

(1972) 03 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 1186 of 1967

A. Shivananda Survana

APPELLANT

Vs

Divisional Commissioner, Mysore and Others

RESPONDENT

Date of Decision : 03-03-1972

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 320, 320 (2), 323

Citation : AIR 1973 Kar 21 : AIR 1972 Kar 21

Hon'ble Judges : Narayana Pai, C.J;V.S. Malimath, J

Bench : Division Bench

Advocate : K. Shivashankar Bhat, for the Appellant; R.N. Eyra Reddy, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, who is an employee of the City Municipal Council of Mangalore as a Town Planning and Building Inspector, impugns an order made by the Divisional Commissioner of Mysore, transferring him from Mangalore to Udipi to serve the Municipal Council of Udipi.

2. The transfer has been made by the Divisional Commissioner in exercise of the power of the State Government u/s 320 of the Mysore Municipalities Act, delegated to him by the State Government under a notification bearing No. S. O. 3818 dated 17th January. 1966. Either the validity of the section or the legality of the delegation is not questioned by the petitioner.

3. The petitioner's contention is that the power u/s 320 of the Act should not be read as an absolute power but that the same should be harmonised, as it is put in the argument with the rule-making power u/s 323 of the Act. The point of the argument is that service conditions, promotional opportunities, pay scales allowances, etc., may be different in different municipalities, that therefore unless uniformity is brought about in these matters by exercising the rule-making power u/s 323 of the Act it is not equitable to exercise the power of

transfer u/s 320 and that therefore, we should so read Section 320 as to bring about an equitable position. In simpler words, it means that the powers of transfer u/s 320 should not be exercised or cannot lawfully be exercised until the step is first taken u/s 323 to bring about uniformity in service conditions of all employees of municipalities in the State.

4. It appears to us that the argument really amounts to asking the Court to read into the section something which is not there. The occasion or necessity for harmonious construction arises when two or more statutory provisions operate in respect of same situation and the Courts are bound to see that every one of the said provisions is obeyed or that the possibility of disobedience of any one or more of them is obviated. No such occasion arises in respect of the power of transfer u/s 320 of the Municipalities Act and the power to make rules under Section 323 of the same Act.

5. It might be pointed out that the first sub-section of Section 320 stating that the Government shall have power to transfer any officer or servant of a municipal council to the service of any other municipal council, opens with the words "notwithstanding anything contained in this Act". One cannot also over-look the provisions of Sub-section (2) of Section 320 of the Act. which confers power on the Government to issue such general or special directions as it thinks necessary for the purpose of giving due effect to the transfer made under Sub-section (1) and obliges the municipal councils to comply with such directions. Normally, the transfer of a person from one place to another does not involve any loss of any of the rights and privileges legitimately appertaining to his position as servant. Special allowances payable in connection with particular posts or services necessitating residence within certain area are not allowances attached to the servant but to the place or post as the case may be. Any loss, diminution or increase in such allowances is therefore a matter of no consequence so far as the exercise of the power of transfer is concerned.

If, however, any detriment or prejudice is likely to follow by reason of the transfer, the same is, in our opinion, capable of being rectified by appropriate directions issued by the Government under Sub-section (2) of Section 320 of the Act.

6. There is thus no basis for the prayer that the impugned order of transfer made by the Divisional Commissioner is without the authority of law or is for any reason not lawful.

7. The writ petition is dismissed.