
(1981) 06 KAR CK 0021
In the Karnataka High Court
Case No : WP 7324 to 7346/80

Gurulingappa Shivanandappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-06-1981

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 320

Citation : (1981) 2 KarLJ 282

Hon'ble Judges : M. Rama Jois, J

Judgement

In these writ petitions, the petitioners who are employees of various municipalities in the District of Bijapur, have questioned the constitutional validity of S. 320 of the Karnataka Municipalities Act 1964 (hereinafter referred to as "the Act") and have also prayed for quashing an order made by the Divisional Commissioner, Belgaum Division, by which they have been transferred from the municipalities in which they were working to some other municipalities in the same district.

2. Sri K. Subba Rao, learned Counsel for the petitioners urged the following contentions:

(i) S. 320 of the Act which confers power on the State Government to transfer servants of one municipal council to another council is unconstitutional.

(ii) The orders of transfer made by the Divisional Commissioner are illegal and invalid

3. In support of the first contention learned Counsel for the petitioners submitted as follows. Under S. 10 of the Act each municipal council is a separate corporate body. The petitioners joined the service in the service of the respective municipality. Consequently the concerned municipality is their master and the petitioners were the servants of the municipality to which they got themselves recruited at their own volition. The Legislature is not competent to make a law effecting the change of masters. Art. 23 of the Constitution which forbids forced

labour stands violated by S. 320 of the Act as it empowers the State Government to force a servant of one municipality to become a servant of another municipality.

4. In support of the submission that there can be no substitution of master without the consent of the servant concerned, he relied on the judgment of the Supreme Court in *P.K.P. Bidi Factory v. O.L. Thenge*, (1970) 1 LLJ 492, SC and another decision of Supreme Court in *Kundan Sugar Mills v. Ziyauddin*, AIR 1960 SC 650, Relying on the said decisions he submitted that an order transferring a municipal servant from one municipality to another amounts to compelling him to become a servant of another master, which cannot be done.

5. The question of constitutional validity of S. 320 of the Act on the ground urged for the petitioners is not *res-integra*. In the case of *Ramachandra Shetty v. State of Karnataka*, (1979) 2 Kar.L.J. 173, a Division Bench of this Court repelled a similar contention and upheld the constitutional validity of the section. In view of the said decision the contention urged for the petitioners is liable to be rejected. (See also *Mohd. Rashid v. State of U.P.* (1979) 1 S.L.R. P. 327 at 333 Paragraphs 18 and 19).

6. Learned Counsel for the petitioners next contended that the power which had been delegated to the Divisional Commissioner to transfer municipal servants had been withdrawn by circular dated 14-6-1974 produced as Annexure-D to the petitions. Sri S.V. Narasimhan, learned High Court Government Pleader appearing for the respondents clarified that the power of transfer had not been withdrawn and it continued to be delegated to the Divisional Commissioner. In support of this submission, he produced a circular dated 8th March 1979. A reading of this circular clearly indicates that the power to transfer municipal servants, which had been delegated to the Divisional Commissioners earlier had not been withdrawn and, therefore, the Divisional Commissioner was competent to issue transfer orders. Therefore there is no substance in the second contention urged for the petitioners.

7. Learned Counsel for the petitioners, however, contended that the conditions of service, including pay-scale of the posts may not be the same in different municipalities and, therefore, there is likelihood of the condition of service of the petitioners being affected in view of their transfer, particularly to smaller municipalities.

8. The recruitment and conditions of service of persons appointed to various municipal councils in the State are now regulated by a common set of rules. The recruitment which includes the provision relating to promotion is regulated by Karnataka Municipalities (Recruitment of Officers and Servants) Rules, 1971. Under the said rules the posts on the establishment of different municipal councils have been classified at the district-wise, division-wise and State-wise basis. The appointing authority for the post carrying a pay or maximum pay upto Rs. 500 is vested in the municipal council concerned and in respect of posts the

pay or maximum pay of which exceeds Rs. 500 and does not exceed Rs. 900 the power to make appointment is vested in the Deputy Commissioner in the case of Town Municipal Councils and in the Divisional Commissioner in the case of City Municipal Councils and in respect of all other posts the State Government is the appointing authority. Provision for promotion of persons working in different municipalities to higher cadres is also provided for under the recruitment rules. The conditions of service are also regulated by common rules called the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972. The provisions of this rule ensure uniform conditions of service to all the municipal servants, and therefore the contention that their conditions of service would be affected by their transfer to another municipality is not correct. If in any individual case, a municipal servant is transferred to a post which carries a lower pay-scale or his condition of service is otherwise affected, such person is entitled to question the legality of the transfer on the ground that by such transfer he is adversely affected. In these cases, the petitioners have not made out that their conditions of service have been affected by their transfer to other municipalities within the district.

9. Learned Counsel for the petitioners submitted that unless a seniority list was prepared for different classes of municipal servants as required under sub-rule (2) of rule 14 of the recruitment rules transfers could not be effected.

10. I do not find any substance in this contention. The seniority of the municipal servants stands determined by the date of their regular appointment to the post and in accordance with the rules governing the fixation of seniority. Mere non-preparation of a seniority list does not take away their right to seniority or adversely affect their seniority. The preparation of seniority list cannot also be considered as a condition precedent for effecting transfers. If by a transfer to a place outside the district or division, the seniority and promotional opportunities of a municipal servant is adversely affected, such a servant could question the transfer order on the ground that his right guaranteed under Art. 16 of the Constitution read with the provisions of the recruitment rules had been adversely affected. No such grievance is present in these petitions.

11. For the reasons stated above, I make the following order:

(i) Rule discharged (ii) Writ petitions dismissed (iii) No costs.