

Murthy Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Aug-18-2022

Judge : S.Sunil Dutt Yadav

Appeal No. : WP 14860/2022

Appellant : Murthy

Respondent : The State Of Karnataka

Judgement :

- 1 - R WP No.14860 of 2022 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE18H DAY OF AUGUST, 2022 BEFORE THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV WRIT PETITION No.14860 OF2022(S-TR) BETWEEN: MURTHY S/O HALAIAH, AGED ABOUT46EYARS CHIEF OFFICER, HANUR TOWN MUNICIPAL COUNCIL CHAMARAJANAGARA DISTRICT - 571439 NOW TRANSFERRED, NO PLACE SHOWN R/AT GANAGURU VILLAGE T M HOSURU POST K SHETTIHALLI HOBLI SRIRANGAPATNA TALUK MANDYA DISTRICT - 571807 PETITIONER (BY SRI. PAVANA CHANDRA SHETTY H., ADVOCATE) AND:

1. THE STATE OF KARNATAKA BY ITS SECRETARY OF GOVERNMENT URBAN DEVELOPMENT DEPARTMENT VIKASA SOUDHA - 2 - WP No.14860 of 2022 DR AMBEDKAR VEEDHI BENGALURU - 560 001.

2. THE COMMISSIONER URBAN DEVELOPMENT DEPARTMENT GOVERNMENT OF KARNATAKA 9^H FLOOR, V V TOWERS BENGALURU - 560 001.

3. DIRECTOR OF MUNICIPAL ADMINISTRATION GOVERNMENT OF KARNATAKA 9^H FLOOR, V V TOWERS BENGALURU - 560 001.

4. THE DEPUTY COMMISSIONER CHAMARAJANAGARA DISTRICT CHAMARAJANAGARA - 571 313.

5. CHIEF OFFICER HANURU TOWN MUNICIPAL COUNCIL HANURU CHAMARAJANAGARA DISTRICT - 571 439.

6. PARASHIVAIAH CHIEF OFFICER HANURU TOWN MUNICIPAL COUNCIL CHAMARAJANAGARA DISTRICT - 571 439. RESPONDENTS (BY SMT. M.C.NAGASHREE, AGA FOR R1 TO R4; SRI. H.V.MANJUNATH, ADVOCATE FOR C/R5 AND R6) - 3 - WP No.14860 of 2022 THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

OF TRANSFER PASSED BY THE R-1 IN NO.NaAeEe/238TME 2021 DTD.23.12.2021 PRODUCED AS ANNEXURE-A AS ILLEGAL AND ETC. THIS WRIT PETITION COMING ON FOR

ORDER

S THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has called in question validity of the order of transfer at Annexure - A dated 23.12.2021. The facts made out in the petition is that respondent No.6 has been posted to the place of the petitioner as per the impugned order at Annexure-A dated 23.12.2021. Insofar as the posting of the petitioner is concerned, it is only observed that the petitioner is to report to the competent authority for obtaining an order for posting. It is further noticed that it is only on 20.07.2022, more than about six [6]. months after the order at Annexure - A, during the pendency of the present

proceedings, the petitioner has - 4 - WP No.14860 of 2022 been given an order of posting at the Town Municipal Counsel, Ullal (for vacant post).

2. The only point that requires to be considered is as to whether the order of transfer after the period of general transfers could be upheld where no order of posting has been shown as regards the petitioner. The legal position insofar as not showing order of posting of an employee in whose place another employee has been placed, has been considered in detail by the Division Bench of this Court in M.Arun Prasad Vs. The Commissioner of Excise and Others¹ . The observations at Paragraph Nos.4 to 7 are reproduced below:

"4. We may record that this Court in the above referred order dated 16.09.2016 at paragraph-6 had observed thus:

6. There are two serious infirmities in the transfer order. One is that when the petitioner is transferred from the post of Assistant Conservator of Forest, there is no clear posting order at a particular post of the petitioner. 1 W.P.No.58931/2016 (S-KAT) dated 02.03.2017 - 5 - WP No.14860 of 2022 Unless the petitioner is lifted from one place and posted at another place, it cannot be said that any vacancy has arisen of the petitioner and such an exercise of the power cannot be appreciated even if one keeps in mind the administrative circumstances for the public interest as the case may be. It is hardly required to be stated that when A is posted in place of B from one place to another then only there will be a vacancy of A and B can be posted at the place of A. If A is lifted and his posting is kept in lurch and B is posted vice-A such practice cannot be appreciated and deserves to be rather deprecated and the reason being that the officer who is lifted from one place is not certain at which place he has to join the duty and unless he joins the duty at different place, it cannot be said that vacancy in law had arisen at his original place. So long as there is no vacancy at the original place, the question of posting is without any foundation. Hence, the said transfer order can be said to be with the exercise of legal malafide.

5. Thereafter this Court while allowing the petition had also observed at paragraph-12 in the said decision which reads as under: 12. Before parting with, we would find it appropriate to observe that in number of cases it is found by this

Court that the transfer order is passed in a manner that one Officer is lifted from one post but it is not clarified about his next posting and he is expected to approach before the concerned Department for appropriate posting and another Officer vice him is already posted. This practice would keep the Officer in lurch about his next posting even he is to be transferred. Such practice is deprecated by the Court in this matter as well as in other - 6 - WP No.14860 of 2022 matters. A reference may be made to the order passed by this Court in W.P.No.39438/2016 disposed of on 19.08.2016 and W.P.No.43919/2016 disposed of on 23.08.2016. Hence, in order to ensure that appropriate mechanism is worked out, the registry shall forward the copy of the order to the Chief Secretary of the State Government to look into the matter and to take suitable action.

6. Pending the present petition, the posting order of the petitioner was already made. However, the fact remained that without appropriate posting of the petitioner, the transfer order was passed coupled with the aspects that as per the observations made by this Court in the earlier order, no transfer order could have been passed without appropriate posting of the Officer who is lifted from the place he is working.

3. It is clear that the position of law is settled that passing an order of transfer without showing place of posting would suffer from legal malafide. This position is reiterated by the Division Bench of this Court in the latest decision in Mahiboob Sab Vs. The State of Karnataka and Others² . It is also to be noticed that this is the stand of the Government as is noticed from the Circulars 2 W.P.No.16363/2021 (S-KSAT) dated 31.05.2022 - 7 - WP No.14860 of 2022 of 18.01.2017 and 27.03.2017. In fact, the Circular of 27.03.2017 further stipulates that reasons must be recorded in writing for not showing posting to any Government Servant and such reasons should be "compelling administrative reasons like non availability of post due to abolishment/up-gradation/down-gradation, shifting in lieu of suspension, requirement of Government Servant to perform urgent confidential work in a post, unsuitability or inefficiency to work in the existing vacancy or for being utilized against temporary and leave vacancy etc., which are only illustrative but not exhaustive". Procedure is also shown to review orders of transfer by the Head of the Department where person displaced is

not shown posting recording reasons in writing.

4. Admittedly, in the present case, none of the procedures are followed. Despite the observations by the Division Bench of this Court in M.Arun Prasad's case - 8 - WP No.14860 of 2022 (supra) and also the Government Circulars referred to above, time and again orders of transfer are being passed without showing places for posting. In terms of the order in M.Arun Prasad's case (supra), vacancy will not arise until an employee in whose place another employee has been transferred, is shown a place of posting. The Government to ensure that such instances should not repeat and strict compliance of Circular dated 27.03.2017 as well as directions of the Division Bench of this Court in M.Arun Prasad's case (supra).

5. It is also necessary to note that transfer is made in the month of December. Even as per the records submitted by the Government, as per note on 01.10.2021 it is observed that if transfers are made after the period of general transfers, no request for transfers should be entertained or orders made unless there is a vacant place. In the present case, as stated earlier, there was no vacant - 9 - WP No.14860 of 2022 place while considering the representation of the respondent No.6 to be transferred and posted in the place of the petitioner. It is also noticed that the case of respondent No.6 is on the basis of the letter of the Member of the Legislative Assembly. Nevertheless, procedure requires to be followed.

6. The delay in filing is explained by way of earlier proceedings instituted by the petitioner before this Court in W.P.No.3955/2022 (S-RES) disposed of on 22.02.2022 and subsequently, in Application.No.1439/2022 disposed of on 12.07.2022.

7. Accordingly, on two grounds i.e., not showing an order of posting for a period of more than six [6]. months and on the ground that no transfer must be made except to a vacant post after the period of general transfers, while noticing that the transfer is made in December 2021 as noticed in the proceedings of transfer, - 10 - WP No.14860 of 2022 the petition is allowed. The impugned order dated 23.12.2021 at Annexure - A is set aside. The parties are directed to be placed in the position prior to the impugned order. It is only expected that the State will ensure strict compliance with its own Circular of 27.03.2017 as well as directions

of the Division Bench passed in M.Arun Prasad's case (supra) and the observations in Mahiboob Sab's case (supra). Sd/- JUDGE RB

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