

(2019) 07 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 28866 Of 2019 (S – TR)

Panduranga M R

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 82, 82(1)
Karnataka Urban Development Authorities Act, 1987 — Section 66, 2(n)
Karnataka Municipalities Act, 1964 — Section 320, 320(2)
Karnataka Municipal Corporation Rules, 1977 — Rule 26

Citation : (2019) 07 KAR CK 0060

Hon'ble Judges : P.B. Bajanthri, J

Bench : Single Bench

Advocate : M S Bhagwat, M S Prathima

Final Decision : Dismissed

Judgement

1. In the instant petition, petitioner has assailed the order dated 3.7.2019 and 4.7.2019 (Annexures-E, F and G). It relates to bifurcation of certain posts in Bruhuth Bengaluru Mahanagara Palike (for short 'BBMP') and such bifurcation of posts are subject to approval of the Government. Consequently, petitioner has been displaced and his services have been repatriated to parent department i.e. Public Works Department (wrongly shown as PWD instead of Mysore Urban Development Authority). He is a permanent employee of Mysore Urban Development Authority (for short 'MUDA'). He was deputed to Hubli - Dharwad Urban Development Authority. On 16.6.2016, he was deputed to BBMP. The post of Assistant Executive Engineer held by the petitioner is identical to that of Assistant Executive Engineer in the BBMP. The post of Assistant Executive Engineer in BBMP is governed by Rules called Karnataka Municipal Corporation Rules, 1977 (for short 'Rules') read with Schedule. Schedule stipulates the method of recruitment to the post of Assistant Executive Engineer and one of the source cadre under the heading is by deputation. It is only Karnataka Public Works Department and not MUDA. Petitioner has no locus standi to come on

deputation to the BBMP in view of Section 82 of Karnataka Municipal Corporation Act, 1976 (for short 'Act 1976'). Extract of Section 82(1) reads as under:

"82(1).-Appointment of Engineer, Health Officer etc. - The Government shall appoint for every Corporation such officers of the State Civil Services as it considers suitable to be the Engineer, Health Officer, Revenue Officer, Chief Accounts Officers and Council Secretary for the efficient functioning of the Corporation and such officers shall be heads of their respective departments in the Corporation and they shall be subordinate to the Commissioner. The Government may also appoint one or more Deputy Commissioners and Assistant Commissioners who shall exercise such powers and discharge such functions as may be specified in the rules. They shall be subordinate to the Commissioner."

2. Learned counsel for the petitioner submitted that since the petitioner's parent organization is MUDA, relevant statute is Karnataka Urban Development Authorities Act, 1987 for Short Act, 1987. Learned counsel vehemently relied on Section 66 read with Section 2(n) of the said Act, 1987. Section 2(n) relates to definition of "local body" which reads thus:

"(n) "local authority" means a municipal corporation or a municipal council constituted or continued under any law for the time being in force ;

"66. Transfer of employees.-(1) Notwithstanding anything contained in this Act or in any law for the time being in force, the Government may transfer any Officer or servant of one authority to the service of any other authority or of any Local Authority.

(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 transfer made under sub-section (1) and such directions shall be complied with by the authority or local authority concerned."

Further he relied on the judgment of Ramachandra Setty and another -vs- State of Karnataka and others reported in 1979 ILR 1762 holding that Section 320 of the Karnataka Municipalities Act 1964 is identical to that of Section 66 of the Act and another decision in the case of S K Gurupadaswamy -vs- Mysore Urban Development Authority & others in WP No.10349/2006 and connected matters decided on 27.7.2011. Paras-5 to 7 read thus:

"5. The learned counsel for the respondents, on the other hand, would point out that the point raised is squarely covered by two Division Bench decisions of this court, namely, in Ramachandra Shetty vs. State of Karnataka, 1979(2) KLJ 173 and B T Sannabasavegowda vs. State of Mysore, 1972(1) My.LJ 665, wherein the legislative competence to enact Section 320 of the Karnataka Municipalities act, 1964 was impugned and addressing the power of transfer of officers under the said provision, the Division Bench, in the first of above cited cases, held that Section 320 does not expressly set out any guidelines for exercise of such wide powers of transfer, but it is implied that such power should be exercised in public

interest. Periodical transfers of civil servants from place to place is the normal practice in the administration and such transfers are considered as being in public interest. The public interest provides the guide line. Hence, mere absence of express guidelines for exercise of such power does not render such conferment of power bad. If such power is exercised in any particular case, arbitrarily, capriciously, unreasonably or even malafide, the exercise of such power would be bad and may be liable to be struck down by courts. The same is the view taken in the earlier decision. It is added therein that any loss, diminution or increase in allowances affecting seniority or pay could be appropriately corrected by directions issued under Sub-section 2 of Section 320. In that light of the matter, the learned counsel would submit that Section 320, which is in pari materia with Section 66 of the Karnataka Urban Development Authorities Act, 1987, would squarely apply on all fours to the present cases on hand and the contention that the post to which the petitioners were sought to be transferred have since been filled up and therefore there are no posts to which the petitioners could be transferred is an incorrect assertion and it is only if the posts have been filled up, would there be any substance in the contention of the petitioners. In any event, the power of transfer is not taken away and hence the petitioners are bound to be transferred, if not the place to which they were originally intended to be transferred, to such other places as well. Therefore, there is no warrant for interference. And insofar as lack of progress in the inquiry is concerned, it is vehemently asserted that there has been substantial progress. The delay, if any, was on account of objections raised by the petitioners themselves from time to time as to the non-production of the original documents or such other technical objections which are inquiry officer was not capable of complying with and which was beyond his control and therefore, the inevitable delay has occurred. This by itself would not preclude the authorities from proceeding with the inquiry in accordance with law.

6. The learned Government Pleader would also contribute by submitting that, as already pointed out, in the event that the order of transfer should cause any inconvenience or disadvantage to the petitioners, it is open for them to address such grievance, which would be appropriately corrected by passing necessary orders to protect the seniority, pay, allowances or such other benefits to which the petitioners would be entitled to.

7. Given the above facts and circumstances, the petitioners being sought to be transferred in exercise of power under Section 66 of the Act, cannot be subject matter of challenge in view of the authoritative decisions of the two Division Bench judgements of this court. What follows is that whether the petitioners could be called upon to report for duty at the very place where they were sought to be transferred immediately prior to the petition. As rightly contended by the learned counsel for the petitioners, if the said posts have been filled up as on date, it would be open for the Government to redo the orders of transfer while also passing additional directions to protect the pay, seniority and other benefits which the petitioners would be entitled to, in the event that there is any

inconsistency or anomaly insofar as the service conditions are concerned, which the petitioners would face on account of being transferred to such other local bodies. Insofar as the claim that the inquiry has been inordinately delayed and therefore, the petitioners ought not to have suffered further proceedings is a contention that may not be available to the petitioners and if at all, it would be against any findings, which are arrived at and if it could be demonstrated that the findings could not stand the test of law, by virtue of any such delay, is a contention which is available on merits, in the event that any order pursuant to findings therein are passed and if the petitioners have occasion to challenge any such orders. That cannot be the subject matter of consideration in the present petitions."

3. First issue is required to be examined whether petitioner has locus standi to be on deputation to BBMP or not?

4. Undisputedly, the post of AEE in BBMP is governed by Section 82 of the Act, 1976 read with Rule 26 of Rules 1977, when the petitioner was on deputation to BBMP, relevant statutory provisions are only under the provisions of Act, 1976 read with Rules, 1977. Act 1987 has no overriding effect on Act, 1976 and Rules 1977. Therefore, petitioner has no locus standi to be deputed to BBMP. Further, it is to be noted that under Section 82(1) of the Act, 1976, the Government shall appoint for every Corporation such officers of the State Civil Services as it considers suitable to be the Engineer, Health Officers, etc. Undisputedly, petitioner is not belonged to State Civil Services so as to presume government invoking Section 82 of the Act, 1976 and appoint the petitioner in the post of AEE in BBMP.

5. The cited decisions do not assist the petitioner for the reasons that both the decisions are relating to interpretation of Act, 1987, whereas in the present case, relevant statutory provision is Act, 1976 in particular Section 82 of the said Act read with Rules, 1977 and Schedule. Before examining any citation, it is relevant to examine the relevant statutory Rules and facts of the case. The Act, 1987 interpreted by this Court in the aforesaid citations have no application to the petitioner's case. In view of the decision of the Supreme Court in the case of Nair Service Society -vs- T Beermastan reported in (2009) 5 SCC 545, para-48 of the said judgment reads thus:

"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."

The relevant provisions are Act, 1976 read with Rules, 1977 and Schedule. In the case of Syed T.A Naqshbandi & ors. -vs- State of Jammu and Kashmir reported in

(2003) 9 SCC 592, wherein the Supreme Court held that the conditions of service of members of any public service are governed by Statutory Rules or orders, and so long as such Rules and orders continue, they cannot yield to any policy decisions taken even to amend or modify them.

7. In view of these facts and legal position, petitioner has no locus standi to have his leg in BBMP. Accordingly, petitioner has not made out a case for interim relief and it is rejected.

8. At this juncture, learned counsel for the petitioner requested to dispose off the main matter in view of rejection of interim relief.

9. In view of the legal issues cited supra, the present petition is not maintainable to the extent that the petitioner has no locus standi to be on deputation and questioning the validity of the order dated 3.7.2019 (Annexure-E) issued by the respondent No.2, order dated 3.7.2019 (Annexure-F) issued by the respondent No.2 and order dated 4.7.2019 (Annexure-G) issued by the respondent No.3 in so far as the petitioner is concerned.

Accordingly, writ petition stands dismissed.

This Court has come across in number of cases that Government - 1st Respondent stated to be borrowing authority for various posts in the local bodies like BBMP, Bangalore Development Authority etc., Government - 1st Respondent and Commissioners of such local authority or Head of the Department are simply ignoring the method of recruitment, i.e., statutory provisions while borrowing officials illegally and drafting/deputing to local authority without verifying the Rule position. In other words statutory provisions are totally side tracked in lending and borrowing officials. Therefore Government-1st Respondent and Commissioner/Head of the Department of local body to examine each of the deputed official whether such deputation is in accordance with relevant statute or not. In the event of such deputation is contrary, repatriate such identified employee and stick to statute while deputing an employee.