
(2015) 01 KAR CK 0381

In the Karnataka High Court

Case No : Writ Petition Nos. 60255-265 of 2014 (S-KAT)

Nanda B.Y. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Food Safety And Standards Act, 2006 — Section 30, 36

Citation : (2015) 2 Crimes 650 : (2015) ILR Kar 2873 : (2015) 2 KarLJ 465

Hon'ble Judges : G. Narendra, J.;N.K. Patil, J.

Bench : Division Bench

Advocate : Subramanya Jois, Senior Counsel for B.B. Bajentri, for the Appellant;
H.B. Mahesh, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G. Narendra, J.—The above writ petitions are preferred by the petitioners primarily challenging the validity of the order of repatriation dated 20.06.2014 whereby the petitioners have been repatriated to the parent Department of Health and Family Welfare from their current post of Designated Officers and the subsequent order of the Karnataka Administrative Tribunal dated 15.12.2014 passed in Application No. 5036-5055/2014 c/w Application No. 5253/2014, which is produced as Annexure "A" to the Writ petitions. The Tribunal has confirmed and upheld the impugned proceedings.

2. The claim of the petitioners is that, they have been appointed as Designated Officers under the Food Safety and Standards Act, 2006, a Central Enactment for the purpose of regulating and laying down science based standards for articles of Food and to regulate their Manufacture, Storage, Distribution, sale and import, to ensure availability of safe and wholesome food for human consumption. It is also the case of the petitioners that such deputation was made after calling for applications from Medical Officers who satisfy the parameters set out in Circular dated 10.09.2012. It is further contended that under the said circular dated 10.09.2012 applications were called for 30 posts of Designated Officers. Under

the scheme of the Act, every State is required to appoint a Commissioner for Food Safety as per Section 30 of the Act. The Government of Karnataka vide G.O. No. HFW 31 FPR 2011 Bangalore, dated 03.02.2011 appointed the Commissioner, Health and Family Welfare Services as Commissioner of Food Safety to the State of Karnataka. Under the Scheme of the Act, the Central Government has issued a Notification for the urgent implementation of the Act in its entirety.

3. The Commissioner, under the scheme of the Act, and as per the provisions of Section 36 of the Act is the appointing authority in respect of the Sub-ordinates of the Department, which includes the Designated Officers. Sub-Section (1) of Section 36 of the Act empowers the Commissioner for Food Safety to appoint a Designated Officer as in-charge of Food Safety administration over such area as specified by Regulations. Sub-Section (2) specifies the area of operation of the Designated Officers. Sub-Section (3) of Section 36 enumerates the functions to be performed by the Designated Officers. The reading of the functions enumerated under Sub-Section (3), to put it in a nutshell, are Ministerial/ Administrative in nature. In fact the provisions of Chapter II of the Food Safety and Standards Rules, 2011 and Rule 2.1.2 deals with the qualifications for a Designated Officer and reads as follows:

"2.1.2 Designated Officer

1. Qualification

(i) The Designated Officer shall be a whole-time officer, not below the rank of Sub-Divisional Officer or equivalent and shall possess a minimum of bachelors" degree in science with chemistry as one of the subjects or at least one of the educational qualifications prescribed for the Food Safety Officer under these rules.

(ii) He shall undergo training as may be specified by the Food Authority, within a period of six months from the date of his appointment as Designated Officer.

(iii) (a) Persons having been appointed as food Inspector having qualification prescribed under the PFA Rules, 1955 or as Local Health Authority, shall be eligible for appointment as Designated Officer, subject to fulfilling such other conditions as may be prescribed for the post of Designated Officer by the State Government".

4. The petitioners and others came to be deputed as Designated Officers by an order of the Government of Karnataka bearing No. AA Ku Ka 33 CGE 2014, Bengalum dated 13.01.2014. A copy of the said order is produced at Annexure A-3 to the writ petitions and reads as follows:

5. It is also contended that under Section 30 the Commissioner of Food Safety of the State is appointed by the State Government for efficient implementation of food safety.

6. It is also contended that under Sub-Section (3) the Commissioner of Food

Safety may, by order, delegate, subject to such conditions and restrictions as may be specified in the order, such of his powers and functions under the Act (except the power to appoint Designated Officer, Food Safety Officer and Food Analyst) as he may deem necessary or expedient to any officer subordinate to him. It further argued that the Designated Officers are appointed under the provision of Section 36 of the Act and the appointing authority is the Commissioner and that the person so appointed shall not be below the rank of a Sub Divisional Officer, to be in-charge of food safety administration in such area as may be specified by regulations and there shall be a Designated Officer for each district. The Learned Counsel would also detail the functions of the Designated Officer and it include the power to issue or cancel licence of food business operations, to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations made there under, to receive report and samples of article of foods from Food Safety Officer under this jurisdiction and get them analysed, to make recommendations to the Commissioner of Food Safety for sanction to launch prosecutions in case of contraventions punishable with imprisonment and to sanction launch of prosecutions in cases of contraventions punishable with fine, etc.

7. It is also contended in the Application that for implementation of Food Safety and Standards Act, several posts existing were re designated and several posts were created. It is further contended in the Application that when this being the position, surprisingly and to the utter shock of the Applicants, by Notification dated 20/06/2014. All the 21 Medical Officers who were discharging their duties as Designated Officer have been repatriated to Health and Family Welfare Services department and have been posted to various places and that it is stated in the said Notification, that the petitioners are being repatriated since there is a dearth of Medical Officers in the Department Health and Family Welfare Services, and justified the action taken. It is also contended in the application that the applicants are entitled to continue in the cadre of Designated Officers till regular recruitment process take place. It is further pleaded that now by the impugned order dated 20.6.2014, they are being transferred without following the KFCS (Regulation of Transfer of Medical Officers and Other Staff) Rules, 2011 and that too prematurely and by an incompetent authority in gross violation of the KSCS Rules, 2011.

8. It is asserted that there is no deputation from the Health Department and since the C and R Rules are yet to be framed, and separate authority to be established for the purpose of implementation of 2006 Act, the services of the existing Government servants were utilized. The petitioners have further contended that they are being paid through the Health Department and the posts of designated officers are attached to the offices of the Health Department. Therefore, their appointment as designated officers cannot be termed as deputation. The 1st respondent is yet to establish a separate Food Safety Authority in the State. Therefore, in the absence of Food Safety Authority in the State, the appointment of applicant cannot be termed as deputation. The

impugned order of the 1st respondent, terming the appointment of applicants and others as designated officers and deputation is a misnomer.

9. Per contra, the respondents have contended that the applicants have sought for a further direction directing the respondents to continue the applicants as Designated Officers in the post in which they are working. They further state that the impugned order is explicit as to why there was need for withdrawal of deputed employees i.e., the applicants. Since many posts of Medical Officers fell vacant for a long duration, the services to the General public, particularly the health of the poor and down trodden was being affected. Further, the applicants are not regular employees to the work they are carrying since they were deputed temporarily, their services can be withdrawn at anytime as per requirement of the parent department.

10. In this background, the points which arise for consideration are as follows:

a) Whether the first respondent is competent to issue the order of repatriation dated 20.06.2014?

b) Whether an Officer who accepts deputation without demur is entitled to resist the subsequent order of repatriation to the parent department?

c) Whether the Officer who voluntarily accepts deputation can impugn the order of repatriation on the premise of premature transfer?

11. We have heard the learned Senior Counsel Sri Subramanya Jois for the petitioners and the learned Government Pleader and given our thoughtful consideration to their various contentions and concluded as below.

12. A Reading of the notification/proceedings, demonstrates that the services of the petitioners who are employees of the Department of Health and Family Welfare Services, have been assigned to the Food Safety Authority for the purpose of discharging the functions of Designated Officers as envisaged under Section 36 of the Act of 2006. The proceedings at Annexure "A3", though relates only to some of the petitioners, makes it amply clear and leaves no doubt in the mind of this Court that the placement of the services of the petitioners at the disposal of the Commissioner under the Act is squarely a case of deputation and is not an appointment on deputation and the petitioners have not produced any material to the contrary. The notification at Annexure "A3" does not refer to the circular dated 10.09.2012. That being the fact, the petitioners' reliance on the same and the relevancy of the circular dated 10.09.2012 is an exercise in futility and does not further the cause of the petitioners. The notification at Annexure "A3" leaves no room for any ambiguity and clearly stipulates that the placement of the services of the petitioners at the disposal of the Commissioner for Food Safety is only until further orders and that the terms of appointment in the parent department of Health and Family Welfare would be applicable to them.

13. The petitioner Nos. 3, 6, 7, 8 and 12 to 19 have been appointed as Designated Officers under Annexure "A3". Thus, the above finding clearly belies

the contention of the petitioners that their appointment as Designated Officers is not one of deputation and is in the nature of a permanent employment. The said claim of the petitioners is baseless and is accordingly, rejected.

14. The next limb of argument of all the petitioners is that the order of repatriation, that is, withdrawing their services to the parent department is one without jurisdiction. The learned Senior Counsel would vehemently submit that the 1st respondent is no longer the Competent Authority to order the transfer or repatriation of the petitioners in view of the provisions of Section 30 of the Act. The learned Counsel further elaborates that the Designated Officers are appointed under Section 36 of the Act and as per the provisions of Sub-Section 1 of Section 36 of the Act, it is the Commissioner who is the appointing Authority and hence, the impugned order of repatriation is bad in law as the Authority issuing the same lacks in competency and jurisdiction to issue the impugned proceedings.

15. Though this point is vehemently argued, in our considered opinion, it is but a feeble attempt. This Court is constrained to arrive at such a view as the argument must fall in the face of the contents of Annexure "A3". Moreover, if the argument of the learned Senior Counsel, that the Commissioner is the appointing Authority and he alone has the authority and competency to transfer or otherwise deal with the petitioners, is taken as correct and is considered in the strict sense, then the very order deputing the petitioners to the Food Safety Authority and their continuation till they were relieved is itself illegal. The very order deputing the petitioners' services to the Food Safety Commissioner is itself a conditional one and it has reserved the right to withdraw the petitioner's services to the parent department. It is also settled law that ordinarily transfers on deputation are made against equivalent posts in which the deputationist neither has any legal right to the deputed post, nor a right to be absorbed in the deputed post since deputation does not result in recruitment and incumbent continues to be a member of parent service. This is also the admitted position in this case. Their very own pleading leaves no scope for any ambiguity as to how the petitioners have understood the original order of deputation. The opinion of the Court is further buttressed by the petitioners own pleading in the application that all the Applicants are all Officers in the cadre of Senior Medical Officers and Deputy Chief Medical Officers in the Department of Health and Family Welfare Services and that by an Act of Parliament, the Food Safety and Standards Act 2006 was enacted with effect from 24th August 2006. The said Act was enacted to consolidate the laws relating to Food and to establish Food Safety and Standards Authority of India for laying down Science based Standards for articles of food and regulate their manufacturing, storage, distribution, sale and import and to ensure availability of safe and wholesome food for human consumption and for matters connected there with incidental thereto.

16. On a perusal of the documents and after consideration of the submissions placed before this Court we are of the considered opinion that the petitioners are

merely on deputation to the Food Safety Authority in the State and their services are being utilized to discharge the functions as Designated Officers, the impugned order of repatriation dated 20.06.2014 viewed from any angle cannot be termed as illegal and the respondent is competent to issue the same.

17. A conjoint reading of the pleadings in Application Nos. 5036-5055/2014 and Application No. 5253/2014 would clearly demonstrates that the petitioners themselves are under the clear impression that they are employees of the parent department. The plea of lack of competency, thus, is created only for the purpose of this case and in order to overcome the impugned notification withdrawing their services to the parent department. The pleadings themselves are in the nature of admission and that they admit that they are all holding the posts of Senior Medical Officers and Deputy Senior Medical Officers in the Department of Health and Family Welfare. It is also their grievances that the impugned order, though passed in a public interest, is contrary to the KSCS (Regulations of Transfer of Medical Officers and other Staff) Rules, 2011 and it is premature. As seen above, the petitioners have been blowing hot and cold. In one breath they claim that the impugned order is bad as the authority issuing the same lacks in competency. In the same breath they ascertain that the impugned order is bad as being a premature transfer. The inference from such an argument is that the petitioners admit the competency of the authority issuing the impugned order, but that it is vitiated as being premature. The petitioners cannot approbate and reprobate. As is said one cannot run with the hares and hunt with the hound.

18. The facts stated above clearly demonstrate, that the petitioners have accepted without a demur the placements of their services with the Commissioner for Food Safety under the order at Annexure A3 to the application and is dated 13.01.2014. The said order also states that the services of the petitioners can be withdrawn by further orders and the deputation is only until further orders. The petitioners having not objected to the conditional transfer on deputation cannot now be heard to complain or claim the same as an appointment on deputation.

19. The preceding facts does not leave any doubt in the mind of this Court that the petitioners who accepted the deputation and voluntarily relinquished the earlier posts which they were occupying cannot now turn around and impugn the subsequent order of repatriation on the premise of premature transfer. Even as per the averments in the application, it is claimed that "several posts existing were re-designated and several posts were created for the purpose of implementation of Food Safety and Standards Act". This only further demonstrates and strengthens the contentions of the respondents that the proceedings dated 13.01.2014 was only made to meet the exigency created in the course of implementation of the Act in its initial stages and not as a permanent measure. That being the case, the claim of the petitioners that they are regularly appointed members of the State Food Authority is false and motivated and is liable to be rejected.

20. The petitioners have also admitted that the impugned notification is issued as there is a serious dearth of the Medical Officers in the Department of Health and Family Welfare Services. They have also admitted that the C and R Rules are yet to be framed and separate authority yet to be established for the purpose of implementation of 2006 Act and that the services of existing Government Services, like the petitioners, are doing the work for the purposes of implementation. Thus, even by their own admission, their appointment is not by an Authority competent under the Act and they could not have been appointed under the Act or the Rules as the C and R Rules are not yet been framed.

21. Viewed from any angle, the placement of the services of the petitioners at the disposal of the Commissioner for Food Safety is only by way of deputation and the Government, in the light of the fact that there is a serious dearth of Doctors in the parent department has now decided to withdraw the services of the Doctors, who alone are capable of handling the services to be rendered by the department of Health and Family Welfare Services.

22. As per the Rules, the qualification for being appointed as Designated Officers is satisfied if the applicant has obtained a Degree in Science with Chemistry as a subject. Thus, we can safely conclude that the functions of a Designated Officers can be discharged even by a person who is merely a holder of a Bachelor Degree in Science with Chemistry as one of the subject. But, on the other hand, the petitioners who are all Professional Doctors, are alone capable of meeting the requirements of the Health and Family Welfare Services Department. Hence, the decision of the State Government has to be appreciated in acting wisely to withdraw the services of the petitioners who are deputed to Executive Post and deploying them in the appropriate posts where they would be able to better utilize their professional skills to serve the society in an appropriate manner.

23. It is obvious that the petitioners have orchestrated this litigation only with an intention of retaining the posts of the Designated Officers. It is bemusing and befuddling as to why professionals like the petitioners are yearning to covet the posts of "Designated Officers". The petitioners who have all acquired the licence to save human lives by their dint of sheer hard work are coveting the posts of a designated officer whose educational requirement is only a Bachelor degree in Science with Chemistry as a subject. Even by their own pleadings the petitioners have admitted that they have been asked to hand over charge to officials from the Group "C" cadres. Even though it is settled law that an Officer on deputation has no lien or right to the Office where he is deputed, the petitioners have orchestrated this litigation and resisted the attempt of State Government to rectify their earlier mistake committed under the notification dated 13.01.2014. The resistance to the repatriation is wholly unjustified and accordingly, rejected by the Tribunal. This Court deems fit and necessary to deprecate the conduct of the petitioners.

24. The attempts by the petitioners to evade and avoid repatriation to the parent department to discharge the duties for which they were originally selected is

tantamount to lack of devotion to duty and though this Court deems fit and proper to visit the petitioners with heavy costs the same is not levied keeping in mind their stature as doctors and that they have subsequently taken charge in places where they have been transferred.

25. In view of the above, we don't find any merits to interfere with the order passed by the Karnataka Administrative Tribunal, being the impugned order in these writ petitions and accordingly, these writ petitions are dismissed as being without merits.