(2019) 03 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 40442, 40443, 50889, 47694, 52125, 49635, 47463, 47464 Of 2018, 2434 Of 2019

B L Narasimha Murthy And Ors — APPELLANT

Vs

Karnataka Power Transmission And Ors — RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:
Constitution Of India, 1950 — Article 12, 309

Citation : (2019) 03 KAR CK 0020

Hon'ble Judges : R. Devdas, J

Bench : Single Bench

Advocate : Naga Prasanna M, S S Nagananda, Sriranga S, P Prasanna Kumar

Final Decision : Allowed

Judgement

1. Since question for consideration and grievances urged in these writ petitions are one and the same, these matters are heard and disposed of by this common order.

2. The petitioners are employees of the respondent-Karnataka Power Transmission Corporation Limited (hereinafter referred to as 'KPTCL') and Bangalore Electricity Supply Company (hereinafter referred to as 'BESCOM'). BESCOM and all other ESCOMS are subsidiary companies of KPTCL. The grievance of the petitioners is that they have been transferred in the middle of the academic year and well before the minimum tenure provided under the Government guidelines dated 07.06.2013.

3. Sri. M. Nagaprasanna, learned Senior Counsel appearing for the petitioners submits that the respondent-Corporation and Company have adopted the Karnataka Civil Services Rules, 1957 (hereinafter referred to as 'KCSR', 1957) and the Government guidelines pertaining to transfer. It is submitted that it is an undisputed fact that the transfer orders have been issued in violation of the Rules and the guidelines which govern the transfer of the employees and

therefore interference is sought at the hands of this Court.

4. On the other hand, the main contention of the respondents is that the Government guidelines dated 07.06.2013 is not adopted by the respondent-Corporation/ Company, for the year 2017-18 and onwards. Learned Senior Counsel, Sri.S.S.Naganand, appearing for the respondent-Corporation/ Company submits that the transfer guidelines of the State Government is not automatically applicable to the respondent-Corporation/Company. It is further contended that the object of the transfer guidelines and the contents thereof clearly indicate that the same cannot be applicable to Corporate Bodies as the Hon'ble Chief Minister does not exercise powers in regard to persons who are not Government servants. Therefore, from time to time, in exercise of powers delegated to the Managing Director of the Corporation, the Managing Director is empowered to transfer the employees, in public interest and exigencies. It is therefore submitted that it is left to the discretion of the Board to either adopt or not adopt the Government guidelines on transfer.

5. During the course of these proceedings, the respondent Corporation was directed to file an affidavit regarding the adoption of transfer guidelines. An affidavit dated 12.02.2019, sworn by the Deputy General Manager (Personnel) was filed before this Court on 13.02.2019. It is stated in the affidavit that the order dated 26.02.2013, was not issued pursuant to any decision of the Board of Directors of the Corporation. It was issued based on the approval of the Managing Directors, who exercises powers as the Chief Executive Officers of the respondent-Corporation. It is also stated in the affidavit that the Managing Director has taken a decision that the transfer guidelines of the State Government would not be adopted for the year 2017-18.

6. It was therefore submitted by the learned Senior Counsel Sri. S.S.Naganand that the adoption of Government transfer guidelines was not mandatory and it is only the Board of Director which can decide whether or not to adopt the transfer guidelines. Since, the transfer guidelines have not been adopted for the years 2017-18 and any further, the foundation of the petitioners contention that there is violation of the transfer guidelines is taken away. Even otherwise, since transfer is an incidence of service, the orders of transfer issued in public interest should not be interfered with.

7. The learned Senior Counsel further submits that the transfer policy was not consciously adopted by KPTCL in view of the recent judgment of Hon'ble Supreme Court in the matter of B.K.Pavitra Vs. Union of India, reported in (2017) 4 SCC 620, which has led to large scale changes in the Seniority List and designations which would inevitably lead to creation of vacancies in various places due to promotions and demotions. It is therefore submitted that the impugned transfer orders had to be issued in the interest of the Corporation, which is a bonafide act and inevitable in the wake of large scale changes as stated above.

8. By way of reply, the learned Senior Counsel Sri.M.Nagaprasanna submitted that the contention of the Corporation that the impugned transfer orders were inevitably issued in the wake of the large scale changes that were brought about while complying with the directions of the Hon'ble Apex Court in the case of B.K.Pavitra (supra), is nothing but an after-thought. In this regard, it was submitted that in compliance of the directions issued in B.K.Pavitra, promotions and demotions in KPTCL and BESCOM were effected much before 16.04.2018 in order to avoid contempt petitions. The learned Senior Counsel submitted that the KPTCL had in fact filed compliance affidavit before the Hon'ble Supreme Court and therefore it was contended that the impugned transfer orders were not issued in the backdrop of B.K.Pavitra's case. The learned Senior Counsel asserts that 275 transfers/promotions/demotions were made on or before 16.04.2018 and the impugned transfer orders had nothing to do with B.K.Pavitra's case.

9. Heard Sri. M.Nagaprasanna, learned Senior Counsel for the petitioners and Sri.S.S.Naganand, learned Senior Counsel for the respondents.

10. Since KPTCL had contended that the impugned transfer orders were inevitably issued in the backdrop of B.K.Pavitra's case, this Court had directed KPTCL to furnish the records and notings pertaining to the impugned orders. Learned Senior Counsel for the respondents had furnished the individual files along with the note-sheets. This Court has gone through the notings and did not find any mention that the transfer orders are being issued in the backdrop of B.K.Pavitra's case or the aftermath of the promotions/demotions effected in compliance of B.K.Pavitra.

11. This Court has gone through the order dated 22.06.2013, issued by the Director (Administration & Personnel), KPTCL stating that the earlier Official Memorandums dated 19.04.2005, 21.05.2005 and 27.05.2005, pertaining to the transfer guidelines of the employees of KPTCL and ESCOMs stand superseded by the adoption of Government transfer guidelines dated 07.06.2013, from 2013-14 onwards. The respondents have not placed any material on record to substantiate their contention that KPTCL/ESCOMs are either required to or hitherto followed the system of passing a specific order every year adopting the Government transfer guidelines. Moreover, a plain reading of the order dated 22.06.2013, makes it clear that the KPTCL/ESCOMs adopted the Government transfer guidelines dated 07.06.2013 for the year 2013-14 onwards. It is pertinent to note that the earlier transfer guidelines dated 22.11.2001, was superseded by Government order dated 07.06.2013 and therefore KPTCL/ESCOMs were required to adopt the new policy. KPTCL/ESCOMs have always followed the Government transfer policy and adopted the transfer guidelines as and when changes were brought about by the Government. Whenever, changes were brought about to the Government transfer guidelines, KPTCL/ESCOMs followed suit by issuing orders adopting the same. Therefore, the contention of the respondents that the respondents have not adopted the transfer guidelines for the years 2017-18 onwards, does not stand to reason. There is no such

requirement that KPTCL/ESCOMs should adopt the transfer guidelines every year by issuing a specific order. The respondents have failed to place on record any material to substantiate their contention that every year the Corporatin/Company had passed specific orders adopting the transfer guidelines of the Government viz for the year 2014-15, 2015-16 and 2016-17.

12. Even otherwise, the contention of the respondents if accepted, would give raise to an anomalous situation where a statutory authority/Government entity answering to the definition of 'State' under Article 12 of the Constitution of India, should be left in a state of lawlessness. Every State and State entities within the definition of Article 12 are required to regulate the recruitment and service conditions of persons appointed to public services and posts connected with the affairs of the State, as provided under Article 309 of the Constitution of India. The adoption of the transfer policies of the State Government by the respondents is in accordance with Article 309. On the contrary, if the arguments of the respondents is accepted, it will lead to a situation where there would be no guidelines regulating transfer, which would run counter to Article 309.

13. The alternative argument of the respondents that the impugned transfer orders have been issued in public interest and therefore, they should not be interfered with, should also necessarily fail because, para-9 of the guidelines provides for such exigencies, however, the procedure requires to be followed. The tenure of posting of a Government servant may be extended or reduced by the competent authority, after recording reasons for the same in writing. It also provides that the minimum period of stay at a place can be reduced if, the competent authority feels that the employee is not suitable for discharging the duties at the present place and the reasons are to be recorded in writing. As noted earlier, the noting sheets do not reveal of any such exercise having been undertaken by the respondents and order of the competent authority recording reasons in writing is not forthcoming.

14. In the light of the above, this Court is of the opinion that the respondent-KPTCL/ESCOMs have issued the impugned transfer orders in violation of the transfer guidelines dated 07.06.2013 and therefore, the same requires to be set-aside.

15. As a result, the writ petitions are allowed. The impugned transfer orders dated 06.09.2018, at Annexure-G, in W.P.No.40442/2018; order dated 06.09.2018, at Annexure-H, in W.P.No.40443/2018; order dated 09.11.2018 at Annexure-F, in W.P.No.50889/2018; order dated 20.10.2018, at Annexure-A, in W.P.No.47694/2018; order dated 11.10.2018 at Annexure-H, in W.P.No.52125/2018, order dated 06.09.2018 at Annexure-K, in W.P.No.49635/2018; order dated 16.10.2018, at Annexure-M, in W.P.Nos.47436-47464/2018 and order dated 24.09.2018, at Annexure-F, in W.P.No.2434/2019 are quashed and set-aside.

