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Vasudevamurthy and anr. Vs. the Director of Public Libraries, Bangalore and ors.

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Court : Karnataka

Decided On : Nov-09-2001

Reported in : 2002(2)KarLJ590

Judge : R. Gururajan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition Nos. 34837 and 34838 of 2001

Appellant : Vasudevamurthy and anr.

Respondent : The Director of Public Libraries, Bangalore and ors.

Advocate for Def. : Rosa Perumal, High Court Government Pleader

Advocate for Pet/Ap. : R.V. Srinivasa Reddy, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

R. Gururajan, J.

1. Facts of the case reveal the enormous influence wielded by the Private Secretaries attached to the sitting Ministers.

Petitioners were appointed as Library Assistants under the control of the second respondent in Gram Panchayath Libraries. Petitioners made a representation for a mutual transfer in terms of Annexure-A, which was considered and an order was passed by the second respondent in terms of Annexure-B. In terms of Annexure-B petitioners were relieved from their posts and they handed over charge to each other in terms of Annexure-C and D. These being the facts of the case, a notification dated 30-8-2001 (Annexure-E) was issued by the first respondent. This notification is challenged in this petition.

2. The matter was posted before this Court on 12-9-2001 and this Court ordered notice pursuant to which the first respondent filed an affidavit on 4-10-2001. The third respondent despite service has not chosen to appear in this Court.

3. Heard the learned Counsels for final disposal with their consent.

4. The third respondent is placed ex parte since he has failed to appear in this Court in spite of service.

5. Petitioners' Counsel reiterates the facts and grounds. Learned Counsel for the petitioners also states that the impugned notification has been issued at the instance of the Personal Secretary of the Minister and therefore the same is unsustainable. He wants the same to be set aside.

Per contra, learned High Court Government Pleader explains the circumstances in which the impugned notification is issued. She justifies the action of the respondents.

6. Material facts reveal that the petitioners were transferred in terms of Annexure-B and they have also taken charge. Thereafter Annexure-E has been issued by the second respondent on 30-8-2001. In the said notification it is stated that in terms of the telephonic discussion the second respondent had with the Private Secretary of the Minister, the mutual transfer is kept in abeyance. The said order is explained by the first respondent in his affidavit filed on 4-10-2001. The first

respondent admits that an order was issued on 27-8-2001. According to him the said order is contrary to the general circular dated 2-1-2001. The first respondent submits in para 5 as under:

'5. It is submitted that when the people of Melya and Vatada-hosalli came to know about the transfer of the petitioners, they straightaway went to the Hon'ble Minister's office on 29-8-2001 and made a oral complaint to the Hon'ble Minister. The respondent 2 was called over the phone by the staff of Minister's office and respondent 2 was not available.

After knowing this, the respondent 2 had telephoned to the Hon'ble Minister's office to ascertain about the telephone. Then he was informed about the validity of transfer and authority to transfer memo dated 27-8-2001, which was issued by respondent 2 by a staff member of the office of the Hon'ble Minister for Libraries and narrated the oral complaint made by the people of Melya and Vatadahosalli to the Hon'ble Minister on 29-8-2001. Knowing this respondent 2 has passed a memo dated 30-8-2001 which is in the impugned order'.

A reading of para 5 would show that the impugned order has no legs to stand. If the impugned order has been issued either by mistake or contrary to any rule or regulation, the right course is to issue a notice or issue an order of cancellation giving acceptable reasons. No such attempt is made in the case on hand. At any rate the second respondent in the impugned notification keeps the order passed by him in suspension on the telephonic instruction of the Private Secretary of the Minister. Private Secretary of the Minister admittedly is not holding any position or power with regard to an administrative order passed by a Department Official. A Private Secretary cannot dictate to the officials in the matter of administrative orders affecting the rights of the parties concerned. The second respondent also ought not have passed orders on the basis of a telephonic instruction in this regard. The impugned order, Annexure-E speaks by itself the influence wielded over the authorities, in particular, respondent 2 by respondent 3. Such practice of telephonic instruction to keep in abeyance an administrative order has to be deprecated except in extraordinary circumstances. As otherwise there is every chance of misuse of power in such cases. Moreover, in the affidavit filed by

the Government, there is no whisper with regard to the consent or order of the Minister with regard to keeping a written communication in abeyance. No material is placed in this regard. In these circumstances, I express my strong displeasure the way in which the instructions are given and acted upon by the officials. Hence, I have no hesitation in holding that such orders are to be set aside in the larger interest of justice by me in this petition. Hence, the impugned notification at Annexure-E is set aside.

7. Before concluding I must also observe that despite notice respondent 3 has not chosen to explain his stand in the matter. It is only the first respondent who explains the same by saying that at the instance of oral complaint of the people of Melya and Vatadahosalli, and by way of oral orders, the transfer of the petitioners have been kept in abeyance by way of the impugned notification. The oral complaint and oral orders are unknown in administration and it is always necessary to have a written complaint and a written order for proper administration by the Government.

8. In the light of the affidavit and Annexure-E, I deem it proper to issue a direction to the Secretary of the Department concerned to get hold of the records and to find out as to how a telephonic instruction can nullify a written administrative order. The Secretary concerned is also at liberty to initiate proceedings if need be against those concerned in the matter. I also deem it proper to direct the Secretary concerned to place this order before the concerned Minister for his appropriate action in the matter to avoid any such reoccurrence in the matter. I also deem it proper on the peculiar facts of this case, to impose costs of Rs. 5,000/- payable by the third respondent in equal proportion to each one of the petitioners.

In the result, this writ petition is allowed. Annexure-E is set aside with costs quantified at Rs. 5,000/- payable by the third respondent.

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