

(2024) 10 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 24945 Of 2024 (S-KSAT)

Amaresh

APPELLANT

Vs

State Of Karnataka, Represented By Its Principle Secretary,
D.P.A.R, Vidhana Soudha, Bengaluru-560001 & Others

RESPONDENT

Date of Decision : 24-10-2024

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 4, 5, 6
Karnataka Civil Services Rules, 1957 — Rule 8

Citation : (2024) 10 KAR CK 0015

Hon'ble Judges : C M Joshi, J

Bench : Single Bench

Advocate : C M Nagabhushan, P S Rajagopal, Ranganath S Jois, S R Khamroz Khan

Final Decision : Allowed

Judgement

CAV ORDER

Krishna S Dixit, J

1. Petitioner, a KAS Officer is knocking at the doors of writ court grieving against Service Tribunal's order dated 05.09.2024, whereby his Application No.3401/2024 challenging his 'deployment order' dated 16.07.2024, has been negatived.

2. Learned Sr. Advocate Prof.C.M.Nagabhushan appearing for the petitioner seeks to falter the impugned order on the following grounds:

(a) The case of petitioner is both of transfer & deployment as defined under the Transfer Guidelines promulgated vide Government Order dated 25.06.2024 and the Tribunal holding it otherwise fell in error apparent on the face of the record.

(b) The Co-ordinate Bench decision has been conveniently ignored by the Tribunal and that has resulted into an order prejudicial to the petitioner, and

(c) The transfer/deployment is too premature and that has been effected without prior sanction of the Chief Minister.

3. Learned AGA appearing for the State and the learned Sr. Advocate appearing for the private respondent resisted the petition making submission in justification of the impugned order and the reasons on which it has been structured.

4. Learned Sr. Advocate drew our attention to the textual change brought about by the subject 2024 Transfer Guidelines which at paragraph 6 has substituted 'Minimum period of stay at a place' for the 'Minimum period in the post' and according to him, this change would render case of the petitioner weak and therefore, no ground is made out for interference in the order of the Tribunal. Mr.Ranganath Jois appearing for the very same private respondent on record, placed before us the Government Order dated 03.08.2007 issued u/s 6 of the Karnataka Land Revenue Act, 1964 whereby, inter alia the District Head Quarters have been specified. This he did in support of his contention that the deployment order has not resulted into change of Head Quarters of the petitioner.

5. Having heard the learned counsel for the parties and having perused the Petition Papers, we are inclined to grant indulgence in the matter for the following reasons:

(a) It is not in dispute that petitioner was waiting for posting since about six months and he came to be posted as Additional Deputy Commissioner, Kolar, on 09.01.2023. Subsequently on 08.03.2023, he was posted as Additional Deputy Commissioner, Bangalore Rural District and took charge of the office on 09.03.2023. During the period between 14.03.2024 and 11.06.2024, he was deputed to election duty away from the post and on 12.06.2024, he was restored to the office of Additional Deputy Commissioner. When that was the position, before the expiry of the retention period at the place, the 2nd respondent came to be posted as Additional Deputy Commissioner in the place of petitioner vide 16.07.2024. By that date, petitioner had spent only 34 days in the said post. We are told that during her entire tenure of service, the Respondent No.2 has not moved out from Bangalore. No reasons are forthcoming from the side of the State which chose not to file any Statement of Objections before the KAT nor before us, although the private respondent had filed one. Going by the stand taken by her, it leaves no manner of doubt that she secured the posting as Additional Deputy Commissioner of Bangalore Rural District. We will not say that she has wielded enormous political/official influence. Be that as it may.

(b) The first submission of learned counsel for the petitioner that his case is both of transfer and deployment in terms of 2024 Transfer Guidelines, is eminently demonstrated by taking us through its definition clause. Transfer is defined to mean posting of a Government servant from a post to another post, from one Head Quarters to another. Similarly, 'deployment' is defined to mean posting of a Government servant from one office to another within the same Head Quarters. Sub-paragraph No.3 of paragraph 2 of the Guidelines defines 'deployment'.

Explanation to this sub-paragraph excludes the case of transfer from the precincts of 'deployment'. However, a Coordinate Bench of this Court in W.P.No.20732/2024 C/w W.P.No.20740/2024 (S-KAT), between SRI.S.M.SHIVA KUMAR VS. STATE OF KARNATAKA, decided on 7.8.2024 has granted relief to the litigant in substantially similar fact matrix placing its interpretation on the said explanation. Despite vociferous submissions from the side of 2nd respondent, nothing has been demonstrated to deviate from the beaten track, admittedly there being no prior permission from the competent authority for effecting premature displacement, only to accommodate the said respondent, who wants to remain in Bangalore all through. This very fact rebuts the presumption of subject deployment being in the interest of public service or in the interest of exigencies of administration. Prof.C.M.Nagabhushan is right in submitting that the Tribunal fell in a gross error in not following the decision of the Coordinate Bench scrupulously, despite urgency.

(c) The vehement submission of learned Sr. Advocate Mr.P.S.Rajagopal appearing for the 2nd respondent that the textual change brought about to the Transfer Guidelines vide Government Order of 2024 by substituting the expression 'minimum period of stay at a place' for the term 'minimum period of stay in a post', would come to the rescue of his client, is difficult to countenance. There is change of Head Quarters. The office of Additional Deputy Commissioner, Bangalore Rural District is situate at Devanahalli and not at Bangalore city. Petitioner assumed charge of the said office on 12.06.2024 at Beerasandra, Devanahalli Taluka which is reflected in the Certificate of Charge Transfer at Annexure-A5. The Government Notification dated 3.8.2007 which gives a version in variance, pales into insignificance since it has been issued u/s 6 of the 1964 Act, which in turn refers to sections 4 & 5. None of these provisions mentions anything about the fixation of Head Quarters, although they speak about area, region, district, taluk & village. In the absence of specific indication in the Transfer Guidelines or in Rule 8 of Karnataka Civil Services Rules, we cannot hastily jump to accept the contention that in matters like this, this Government Notification needs to be applied.

In the above circumstances, this petition succeeds; a Writ of Certiorari issues quashing the impugned order of the Tribunal; petitioner's Application No.340/2024 having been favoured, another Writ of Certiorari issues quashing the Government Order dated 16.07.2024 whereby, 2nd respondent had displaced the petitioner. Further, we also issue a Writ of Mandamus to the 1st respondent-State to restore the petitioner to the office of Additional Deputy Commissioner, Bangalore Rural District, Bangalore, forthwith.

Costs, reluctantly made easy.