

(2019) 12 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 50212 Of 2019 (S-Tr)

K M Vasu

APPELLANT

Vs

Bruhat Bengaluru Mahanagara Palike

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 69

Citation : (2019) 12 KAR CK 0012

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : A S Ponnanna, Leela P Devadiga, I G Gachchinamath, A Nagarajappa

Final Decision : Allowed

Judgement

1. Petitioner, an employee on deputation to respondent-BBMP is knocking at the doors of Writ Court for assailing the orders dated 24.10.2019, a copy whereof is at Annexure-E and another dated 28.10.2019, a copy whereof is at Annexure-G both issued by the first respondent whereby he has been transferred premature from the Office of Executive Engineer, Hebbal Division to the consequent vacancy the third respondent herein having been posted, but no place having been shown to the petitioner.

2. After service of notice, the respondent Nos. 1 & 2 have entered appearance through their Senior Panel Counsel Shri I G Gachchinamath; and the third respondent private party has entered Caveat through his counsel Shri A Nagarajappa; the answering respondents have filed a brief Statement of Objections dated 11.11.2019 resisting the writ petition.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court grants indulgence in the matter for the following reasons:

(a) Petitioner, an employee in the equivalent cadre of Executive Engineer is on deputation to the BBMP till 10.03.2020 vide Notification dated 22.02.2019 vide

Annexure-D; the third respondent too is on deputation to the BBMP is not in dispute; once the personnel from other employers are lent, their deployment and posting are within the competence of the borrowing organization; therefore, the Commissioner of BBMP should have exercised the statutory discretion in accordance with the rules of reason & justice and not whimsically nor at the instance of high and mighty; the contra having happened in this case, there is error apparent on the face of record;

(b) in the instant case, the documents produced by the petitioner vide Memo dated 04.11.2019 prima facie show that the deployment of services of the petitioner and of the third respondent within the BBMP organization is done at the instance of a Central Minister and the Chief Minister; the Central Minister addresses a letter dated 06.10.2019 to the Chief Minister at Annexure-H and the Chief Minister endorsed the request on the very said letter on 17.10.2019, seeking posting of third respondent to the post of petitioner; this has resulted into the issuance of impugned orders and thus, there is legal mala fide that vitiates them; factual mala fide is not addressed since the said Ministers are not before this Court, eo nomine;

(c) no provision of law is brought to the notice of this Court that these Ministers have any say in the deployment of personnel within the BBMP organization; therefore the power exercised by the Commissioner under Section 69 of the Karnataka Municipal Corporations Act, 1976, whereby impugned transfers are effected is vitiated since the Commissioner has "acted on the dictate of alien authorities" which course the first principle of Administrative Law, shuns; the Apex Court in the case of *Purtabpore Company Ltd. Vs. Cane Commissioner of Bihar*, (1969) 1 SCC 308, half a century ago castigated the Cane Commissioner observing that he alone should have exercised the power under the Sugarcane (Control) Order and not abdicated his responsibility in favour of the Chief Minister and that it was not proper for the Chief Minister to have interfered with the Commissioner's function; the ratio laid down in this decision in all fours applies to the case at hands;

(d) in a similar fact matrix, a Coordinate Bench of this Court in the case of *B T Mohan Krishna Vs. BBMP*, in W.P.No.41458/2013 (S-TR) vide judgment dated 12.12.2013 strangely, exactly six years ago, has observed as under:

"7. It is rightly stated by the learned counsel appearing for the BBMP that under S.69 of the Karnataka Municipal Corporations Act, 1976('the Act' for short), it is only the Commissioner or his delegate who has power to give internal postings to the employees and Officers of the BBMP. In my opinion, under the Act, neither the Chief Minister nor any Minister has any power to interfere with the statutory power of the Commissioner under S.69 of the Act to make internal transfers of the employees or Officers of the Municipal Corporation. However, the State Government has power under S.91-A of the Act to transfer any officer or servant of a Municipal Corporation to another Corporation or a local Authority. It is a settled position in law that an authority empowered to exercise a power cannot

abdicate its functions by acting at the dictates of another authority, howsoever high it may be. Postings or transfers within the BBMP could be made only by the Competent Authority i.e. the Commissioner or his delegatee who has to apply his mind and to make the order. He cannot abdicate his statutory power at the dictation of another, who is not conferred with the power to dictate. The Commissioner would be failing in his statutory duty, if he acts at the dictation of any Minister including the Chief Minister in the matter of internal transfers within the BBMP.

8. The above referred letters would show the kind of interference by the Chief Minister even in the internal postings within the BBMP. The sooner this kind of interference is stopped, better it is for the administration and the people of this State. The impugned order of transfer dtd. 06.09.2013 which is admittedly passed at the dictation of the Chief Minister is unsustainable in law. It is liable to be set aside and it is accordingly set aside.

9. All internal transfers made in the BBMP at the dictation of the Chief Minister or any other Minister are unsustainable in law. The Commissioner shall cancel all such transfers and give appropriate postings to the concerned Officers and employees having regard to their ability, honesty and integrity to bring efficient administration in the BBMP. This shall be done expeditiously, and in any event, within two months from the date of receipt of a copy of this order. The Commissioner shall also take steps to review all postings in the BBMP and to make appropriate internal transfers to increase the efficiency of the administration in the BBMP. I may add that I have come across several writ petitions filed by residents of Bangalore only for a direction to the BBMP to consider their applications which are kept pending for months and years. This only reflects the functioning of the BBMP. This must change at the earliest. The sooner, the better. Petition allowed."

The above observations that were made against the very respondent-BBMP exactly six years ago squarely apply to case of the petitioner herein too;

(e) true it is, the Apex Court in the case of Smt. Shilpi Bose & OTHERS Vs. State of Bihar and others, AIR 1991 SC 532 has permitted transfer of one employee for accommodating another on the ground of hardship provided it is in the public interest and for administrative reasons; the Apex Court also cautioned against such orders being made with mala fide; even this ratio of the decision would not come to the rescue of the respondents since a concrete case of legal mala fide has been established by the chain of circumstances emerging from the record of the case; this apart, it is not the case of the other side that the impugned transfer orders are made to mitigate the hardship of the third respondent;

(f) lastly, a transfer of an employee without giving him posting is legally impermissible as held by a Division Bench of this Court in W.P.No.48499/2016 between Ms.Seema H Vs. State and Others vide judgment dated 16.09.2016 wherein the observations at para no.6 run as under:

6. There are two serious infirmities in the transfer order. One is that when the petitioner is transferred from the post of Assistant Conservator of Forest, there is no clear posting order at a particular post of the petitioner. Unless the petitioner is lifted from one place and posted at another place, it cannot be said that any vacancy has arisen of the petitioner and such an exercise of the power cannot be appreciated even if one keeps in mind the administrative circumstances for the public interest as the case may be. It is hardly required to be stated that when 'A' is posted in place of 'B' from one place to another then only there will be a vacancy of 'a' and 'b' can be posted at the place of 'A'. If 'A' is lifted and his posting is kept in lurch and 'B' is posted vice-A such practice cannot be appreciated and deserves to be rather deprecated and the reason being that the officer who is lifted from one place is not certain at which place he has to join the duty and unless he joins the duty at different place, it cannot be said that vacancy in law had arisen at his original place. So long as there is no vacancy at the original place, the question of posting is without any foundation. Hence, the said transfer order can be said to be with the exercise of legal malafide."

(g) the contention of the Senior Panel Counsel for BBMP that petitioner is now given posting vide Order dated 02.11.2019 is a poor solace to an aggrieved employee; this posting is an after thought only to liquidate the ground which the petitioner has taken up for invalidation of the impugned orders; subsequent posting order does not cure the legal defect which infected the impugned orders; even here too, nothing is mentioned about the hardship or otherwise which the third respondent would suffer if the impugned transfer was not made; therefore, this ground of justification too fails.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned transfer orders; a Writ of Mandamus issues to the respondent nos.1 & 2 to restore the petitioner to the original position as he was before, forthwith.

Though this is a fit case for passing strictures against all the concerned, and for levy of exemplary costs, this Court with much reluctance, restrains itself from doing the same so that such illegal transfers shall not be repeated hereafter.

No costs.