

(1978) 11 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 12255 of 1978

G.P. Reddy

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 28-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipalities Act, 1964 — Section 320, 327, 327 (2), 365

Citation : AIR 1979 Kar 63 : (1979) ILR (Kar) 818

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Judgement

1. In this writ petition under Art. 226 of the Constitution, the petitioner has challenged the Official Memorandum No. HUD 619 MLR 78 dated 2nd Nov., 1978 issued by the Government of Karnataka transferring him as Manager, City Municipal Council, Bellary, (Exhibit D).

2. As a member of the Karnataka Municipal Administrative Service, the petitioner was working as an Octroi Superintendent, City Municipal Council, Raichur. In Official Memorandum No. HUD 619 MLR 78 dated 16-9-1978 (Exhibit B), the Government transferred and posted the petitioner as Chief Officer, Town Municipal Council, Harihar, in the place of respondent No. 2. By the same order, the Government transferred respondent No. 2 who was then working as Chief Officer, Town Municipal Council, Harihar, as Office Manager, City Municipal Council, Bellary. In pursuance of the order of transfer, the petitioner reported for duty at Harihar on 28-9-1978 while respondent No. 2 proceeded on leave without handing over charge to the petitioner and without reporting for duty at Bellary. By the impugned order the Govt. has cancelled the transfer of respondent No. 2 from Harihar to Bellary and has reported him to Harihar and has transferred the petitioner from Harihar to Bellary.

3. The principal case of the petitioner is that the Harihar Town Municipal Council has not passed a resolution by a majority of not less than 3/4th of the total

number of Councillors as required by Sub-section (2) of S. 327 of the Karnataka Municipalities Act, 1964 (Karnataka Act 22/64) (hereinafter referred to as "the Act") requesting for his transfer from that Municipality and therefore the Government had no authority to transfer him from Harihar to Bellary. The petitioner has also urged that his transfer by Government in about a month's time particularly when he had obeyed its order is unjustified. In his return, respondent No. 2 has justified the order of the Government. Among others, respondent No. 2 has pleaded that the Government has cancelled his transfer on a representation made by the President of the Town Municipal Council to retain him at Harihar as per his letter dated 21-9-1978, a copy of which is produced as Exhibit R1. As the principal question raised by the petitioner was one of power of the Government, I told the learned Government Pleader that a return by respondent No. 1 was not necessary and the case may be argued with reference to the records and the provisions of the Act. Accordingly, Shri V. C. Brahmarayappa, learned High Court Government Pleader, has produced for my perusal the original Secretariat File No. HUD 619 MLR 78 and has argued the case. From the papers produced by the learned High Court Government Pleader, I do not find the original representation if any stated to have been made by the President of the Harihar Town Municipal council. On the transfer of respondent No. 2, probably sensing that he was trying for cancellation of that order, some telegrams were sent to the Government requesting it not to cancel his transfer. In the telegrams various allegations have been made against respondent No. 2 which in the very nature of things cannot be examined by me in this writ petition. On 3-10-1978, the petitioner also had sent a telegram to the Government stating that he had assumed charge at Harihar and that respondent No. 2 had not handed over charge to him. On an examination of these telegrams, a note was put up on 4-10-1978 seeking orders on the evasive tactics of respondents No.2 and his refusal to hand over charge. On that note, one Shri V. S. Kadam, Under-Secretary to Government, noted as under and marked it to the Commissioner:--

"23) P. S. To M. M. A. Telephones to me today that the Minister desires to see this file.

Sd/- V. S. Kadam, 4-10-78.

Commissioner

M.M.D."

On 5-10-1978, the Commissioner marked the file to the Minister for Municipal Administration Department. On 28-10-1978, the Minister for Municipal Administration minuted as under:-

"25) Shri Padhate may be retained in Harihar and Shri G. P. Reddy may be posted to Bellary. Modified orders may be issued.

Sd/- H. C. Srikantaiah, 28/10 Minister for Municipal Administration."

In pursuance of the above minute of the Minister for Municipal Administration, the impugned Official Memorandum has been issued on 3-11-1978.

4. Shri H. Subramanya Jois, learned counsel for the petitioner, strenuously contended that in the absence of a resolution passed by the Harihar Town Municipal Council under Sub section (2) of S. 327 of the Act, the Government has no power to transfer the petitioner from Harihar. Shri V. C. Brahmarayappa, learned High Court Government Pleader, appearing for respondent No. 1 refuted the contention of Shri Subramanya Jois and urged that Government as the master had the power to transfer its servants and that power is not controlled by sub-section (2) of S. 327 of the Act. Shri Brahmarayappa also urged that under S. 320 of the Act, the Government had the power to transfer the petitioner. Shri R. Gopal, learned counsel for respondent No. 2, adopted the arguments of Shri Brahmarayappa.

5. Shri Subramanya Jois did not dispute that the petitioner is a member of the Karnataka Municipal Administrative Service. Sub-section (1) of S. 365 of the Act empowers the Government to fill up certain specified posts in Municipalities by members of the Karnataka Municipal Administrative Service by making direct appointment to those posts. Sub-section (2) of S. 365 empowers the Government to specify the persons holding those posts that may be filled up by direct appointment under sub-section (1) to become officers of the Government or members of the Karnataka Municipal Administrative Service from the appointment date. In exercise of the powers conferred by Clause (A) of the sub-section (2) of S. 365, the Government has issued Notification on 8-5-1978 inter alia stating that the petitioner had become an officer of the Karnataka Government or a member of the Karnataka Municipal Administrative Service from 28-7-1976 (vide Exhibit A). By virtue of this Notification and S. 365, the petitioner has undoubtedly become an officer of the Karnataka Government, whatever may be the position he held prior to the Notification dated 8-5-1978 and whoever was his appointing authority and the Municipality that had appointed him. As long as the Government is the master of the petitioner, its power to transfer him cannot be denied to it both on principle and authority. In my opinion, Shri Brahmarayappa is right in his submission that the Government as master had the power to transfer the petitioner and that power is not curtailed as contended by Shri Subramanya Jois.

6. Let me now examine whether sub-section (2) of S. 327 of the Act curtails the power of the Government or places any restriction on the power of the Government to transfer the members of the Karnataka Municipal Administrative Service as contended by Shri Subramanya Jois. In order to answer this question, it is useful to read S. 327 of the Act and the same reads thus:-

"327. Appointment of Chief Officer:-

(1) Every municipal council shall have a Chief Officer who shall be appointed by the Commissioner from among the persons in the cadre of Chief Officers of the

Mysore Municipal Administrative Service.

(2) A Chief Officer of a Municipality shall be transferable from that officer by a resolution of the municipal council at a general meeting, passed by a majority of not less than three-fourths of the total number of councillors.

(3) The municipal council may recommend disciplinary action being taken against a Chief Officer for abuse of powers, misconduct or neglect of duty.

(4) When a Chief Officer shall have been appointed, all other officers and servants employed by the municipal council shall, save such as are expected by order of the Government from time to time be subordinate to him."

Section 327 occurs under the Chap. XIV of the Act and the heading of the Chapter reads as "Appointment and Powers of Municipal Commissioner or Chief Officer and other Municipal Officers". Sub-section (1) of S. 327 of the Act directs that every municipal council shall have a Chief Officer appointed by the Commissioner from among the persons in the cadre of Chief Officers of the Karnataka Municipal Administrative Service. A plain reading of sub-section (2) of S. 327 shows that a Chief Officer of any Municipality shall be transferred from that office if a resolution is passed by the concerned municipal council at a general meeting by a majority of not less than three-fourths of the total number of the councillors. Sub-section (2) of Section 327 nowhere curtails or restricts the power of the Government to transfer the members of the Karnataka Municipal Administrative Service. All that it directs is that when the concerned Municipal Council by a majority of not less than three-fourths of the total number of the councillors has passed a resolution and requests either the Commissioner or the Government, it is bound to transfer him from the Municipal Council.. As to which other places such officer should be transferred is a matter entirely left to the Commissioner of the Government to decide. The reason for providing for such a transfer is nor far to seek. When a Municipal Council by a majority of not less than three-fourths of the total number of councillors passes a resolution against any Chief Officer, it is obvious it would be impossible for him to work in that Municipality. A Chief Officer being the Chief Executive Officer of a Municipality cannot satisfactorily function in a Municipality when the majority of the members of that council is opposed to his continuance in that Municipality. I am therefore of the opinion that the construction suggested by Shri Subramanya Jois is plainly opposed to the language, scheme and object of S. 327 of the Act and reject the same. In this view, it is not really necessary to examine the alternative contention urged by Shri Brahmarayappa, based on S. 320 of the Act. But as my order is subject to appeal. I propose to notice his contention and briefly record my finding thereon.

7. Shri Brahmarayappa maintained that under S. 320 of the Act, Government can transfer any and every officer or servant of any Town Municipal Council to any Town Municipal Council, whether he is borne on the Karnataka Municipal Administrative Service or is borne on the establishment of a Municipal Council. In

order to examine this contention, it is necessary to read Section. 320 of the Act and the same reads thus:-

"320 Powers to transfer officers:--

(1) Notwithstanding anything contained in this Act, the Government shall have power to transfer any officer or servant of a municipal council to the service of any other municipal council or of any other local authority or of any Government Department.

(2) The Government shall have power to issue such general or special directions as it thinks necessary for the purpose of giving due effect to transfers made under sub-section (1) and such directions shall be complied with by the municipal council and any municipal authority concerned.

Section 320 of the Act occurs under Chap. XII "control"-certain control being conferred on the State Government and certain other subordinate officer of the Government over the Municipalities governed by the Act. Section. 320 in express terms conferred any officer or servant of a Municipal Council to the service of any other Municipal Council or of any other Local authority or of any Government Department. Section 320 has nothing to do with the members of the Karnataka Municipal Administrative Service who are servants of the Govt. In my opinion, the power conferred by S. 320 has reference to the officers and servants borne on the establishment of a municipal council and cannot be exercised in respect of officers who are members of the Karnataka Municipal Administrative Service. I therefore reject this contention of Shri Brahmarayappa.

8. Shri Subramanya Jois next contended that there was no justification for the Government to transfer the petitioner from Harihar to Bellary. Elaborating his contention, Shri Subramanya Jois pointed out that the petitioner reported for duty at Harihar only about a month ago and has admitted his children to the educational institutions functioning in Harihar and his transfer in about a month's time particularly when he had obeyed the earlier order of transfer and that respondent No. 2 had defied the same, was wholly unjustified.

9. As to why has to which place an officer of the Government should be transferred from one place to another is primarily a matter for the Government to decide. Any hardship that may be caused in making transfer to its officers is a matter exclusively for the Government to decide. In a petition under Art. 226 of the Constitution, it is not open to the High Court to examine the grievance of an official as it is an appeal and redress his grievance even though his grievance may be justified. In this view, I do not propose to examine the grievance of the petitioner and come to a difference conclusion on the necessity or otherwise to transfer the petitioner from Harihar to Bellary. But while upholding the order of the Government, I cannot help observing that the grievance of the petitioner that he has obeyed a lawful order of transfer while respondent No. 2 did not do so, for which he has been rewarded with an immediate transfer, while respondent No. 2 has been rewarded with retention at the original place of his office, cannot be

characterised as imaginary and wholly unjustified. One can easily understand the feelings of the petitioner against the impugned order of transfer. As to whether there is any truth in all these matters is a matter primarily for the Government to examine, decide and do justice to the petitioner, if justice is due to him without in any way being influenced by the earlier order of transfer and the decision of this Court. In my opinion, this is a fit case in which Government should have a second look into the whole matter and do justice to the petitioner on a fair and objective examination of all the circumstances. I fervently hope that the Government will do justice to the petitioner if it is due to him notwithstanding the dismissal of his writ petition by this Court. In order to enable the Government to examine the matter. I direct the office to communicate a copy of this order to the Commissioner and Secretary to Government, Municipal Administration Department, within 3 days from this day.

10. In the light of my above discussion, I hold that the rule is liable to be discharged.

11. Rule discharged.

12. In the circumstances of the case, I direct the parties to bear their own costs.

13. Rule discharged.