

(2016) 10 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No. 49438 of 2016 (S-TR)

M.C. Sathyanarayana

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 16, Article 226

Citation : (2017) 1 AirKarR 174

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Sri. H.C. Shivaramu, for Sri. K.R. Ramesh, Advocates, for the Petitioners; Smt. H.C. Kavitha, H.C.G.P, for the Respondent No. 1; Chetan B., Advocate, for the Respondent No. 3; Sri. A. Nagarajappa, Advocate, for the Respondent No. 4

Final Decision : Allowed

Judgement

Raghvendra S. Chauhan, J. - The petitioner, Mr. M.C. Sathyanarayana, has challenged the transfer order dated 14-9-2016, whereby the petitioner has been transferred from the Hassan Urban Development Authority, Hassan, to the City Municipal Council, Hassan. Meanwhile, Mrs. H.S. Rashmi has been transferred in place of the petitioner.

2. The brief facts of the case are that the petitioner was initially appointed as an Assistant Engineer in the Public Works Department (the "P.W.D." for short). However, later he was sent to the Urban Development Authority ("the U.D.A" for short) at Hassan. Considering his service with the U.D.A., by order dated 20-7-2012, his services were absorbed in the U.D.A, Hassan. Ever since 2012, the petitioner has been rendering his services as an Assistant Engineer in the U.D.A., Hassan.

3. The respondent No.3, Mrs. H.S. Rashmi, was appointed as an Assistant Engineer in the P.W.D. She was sent on deputation to the City Municipal Council ("the C.M.C." for short), Hassan. On 2-1-2016, she joined the C.M.C. and has

been working ever since then.

4. By order dated 14-9-2016, while Mrs. H.S. Rashmi has been transferred on the petitioner's post held in the U.D.A., Hassan, the petitioner has also been transferred on the post of Mrs. H.S. Rashmi held in the C.M.C., Hassan. Hence, the petitioner is before this Court.

5. Mr. Shivaramu, the learned counsel for the petitioner, has pleaded that the transfer of Mrs. H.S. Rashmi is made only at the behest of the State Minister for Animal Husbandry and Sericulture and Care Taking Minister for Hassan, Mr. A. Manju. By letter dated 29-6-2016, addressed to Hon'ble the Chief Minister of the State, Mr. A. Manju had requested that Mrs. H.S. Rashmi be transferred to the place of the petitioner, who has been working in U.D.A., Hassan, for the last nine years. Consequently, the impugned order has been passed. Relying on the case of Sarvesh Kumar Awasthi v. U.P. Jal Nigam [(2003) 11 SCC 740], the learned counsel has pleaded that the transfer cannot be made at the behest of a Minister. For, such a transfer is neither for administrative reasons, nor is in the interest of the public. If such transfers, at the behest of the politicians were permitted, it would open the flood gates of corruption, and would create administrative chaos. Therefore, the impugned order deserves to be set aside by this Court.

6. The learned counsel for the State, on the other hand, has pleaded that the State has ample power to transfer its employees from the U.D.A. to C.M.C.

Secondly, Mr. A. Manju had made a request to Hon'ble the Chief Minister as he is the Care Taking Minister of the Hassan District. The said request was made, ostensibly, on the ground that the petitioner had already spent nine years with the U.D.A., Hassan. Thus, it was imperative for the State to transfer the petitioner.

7. Mr. Chetan B., the learned counsel for respondent No.3, has further submitted that the impugned order was neither at the insistence of Mrs. H.S. Rashmi, nor she ever requested Mr. A. Manju to make any request to the Government for her transfer. Therefore, according to the learned counsel, the petitioner has been transferred only for administrative exigencies, and not in order to show any favour to Mrs. H.S. Rashmi at the behest of the concerned minister. Hence, according to the learned counsel, it is not a case of political interference.

8. Heard the learned counsel for the parties, and perused the impugned order.

9. Undoubtedly, a transfer is an incidence of service. But a transfer cannot be made at the whims and caprice of a given individual. Admittedly, the State does have the power to transfer its employees from one department to another. But even the said power has to be exercised reasonably, fairly, and justly. An unreasonable, unfair, or unjust exercise of power would be violative of Article 14 of the Constitution of India.

10. A bare perusal of letter, dated 29-6-2016, written by Mr. A. Manju, clearly reveals that he has made a request for the petitioner's transfer not just on the

ground that the petitioner had been working with the U.D.A. for nine years, but more so, in order to place Mrs. H.S. Rashmi on the post occupied by the petitioner. Thus, the request made is not for administrative benefit. But it has been made only to favour Mrs. H.S. Rashmi. Therefore, the transfer order cannot be said to be based on administrative exigencies, or be in the interest of public at large. It is clearly a transfer order at the behest of Mrs. H.S. Rashmi, and that, too, on the insistence of a Minister. Hence, the petitioner has not been transferred either for administrative reasons, or in public interest. But, he is being transferred only to please a Minister. Thus, the transfer order is merely at the whims and caprice of a person.

11. For the reasons stated above, the impugned transfer order is set aside. However, the State shall be free to transfer the petitioner for administrative reasons. The writ petition is hereby allowed.