

(1980) 06 KAR CK 0020
In the Karnataka High Court
Case No : WP 6139/80

Rudrappa Kalaveerappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 09-06-1980

Acts Referred:

Karnataka Municipalities (Delegation of Powers, Executive Functions, Duties, Powers and Determination of Staff) Rules, 1973 — Rule 11
Karnataka Municipalities Act, 1964 — Section 320(1)

Citation : (1980) 2 KarLJ 118

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

1. The petitioner was working as Chief Officer in the Town Municipal Council of Alnavar in Dharwar District having been promoted to that cadre by an order dated 1-2-1977. The cadre of Chief Officer under the relevant Cadre and Recruitment Rules consists of four Grades and the petitioner belongs to Grade-II carrying the pay scale of Rs. 500 to 1120. Aggrieved by an order of transfer dated 30-5-1980 made by the 2nd respondent-Divisional Commissioner, Belgaum, he has impugned the same in this Writ Petition. The said order is produced as Annexure-C to the petition. The order states that the transfers are made on administrative grounds. The petitioner is one of the twelve officers affected by the order. The order is a composite one. The petitioner has been transferred to Kalghatgi in Dharwar District.

2. The petitioner has averred that he is aggrieved by the impugned order of transfer which according to him is contrary to Rule-11 of the Karnataka Municipalities (Delegation of Powers, Executive Functions, Duties, Powers and Determination of staff) Rules, 1973 (hereinafter referred to as "the Rules") in as much as the Town Municipal Council to which he is now transferred under the said Rule-II of the Rules is authorised to have a Chief Officer of Grade-III in a lesser pay scale and therefore the impugned order of transfer has the effect of reducing his Grade as well as his status. The petitioner also has feebly attempted to persuade the Court to hold the impugned order of transfer as illegal on

account of mis-description of the post held at Alnavar as Secretary even though no such post exists in the Town Municipal Council at Kalghatgi.

3. Sri Subba Rao, learned Counsel appearing for the petitioner has strenuously argued that under R. 11 of the Rules the Divisional Commissioner has no powers to make transfers in accordance with the duties of Municipal Commissioner or Chief Officers. Rule-11 of the aforementioned Rules provides for staff pattern, pay scales and the number of employees that a Municipality can have. In accordance with Schedule-II to the Rules the Municipalities have been divided into different categories on the basis of the income they have. Certain Municipalities having the income of more than ten lakhs are required to have Commissioners in the pay-scale of Chief Officers and those Municipalities that have less than ten lakhs income are further sub-divided providing for Chief Officers of Gr. I to IV. The duties and functions of the Municipal Commissioner and the Chief Officers are enumerated in Rules 8 and 9 of the Rules. It is necessary to state that such duties and functions are common to all Town Municipal Council irrespective of their income.

4. The Learned Counsel for the petitioner has strenuously contended that as Alnavar Municipal Council which has income of Rs. two and half lakhs is entitled to a Chief Officer of Grade-II and the petitioner belonging to that Grade was correctly transferred to that Town Municipal Council and the Town Municipal Council to which, now he is transferred, having less than Rs. two and half lakhs income as ascertained in the year 1977, can only have a Chief Officer, Grade III and therefore, the order of transfer amounts to demoting the petitioner to Grade-III without there being any reasons for such reduction in rank much less enquiry on any charge. For this contention he has placed reliance on the language of Rule-11 of the Rules which is as follows:

"11. Staff to be employed by Municipal Council.-Save as otherwise provided in the Act and the Rules and subject to general or special orders of Government from time to time in respect of scales of pay and allowances, a municipal council, whose normal income is as specified in column (2) of Schedule II. shall employ the staff of Officers and servants specified in column (3) of the said Schedule.

Provided that the Government may by order exempt any municipal council from the employment of any officer or servant or permit the employment of a reduced number of officers and servants of any category;

Provided further that it shall not be necessary to obtain exemption in respect of existing permanent establishments of a municipal council."

5. It is, therefore, the argument of the learned Counsel that unless there is a special or general order by the Government, the respondent-Divisional Commissioner, Belgaum is not authorised to make a transfer of Grade-II Officer to a Town Municipal Council which according to the relevant Rules, can only have a Grade III Chief Officer. There is not much force in this argument. The purpose of Rule-11 of the Rules is to provide for staffing the Town Municipal Councils in

accordance with their capacity to pay and bear the burden of pay scales of such staffing. It is for no other purpose. That Rule cannot be read as one restricting the powers of the State Government or the Divisional Commissioner in exercising the power under S. 320(1) of the Karnataka Municipalities Act, 1964. The power Municipalities Act, 1964. The power conferred by Sub-S. (1) of S. 320 of the said Act is absolutely unfettered and this power is delegated by the Government to be exercised by the Divisional Commissioner under the Karnataka Municipalities (Delegation of Power) Rules, 1965. Therefore, if the respondent Divisional Commissioner has made the transfer of the petitioner from a Town Municipal Council entitled to a Chief Officer Grade-II to a Town Municipal Council which is entitled to a Chief Officer Grade-III, the order of transfer shall be read as a Special Order made by the Government in terms of Rule-11 of the Rules enabling the latter Municipality to have a Chief Officer of Grade-II. This would be a reasonable construction of the transfer order which would be for the benefit of the petitioner in as much as his status in the cadre of Chief Officers as well as his pay scale would stand protected.

6. The other contention about the description in the transfer order is not such a serious error as to render the transfer order invalid. The petitioner is aware that there are no posts of Secretaries in the Town Municipal Councils and the reference in the order to Secretary is but an apparent mistake committed and has really reference to transfer of Chief Officers as column-4 of the impugned order makes it clear that the petitioner is transferred vice Sri A.B. Badanikai who has been posted as Chief Officer of Town Municipal Council, Mulgund. The other indications in the order would clearly establish that the posts to which all the incumbents are transferred are of the Chief Officers. Therefore the petition is rejected without issuing rule as there is no infirmity in the order for interference by this Court under Article 226 of the Constitution of India.