

(2007) 06 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 6961 of 2007

Shashikanth N. Kinnarkar

APPELLANT

Vs

The State of Karnataka and The Director, Municipal
Administration Department

RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Citation : (2007) 6 KarLJ 85

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

**Advocate : K.B. Muralidhar, for K.R. Bhavani Shankar and Co, for the Appellant;
S.Z.A. Khureshi, AGA, for the Respondent**

Judgement

N.K. Patil, J.—In the instant case, petitioner is assailing the correctness of the impugned order dated 22.2.2001, of the 2nd respondent vide Annexure-U and the impugned order dated 5.6.2006, of the 1st respondent vide Annexure-Y as the same are illegal, bad in law, arbitrary one. Further, petitioner has sought to direct the respondents to reinstate the petitioner to duty as Peon with all consequential benefits such as continuity of service, service benefits, monetary benefits and all other benefits flowing therefrom.

2. The grievance of the petitioner in this writ petition is that, petitioner was working as Peon at Town Municipal Council, Dandeli and he has been transferred to Special Tahasildar/ Secretary, Land Tribunal III Hangal, on 31.8.1981. Accordingly he has reported for duty at transferred place and he has taken leave to make arrangement to bring his family to the transferred place on 2.9.1981. After completion of leave when he has gone to the office of the Special Tahasildar for reporting duty, he has been informed that the Land Tribunal III Hangal has been abolished and he has not been permitted to report for duty. Thereafter, he has submitted his representation to the Deputy Commissioner on 29.10.1984 requesting to give posting as the Office, to which he has been transferred has been abolished. But his request is neither considered nor has taken any steps by

the respondents by giving him posting to some other place. Be that as it may. The Government has issued the Official memorandum dated 31.1.1989 issuing direction to all the Heads of Departments that any government servant who comes back to service after any period of unauthorised absence, he should be taken to duty. In the light of the official memorandum dated 31.1.1989, the 2nd respondent has sent a communication to the Deputy Commissioner, Karwar on 30.3.1991 requesting him to furnish the details regarding the availability of vacancy at City Municipal Council, Dandeli for giving posting to the petitioner. Thereafter, on 25.5.1992, 2nd respondent has transferred the petitioner to a vacant post of City Municipal Council Dandeli. Instead of giving posting, the Chief Executive Officer, City Municipal Council Dandeli has sent a communication to the Deputy Commissioner on 19.10.1992 seeking clarification regarding taking the petitioner on duty. The Commissioner City Municipal Council Dandeli has sent another communication to the Deputy Commissioner, Karwar on 14.5.1993, who in turn has sent communication to the 2nd respondent on 23.7.1993. When his request has not been considered and he has not been given any posting inspite of the direction issued by the Deputy Commissioner to the 2nd respondent to the Commissioner, Municipal Council Dandeli, petitioner was constrained redress his grievance before the competent authority. In spite of making several correspondences by the office of the 2nd respondent and the Deputy Commissioner Karwar, petitioner has not been provided any job or issued any posting order instead of that, they have initiated the proceedings and dismissed the petitioner from service on 22.2.2001, on the ground that petitioner was not on duty from 1981 to 1984 without verifying the factual aspects of the matter and without affording opportunity to the petitioner. Assailing the correctness of the order passed by the 2nd respondent dated 22.2.2001 petitioner has filed an appeal before the first respondent, who in turn, without conducting proper enquiry and without affording reasonable opportunity to the petitioner, has proceeded to pass the order unilaterally, on 5.6.2006 by confirming the order passed by the 2nd respondent. Having regard to these backgrounds, petitioner was constrained to approach this Court, by presenting this writ petition seeking appropriate relief as stated above.

3. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate for respondents-1 and 2.

4. After careful perusal of the impugned order passed by the first respondent vide Annexure-Y, dated 5.6.2006, it is manifest on the face of the order that first respondent has committed a grave error, much less material irregularity in passing the said order, without conducting proper enquiry and without affording reasonable opportunity to the petitioner and in gross violation of principles of natural justice. On a perusal of impugned order, it emerges that, no opportunity as such has been provided to the petitioner and if an opportunity has been afforded to the petitioner he might have substantiated that for no fault of him he has remained absent from 1981- 1984 (1.1.1981 to 24.10.1984). The material available on file discloses that, petitioner has been transferred from Town

Municipal Council Dandeli to the office of the Special Tahasildar/Land Tribunal- III Hanagal and he has reported for duty at transferred place and went on leave to make arrangements to bring his family Thereafter, when he has gone to report for duty, he has been informed that the Land Tribunal itself has been abolished and therefore he was not taken to duty. Therefore, petitioner has given representation to the Deputy Commissioner Karwar on 29.10.1984 and instead of giving posting to the petitioner, the authorities have dragged the petitioner from pillar to post giving assurances that he will be given posting and they have taken time only in doing correspondence between the Deputy Commissioner of the Department and the officer of the Municipal Council and if that is so, if an opportunity has been afforded to the petitioner he might have been substantiated that, why he has not discharged his duty from 1981 to 1984. Therefore, in the light of the facts and circumstances of the case as stated above, I am of the considered view that, the impugned order cannot be sustained in view of non affording reasonable opportunity to the petitioner and not conducting proper enquiry and in passing the order in gross violation of principles of natural justice.

5. Having regard to the facts and circumstances of the case as stated above, the instant writ petition filed by petitioner is allowed in part.

The impugned order dated 5.6.2006 passed by first respondent bearing No. Na.Aa.E.64 DMK.2005 vide Annexure-Y is hereby set aside.

Matter stands remitted back to the first respondent for reconsideration afresh, with a direction to take appropriate decision, in accordance with law, and dispose of the same, after affording reasonable opportunity to the petitioner, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order.

Further, it is needless to clarify that, petitioner herein is permitted to submit his detailed consolidated representation-cum-written submissions to the first respondent within three weeks from the date of receipt of this order.

First respondent is directed to receive the same and then proceed with the matter in compliance of the directions issued by this Court as stated above.

Learned Additional Government Advocate is permitted to file memo of appearance for respondents-1 to 2 within three weeks from today.