It is in this background alone the full bench has pronounced that these guidelines which were issued in exercise of the

power under Article 162 of Constitution conferred right to enforce them as they had statutory force.

18. The entire approach of the learned Single Judge in holding that even if these regulations had statutory force and conferred right to enforce the same, they could not be WA No.200488/2016 18 applied in a straight jacket manner because deviation from them could be possible under different circumstances escapes the attention regarding core principle underlying the judgment of the full bench. If the view as taken by the learned Single Judge is approved then it would tantamount to upsetting the ratio of full bench which has dealt with the effect of these guidelines in coming to conclusion that they are having statutory force and are enforceable.

19. Further to say that the writ petitioner who was displaced from Bijapur where he was posted to work as Executive Engineer in District Urban Development Cell upon the posting of 5th respondent - Sharnappa C. Oni to his place did not get any cause of action to challenge the same as it did not tantamount to transferring him is not correct. The fact that petitioner was displaced and was not shown any place of posting while 5th respondent was posted to petitioners place gives cause of action to the writ petitioner to challenge the same. He was entitled to approach this Court because the competent authority had ignored the regulations which had the force of law in the matter of WA No.200488/2016 19 effecting transfers. Hence, we are not in agreement with the reasons assigned by the learned Single Judge in this regard that the writ petitioner did not have cause of action.

20. In the result and for the foregoing reasons, we are of the view that order passed by the learned Single Judge deserves to be set-aside. We are also of the view that as the petitioner had been displaced from his place of posting and the relevant rules/guidelines which have the force of law have not been allegedly followed, the learned Single Judge ought to have examined the matter on the merits of the grievance made instead of holding that writ petitioner ought to have approached the higher authorities.

21. The contention of the learned counsel for 5th respondent that this appeal has been rendered infructuous because of the subsequent order passed by the State Government on 5.10.2016 does not hold good in as much as this government

order has been subsequently challenged by the 5th respondent himself and matter is pending before the learned Single Judge in Writ Petition No.205090/2016 where WA No.200488/2016 20 an order of stay has been granted on 6.10.2016. If the 5th respondent had not continued the litigation and the order dated 5.10.2016 had attained finality then there would be substance in the contention of the learned counsel for the 5th respondent.

22. The contention of the learned Additional Advocate General that these rules cannot be enforced as they are not mandatory cannot be accepted. The guidelines vest the concerned Government servants with certain rights and casts certain obligation on the concerned authorities. The guidelines framed have been held to have statutory force and are enforceable. This is antithesis to say that the guidelines are only directions directory not binding and do not vest any right in the government servant.

23. The learned Additional Advocate General has brought to our notice one more decision of a learned Single Judge of this Court dated 22.6.2015 rendered in Writ Petition No.24622/2015 (S-TR) in the case of R. Suresh Vs The State of Karnataka and Others, wherein also an observation has WA No.200488/2016 21 been made stating that the judgments of the full bench could not be interpreted to place an absolute bar on the power of the Government to effect transfers and that such an interpretation of the policy will lead to administrative catastrophe resulting in collapse of the administration in the State and therefore the said guidelines were only directory and not mandatory.

24. As already observed above, the guidelines issued which are held to have statutory force do not lay down any straight jacket formula or do not place any embargo on the power of the competent authority to effect transfer for the reasons enumerated in the government order and by following the procedure prescribed. The guidelines only regulate the transfer and do not prohibit the transfer. The guidelines regulate the exercise of discretion and prevent abuse of the discretion by resorting to arbitrary, unfair and indiscriminate exercise of the power of transfer. It is in this context only the full bench has held that these guidelines have statutory force and are enforceable. If it were to be observed in the teeth of the law laid

down by the full bench WA No.200488/2016 22 that these guidelines are merely directory and did not clothe affected government servant to enforce them by seeking legal redressal it would tantamount to upsetting the principle laid down in the decision of the full bench. Therefore, we do not approve these observations made in the above judgment in R. Sureshs case. For the foregoing reasons, this writ appeal is allowed. Impugned order passed by the learned single judge is set-aside. As subsequent development has happened and the matter is seized by the learned Single Judge, parties are at liberty to agitate the same in accordance with law. Sd/- JUDGE Sd/- JUDGE SGS

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