

(2023) 03 KAR CK 0073

In the Karnataka High Court

Case No : Writ Petition No. 5324, 4884 Of 2023 (S-KSAT)

Bruhat Bengaluru Mahanagara Palike N.R. Square Bengaluru
- 560002

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Bruhat Bengaluru Mahanagara Palike Act, 2020 — Section 98, 98(2)
Karnataka Civil Services Rules, 1958 — Rule 50, 50(3)

Citation : (2023) 03 KAR CK 0073

Hon'ble Judges : G.Narendar, J;M.G.S. Kamal, J

Bench : Division Bench

Advocate : Jayakumar S. Patil, Shilpa S. Gogi

Final Decision : Allowed

Judgement

M.G.S. Kamal, J

1. W.P.No.4884/2023 is filed by the petitioner-Sri.B.G.Govindraju (respondent No.3 before the Tribunal and herein after referred to as the petitioner) and W.P.NO.5324/2023 is filed by the petitioner-Bruhat Bengaluru Mahanagara Palike (respondent No.2 before the Tribunal and hereinafter referred to as BBMP for short) against the order dated 22.02.2023 passed in Application No.766/2023 by the Karnataka State Administrative Tribunal (hereinafter referred to as the 'Tribunal' for short) by which the Tribunal allowing the said application filed by the respondent No.3-Sri. Manjesh B (hereinafter referred to as respondent No.3) quashed the notification bearing No.NaAaE 18 NaYoSe 2023 (E) dated 13.02.2023 issued by the respondent No.1-State Government as per Annexure-A8, so far it relates to posting of petitioner and further directed respondent Nos. 1 and 2 to reinstate the respondent No.3 herein to the present place forthwith, if for any reasons, the respondent No.3 has already been relieved and with further direction that if official respondents failed to reinstate the respondent No.3 in the present place of posting, he would be at liberty to assume charge without

expecting movement order.

2. Brief facts leading up to filing of the present petitions are that ;

(a) The respondent No.3 herein (applicant before the Tribunal) filed above Application No.766/2023 contending inter-alia that he is presently working in the cadre of Joint Director, Town and Country Planning ('JDTP' for short) in the Urban Development Department ('UDD' for short), Government of Karnataka. That the parent department of both the respondent No.3 and the petitioner (respondent No.3 before the Tribunal) is UDD. That the posts of Joint Director, Town and Country Planning (JDTP) in BBMP, are en-cadred posts, which are filled up by deputation from the of officials equivalent to cadre from the respondent No.1 department. That the respondent No.3 was sent on deputation to the BBMP in terms of notification dated 30.09.2019 as per Annexure-A1 to the post of JDTP in place of one Sri.H.N.Raghu, who had been repatriated to UDD in the month of August, 2019.

(b) That subsequently, respondent No.3 was issued with office order dated 14.10.2019 posting him as JDTP (North) in the place of one Sri.Rajesh S.V (Executive Engineer, BBMP) who was then holding in charge of said post. The respondent No.3 assumed charge as JDTP (North) on 15.10.2019 and has been working in the said post till date. Thereafter, the State Government vide notification dated 23.07.2021 as per Annexure-A5 modified its earlier notification dated 30.09.2019 extending his tenure for further period of 2 years or until further orders.

(c) When things stood thus, by notification dated 13.02.2023 as per Annexure-R4, respondent No.1 has disturbed respondent No.3 from his present posting as JDTP (North) BBMP and has posted the petitioner to his post as JDTP (North) and respondent No.3 has not been shown any posting in the said notification. Aggrieved by the same, the above application was filed by the respondent No.3 seeking quash of the said notification dated 13.02.2023. The Tribunal by the impugned order allowed the said application, aggrieved by the same, petitioners are before this Court.

3. Sri.M.S.Bhagwat, learned Senior counsel for Sri. Srikanth Patil K for the petitioner WP No. 4884/2023 and Sri.Jayakumar S. Patil, learned Senior counsel appearing for Sri.B.L.Sanjeev, learned counsel for the BBMP -petitioner in W.P.No.5324/2023 reiterating the grounds urged in their respective memorandum of petitions submitted;

(a) that respondent No.3 has been working as JDTP (North) in terms of notification dated 30.09.2019 and the office order dated 14.10.2019 and has completed term of two years since then. That the notification dated 23.07.2021 clearly states that respondent No.3 was continued for a period of two years or until further orders which ever is earlier. That the Tribunal erred in computing the period of two years term of the respondent No.3 from 23.07.2021 instead of 30.09.2019 as the notification dated 23.07.2021 is only a modification and is not

a fresh transfer order.

(b) that the Tribunal erred in misinterpreting and misconstruing the Rule 50 of the Karnataka Civil Services Rules, (KCSRs') wherein sub-rule 3 of Rule 50 clearly provides that "such deputation should not ordinarily extend beyond 5 years except under special orders of Government". That sub-rule 3 of Rule 50 of KCSRs do not contemplate that the Government servant posted on deputation should be retained for a period of five years. That the said Rule further provides that extension of deputation of Government servant beyond 5 years requires special orders of the Government and said Rule has no application in the matter of transfer of a Government servant.

(c) That in view of Section 98 (2) of BBMP Act, 2020 only a person having qualification prescribed under the provisions of Town and Country Planning Act, shall be deputed to BBMP. As such, the respondent No.3 does not have qualification prescribed under law. Whereas, the petitioner herein has educational qualification of B.E and M.Tech in URP and is eligible to hold the post, which the Tribunal has ignored by erroneously holding that Section 98 of BBMP Act is not applicable to the respondent No.3.

(d) That there is no violation of the Transfer Guidelines as the transfer of respondent No.3 was with prior approval of Hon'ble Chief Minister and even otherwise the Government has power to transfer keeping in mind the public interest and administrative requirements.

(e) That the petitioner has already reported to the duty and has been working since 14.02.2023 as per Annexure-R5.

Hence, seek for allowing of the petition.

4. Sri. Reuben Jacob, learned Senior counsel appearing for the respondent No.3 justifying the order passed by the Tribunal submitted;

(a) That by notification dated 23.07.2021 the deputation of the respondent No.3 has been extended for a period of two years or until further orders and the said period of two years has to be reckoned from 23.07.2021 and not from 30.09.2019 as contended by the petitioners. He further submits that clause "until further orders" cannot be exercised arbitrarily or capriciously. He relied upon the judgment of the Apex Court in the case of UNION OF INDIA AND ANOTHER VS. S.N. MAITY AND ANOTHER reported in (2015) 4 SCC 164.

Hence, he submits that the order passed by the Tribunal do not warrant any interference at the hands of this court. Hence, seeks for dismissal of the petitions.

5. Heard. Perused the records.

6. Before advertng to the rival claims, it is necessary to note that both the petitioner and respondent No.3 belong to UDD and both are in the cadre of Joint Director. The post of Joint Director, Town and Country Planning in BBMP is en-cadred post which is required to be filled up by deputation. Admittedly,

respondent No.3 was sent on deputation to BBMP by a notification dated 30.09.2019. Subsequently, by an office order dated 14.10.2019 respondent No.3 was posted as JDTP (North) and he assumed charge on 15.10.2019. That by notification dated 23.07.2021 the State Government has modified the earlier notification dated 30.09.2019 in terms of which it is clarified that the tenure of respondent No.3 was for a period of two years or until further orders. From the aforesaid undisputed fact what emerges is that it is a "case of deputation" and not "transfer" as apparently misunderstood and misconstrued by the Tribunal.

7. The Apex Court in the case of KUNAL NANDA VS. UNION OF INDIA AND ANOTHER reported in (2000) 5 SCC 362 at paragraph 6 of its judgment has held as under;

"6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd. is inappropriate since, the consideration therein was in the light of statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department, is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim".

8. Similarly, the Apex Court in the case of UNION OF INDIA VS. V.RAMAKRISHNAN AND OTHERS at paragraph 32, has held as under;

"32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on

such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice.”

9. This court in an identical situations in its orders passed in W.P.No.24192/2022 dated 06.12.2022 in the case of Mohan Kumar H.N. vs. State of Karnataka and others and also in the order passed in W.P.No.26035/2022 dated 03.02.2023 in the case of Sri.Jayarama C.H vs. State of Karnataka and others, referring to the aforesaid judgments of the Apex Court in the case of Kunal Nanda (supra) and in Ramakrishnan (supra) has held that a deputationist has no vested right and even if deputation is for a fixed period, deputationist can be repatriated for the reasons to be recorded and after affording an opportunity.

10. In view of the aforesaid settled position of law considering the facts and situation of instant matter, wherein the posting of respondent No.3 as JDTP, BBMP is on deputation from UDD vide order dated 30.09.2019 which order was modified by the notification dated 23.07.2021 clarifying that his term would be two years or until further order whichever is earlier, the contention of the respondent No.3 that he cannot be disturbed from his present posting cannot be countenanced. The respondent No.3 has no indefeasible right to hold on the said post. As such, the order passed by the respondent No.1 dated 13.02.2023 has transferring the petitioner to the post of the respondent No.3 i.e., JDTP (North) BBMP and respondent No.3 having been directed to report to the duty at UDD which is his parent department cannot be found fault with. Besides, the said order has been passed in the public interest and administrative exigencies.

11. In view of the aforesaid settled position of law, this court is of the considered view that the reasoning given by the Tribunal to the effect that the deputation of the petitioner by notification dated 23.07.2021 is for a fixed period and any modification or cancellation of the same required a special order under sub-rule 3 of Rule 50 of the KCSRs is incorrect. The said rule in any event does not prescribe the period to be five years, it only provides that any deputation beyond 5 years cannot be extended without the special orders. The said understanding of the Tribunal is thus erroneous.

12. In that view of the matter, following ;

ORDER

(i) W.P.No.4883/2023 and WP No.5324/2023 are allowed.

(ii) Consequently, order passed in Application No. 766/2022 dated 22.02.2023 is set aside.

(iii) Respondent authorities are directed to continue the petitioner in the post of Joint Director, Town and Country Planning, BBMP (North) , Bengaluru and if the respondent No.3 has taken charge pursuant to the order dated 22.02.2023 passed by the Tribunal, he shall hand over the charge to the petitioner and the

respondent No.3 shall report to his parent department as directed in the notification dated 13.02.2023 at Annexure-A8.

(iv) No order as to costs.