

H.D. Shirnal Vs. State of Karnataka and Others

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Court : Karnataka Dharwad

Decided On : Mar-23-2011

Judge : The Honorable Mr. Justice D.V. Shylendra Kumar

Appeal No. : Writ Petition No. 32621 of 2010 (S-TR) A/W Misc. W.No. 63221 of 2010 In Writ Petition No.32621 of 2010 (S-TR)

Appellant : H.D. Shirnal

Respondent : State of Karnataka and Others

Advocate for Pet/Ap. : For the Petitioner: Sunil S. Desai for Chandrakanth R. Goulay, Advocates. For the Respondents: R3 - A.S. Patil, Advocate, R1 and R2 - Mahesh Wodeyar, AGA.

Judgement :

1. Misrepresentations, false affidavits, misleading submissions by the litigants and misleading submissions by their Lawyers to cling on to a post, more so, if it is a productive post for Government officials, who indulge in rampant corruption, is the order of the day. Court orders are elicited interim orders, suppressing the real position, misrepresenting something else and based on the subsequent order so obtained; all sorts of atrocities are committed by government and quasi Government officials.

2. In this rat race, to keep positions, which are productive for such officials, no effort is spared, no stone is left unturned and Courts and Court orders are used as

a means to achieve such objectives, thereby even bringing disrepute to the judicial system, which ultimately results in the litigant public and the members of the society in general, loosing faith and confidence in the judiciary.

3. The writ petition is not any different from this state of affairs, which prevails in our society. Writ petitioner approached this Court claiming to be a person working as Chief Officer, Pattan Panchayat, Bilagi, having so assumed the office as per an appointment order dated 15.06.2010 vide Annexure-A, which is a Government Notification No. (Kannada) dated 15.06.2010 issued in the name and as per the order of Governor of Karnataka, under the name and signature of one C.R. Ravindra, Under Secretary to the Government, Department of Urban Development, transferring as many as 23 persons, who were working either as Managers or Chief Officers in different town panchayats of the State to other town panchayats in the State to other town panchayats and to work in the transferred place as Chief Officers as per the resolution passed in the meeting of Karnataka Municipal Administrative Services Cadre Management Authority, held on 14.06.2010 and purporting to be in the interest of public administration.

4. In this notification name of the petitioner, figured at serial number 14 and mentions that he is a First Division Assistant, who is awaiting a posting and as per the order he is transferred and appointed as Chief Officer, Town Municipality, Bilagi in place of one Sri. V.S. Latni, who was working in the post as of then. It is the contention of the petitioner pursuant to this order that he took charge on the very next day as Chief Officer at Bilagi and was blissfully and peacefully working there and was jolted with rude shock in terms of another notification as per Annexure -C bearing no. (Kannada) dated 03.09.2010 issued under the name and seal of the very officer and also in the name and as per the order of the Governor of Karnataka, transferring and posting one Sri. B.M. Badiger, Manager, Town Municipality, Bagalkot, to the post of Chief Officer, Town Panchayats, Bilagi, where the petitioner was working and it is this notification which has given cause for presenting the writ petition before this Court.

5. In support of the writ petition it is urged that the notification at Annexure - C in so far as it disturbs the petitioner is concerned, is an improper, illegal and

impermissible notification issued without due application of mind, particularly being one issued in the middle of an academic year and not really sub-serving any public or administrative reasons, is liable to be set aside.

6. It is also urged that a notification of this nature could not have been issued even without providing for a posting to the petitioner and leaving petitioner in lurch, particularly by disturbing the petitioner without a short time and during the middle of the year, that it suffers from bias and malafides, that it is passed or issued more to favour the third respondent and on alleged grounds.

7. Writ petition was presented before this Court on 11.10.2010, the matter came up for preliminary hearing on 12.10.2010 when this Court issued emergent notice and granted interim stay for a period of 15 days. As per orders dated 27.10.2010 and 10.11.2010, interim order has been continued for further two weeks on each occasions and when the matter was listed before the Court on 23.11.2010, submission was made on behalf of the third respondent that the third respondent is seeking for vacating the interim order, whereas the counsel for the petitioner sought for extension of the interim order and it is at this stage that the counsel for third respondent made a submission to the effect that third respondent had taken charge on 06.09.2000 (sic) itself and therefore there is no point in continuing the interim order and in this state of affairs there was no further extension of interim order and the matter was directed to be called on 29.11.2010.

8. However, on the other hand, on 29.11.2010, learned counsel for the petitioner made a submission that the petitioner is continuing in the same place and post. On this submission, the following order came to be passed;

“The learned counsel for the petitioner submits that the petitioner is continuing in the same place. If he is continuing in the same place, he shall not be disturbed.

Call this matter on 01.12.2010”

The matter was again listed before the Court on 01.12.2010 and at the request of counsel for the petitioner it was adjourned to 14.12.2010 and on 14.12.2010 the interim order was continued till 05.01.2011 and was directed to call on 04.01.2011.

On 04.01.2011 it was extended for a further period of three months and it is in background the third respondent has filed miscellaneous application in Misc. W.No. 63221/ 2010 for vacating the interim order and when the matter had come up for orders before the Court on 22.03.2011, it was submitted by the learned counsel for the petitioner, that the petitioner in fact has filed another writ petition no. 195/08, a writ petition questioning the order demoting the petitioner from the post of F.D.A. to the post of S.D.A and this court has granted stay of the order of demotion and the writ petition is pending before this Court. It is therefore the application for vacating the stay filed in W.P.No. 32621/2010 was directed to be listed along with W.P.No. 195/2008 along with Misc. W.No. 63221/2010 and the matter is posted before the Court today.

9. I have heard submissions made on behalf of the third respondent as submitted by Sri. A.S. Patil and Sri. Sunil Desai, learned counsel appearing for the petitioner.

10. Sri. Mahesh Wodeyar, learned Additional Government Advocate, though has not filed any statement of objections so far on behalf of respondent no. 1 and 2, submits that writ petitioner was only an incharge Chief Officer, he had not been either promoted or given posting of Chief Officer and it was only on adhoc or interim arrangement till alternative arrangements are made and in fact with the petitioner even otherwise holding the post of F.D.A. having been further demoted to the post of S.D.A. cannot at all in any view of the matter function as a Chief Officer nor can lay claim to the post of a Chief Officer as a matter of right; that an interim arrangement is of no consequence for giving any right over the post. Therefore submits that the writ petition has no merits, interim order is to be vacated and the petition dismissed.

11. The manner in which the writ petition is filed and there is an on going tussle between the petitioner and the third respondent to get in to the post of the Chief Officer at Bilagi, only reveals much more than what meets the eye. Mr. Patil, learned counsel appearing for the third respondent with reference to the miscellaneous application for vacating the stay order submits that the third respondent in fact took charge and was functioning in the post ever since 06.09.2010 as per annexure - R2, produced along with the application for vacating

stay, that the third respondent was relieved from his earlier post of Manager, Town Panchayat, Bagalkot as per official memorandum dated 04.09.2010 at Annexure - R1; enabling the third respondent to assume the post of Chief Officer, Town Panchayat, Bilagi as an incharge Officer and that the petitioner should hand over charge to third respondent and should report to the Director of Municipal Administration for giving him a suitable posting.

12. Mr. Patil submits that the petitioner suppressing this development and misrepresenting facts before this Court, that he has been functioning in the post of Chief Officer at Bilagi, even on the day of filing of the writ petition, i.e., on 11.10.2010, has managed to obtain an interim order on 12.10.2010, even when he was not so functioning in the post and has by further misrepresentation before the Court continued to get the interim order extended, and also on the strength of the interim order granted by this Court on 12.10.2010 has managed to get back to the post on 15.11.2010, whereas the counsel for petitioner by suppressing this development had obtained extension of interim order on 27.10.2010 and on 10.11.2010, keeping this Court in darkness about the development that the petitioner had already been relieved from the post of Chief Officer, Bilagi on 06.09.2010.

13. Notwithstanding such developments the adamant and stubborn submission of Mr. Sunil Desai, learned counsel, for the petitioner is that the petitioner has not given charge to the third respondent on 06.09.2010 as claimed by the third respondent, but submits that after obtaining the interim order from this Court on 12.10.2010, had written a communication to first respondent and therefore the first respondent acting on such representation and based on the interim order granted by this Court on 12.10.2010, had directed the third respondent to allow the petitioner to work as Chief Officer at Bilagi and pursuant to this direction the petitioner has taken back the charge of the post of Chief Officer on 15.11.2010 and is now functioning as such and therefore there is no need or occasion to vacate the interim order, particularly when the petitioner has been subjected to arbitrary transfer in the middle of the year, etc. in violation of the Government Order regarding the transfer of Government Officials, etc.

14. This writ petition is a telltale story of maladministration and haphazard administration that is prevailing in the State, Government officials and public bodies conducting in a most arbitrary and whimsical manner throwing all rules, regulations and laws to the winds. In the first instance the Government notification dated 15.06.2010 as per Annexure - A in itself is a true reflection to manner of administration rather the manner of maladministration by the State Govt. and the officials of the Government been are functioning.

15. Mr. Mahesh Wodeyar, learned Additional Government Advocate on enquiry, had submitted that the post of Chief Officer of a Town Panchayat, is a promotional post from the cadre of the Managers and also by direct recruitment. It is a feeding channel for the post of Chief Officer is the cadre of Managers and the posts of Chief Officer is the cadre of Managers and the post of Chief Officer is categorized into Chief Officer Grade - I and Chief Officer Grade - II. While Grade - I Chief Officers are borne on the Cadre of Karnataka Municipal Administration Services and are either recruited directly or by way of promotion from the Grade - II Chief Officers. The post of Grade -II Chief Officer is a promotional post for the post of Managers, while such is the position emerging from the Cadre and Recruitment Rules, a look on Annexure - A shows that persons who are purporting to have been transferred and appointed to the post of Chief Officer, are thrown from not only the post of Chief Officers, but also those who are holding the post of Managers, Senior Health Inspectors and in the case of the writ petitioner, even a First Division Assistant, who was waiting a posting, is said to have been transferred and given the posting of Chief Officer, Bilagi.

16. The manner in which the petitioner is given posting of Chief Officer, is a typical examination of the kind of maladministration that is taking place in the State and the kind of favourism that is extended to underserving employees, either in the services of the State Govt. of bodies under the control of State or in such services, to get into coveted posts which command a premium and to make hay there.

17. The present writ petitioner is a person who has already been demoted from the post of First Division Assistant to the post of Second Division Assistant, way back in the year 2008 and it is courtesy the interim order granted by this Court in W.P.

No. 195/08, the writ petitioner has managed to cling on to the post of First Division Assistant. While such is the state of Affairs, a person like the petitioner being patronized to be given the post of Chief Officer as an in-charge officer, is a true mirror to the atrocious manner of administration being carried on in the State of Karnataka. Post of Chief Officer, if the petitioner is to get, has to first get promotion as a Manager and then get promotion as Chief Officer. But all that is thrown to winds and in the guise of transferring the petitioner from the post of First Division Assistant without any posting and awaiting posting, he is in fact given a double promotion to the post of Chief Officer, Town Panchayat, Bilagi and it is this post in respect of which petitioner is claiming a right to question the correctness or otherwise of the transfer order at Annexure - C to the writ petition.

18. The petitioner in fact has no right to hold the post, but the thrust on the petitioner by the benevolent so called transfer order notified by the Government of Karnataka as per Annexure - A to the writ petition, which per se is bad, in so far as it relates to the transfer/promotion of the petitioner.

19. Though Mr. Sunil Desai, has made himself bold to submit that the tradition is this State is to post First Division Assistants as Chief Officers and that the petitioner has been accustomed to work so even on earlier occasions and it was nothing new for the petitioner, it yet again demonstrates the abysmal levels to which the administration of this State has sunk and the extent of patronization extended to the petitioner from the powers that be notwithstanding the law, Cadre and Recruitment Rules not enabling the petitioner to function so.

20. To crown this felony, Writ petitioner approaches this Court with suppression of facts, outright misrepresentation and a false affidavit is sworn before this Court to assert that the petitioner was working as a Chief Officer, Bilagi Town Panchayath and damages to obtain an interim order and subsequently on the strength of the interim order even as revealed by the petitioner himself, has managed to obtain or get issued another notification dated 10.11.2010 getting back to the post with a direction to the third respondent to post the petitioner as in-charge of the post of Chief Officer, Bilagi. It appears himself is not alone in this rat race for eliciting favours from the powers that be as even the third respondent is not lagging behind

as the posting given to the third respondent to the post of Chief Officer, Bilagi, carry an endorsement that it has been approved by the Chief Minister of the State. It is rather surprising nay shocking that the Chief Minister of the State himself gets busy with the posting to be given to a Chief Officer of a Town Panchayat and that too, to a person who is not in this rank, but a person who was holding a post of Manager, but again in the guise of transfer, he has been given promotion to the post of Chief Officer. The only difference between the petitioner and the third respondent is, while the petitioner gets double promotion, the third respondent gets a single promotion in the guise of transfer orders.

21. So much for the manner of functioning of the State Government and its administration. This writ petition deserves to be dismissed on more than one ground, in the first instance, the petitioner has no right, the petitioner cannot question the order of transfer at Annexure -C on the norms as applicable as per the Government orders providing for guidelines to transfer as in the first instance, the petitioner is not or was not a person holding the post of a Chief Officer for getting transferred as per Annexure - A, compounding this is the misrepresentation in the writ petition, swearing to a filing a false affidavit and the misleading submissions made by the counsel for the petitioner.

22. No wonder third respondent feeling aggrieved has approached this Court seeking for vacating the interim order, the earlier interim order is vacated, and the writ petition itself is dismissed levying exemplary costs of Rs. 10,000/- on the writ petitioner.

23. State Government which is the root cause for all these haphazard manner of functioning and giving cause for persons like the writ petitioner to approach this Court and keep wasting the precious time of this Court is also to share the blame and the State is also mulcted with the cost of Rs. 5,000/-

24. The cost though normally is awarded in favour of successful party, in the present case the third respondent is not the one who deserves such cost as he is also a person who is only enjoying patronization, whether law permits or otherwise and therefore the cost is directed to be deposited before this Court, both by the petitioner and the State Government, within four weeks from today. Additional

Registrar General is directed to keep this amount to the account of Legal Services Committee of the High Court, to be utilized only to the extent of legal aid to deserving litigants, who approach this Bench of the High Court for relief.

25. Additional Registrar General to ensure a separate account is maintained at the Legal Services Committee of the High Court, Dharwad and the amount awarded by way of cost in this petition, also to be kept only in that account and administer as indicated in this order.

26. Writ Petition is dismissed.

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