

(2016) 08 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 39438 of 2016 (S-KAT).

Shivappa H. Lamani - Petitioner @HASH State of Karnataka and Others

Date of Decision : 19-08-2016

Acts Referred:

Citation : (2016) 6 KantLJ 515

Hon'ble Judges : Jayant Patel and S.N. Satyanarayana, JJ.

Bench : Division Bench

Advocate : Sri. Jayakumar S. Patil, Senior Advocate and Sri. Bharath Kumar V, Advocate, for the Petitioner; Sri. A.S. Ponnanna, Additional Advocate General, Sri. H.T. Narendra Prasad, Additional Government Advocate, for the Respondent Nos. 1, 2, 4, 5 and 7; Sri. K.N

Final Decision : Disposed Off

Judgement

Jayant Patel, J. - Rule.

2. Mr. A.S. Ponnanna, learned Additional Advocate General and Mr. H.T. Narendra Prasad, learned Additional Government Advocate waive notice of Rule for respondents 1 and 2. Mr. A.S. Ponnanna, learned Additional Advocate General, also appears for respondents 4, 5 and 7. Mr. K.N. Puttegowda, learned Counsel appears for respondent 3. None appears for Mr. Hanumantharayappa-respondent 6.

3. The present petition is directed against the order dated 1-7-2016 passed by the Karnataka State Administrative Tribunal (hereinafter referred to as "the Tribunal" for the sake of brevity), whereby for the reasons recorded in the order, the Tribunal has rejected the application and respondents 1 and 2 were directed to give posting to the applicant within one month.

4. We may record that at the preliminary hearing stage, this Court on 9-8-2016 had passed the following order:

"We have heard Mr. Jayakumar S. Patil, learned Senior Counsel appearing for Mr. Bharath Kumar V, learned Counsel for the petitioner, Mr. H.T. Narendra Prasad, learned Additional Government Advocate appearing for the State Government

and its authorities, Mr. K.N. Puttegowda learned Counsel appearing for respondent 3.

2. We may, at the outset, record that earlier, this matter was heard on 5-8-2016 and the learned AGA, was directed to make the original file of the State Government available to the Court.

3. We have considered the original file and the records show as under:

The order dated 15-6-2016 is for transfer of the petitioner and the same was initially passed with the approval of the Chief Minister, which is a requirement as per the transfer policy of the State Government and the petitioner was transferred from Bengaluru North Taluk to Bengaluru North (Additional) Taluk, Yelahanka.

However, surprisingly, the file shows that under the direction of the in-charge Principal Secretary of the Revenue Department, whose name is stated by learned AGA, as Sri Basavaraj, the said order dated 15-6-2016 is kept in abeyance vide order dated 16-6-2016. The file further shows that the said order dated 16-6-2016 is cancelled and vide order dated 17-6-2016, the petitioner was continued in the same post, namely, Tahsildar, Grade I, Bengaluru North Taluk. The said order is passed by Deputy Secretary, Revenue Department, whose name is stated to be Sri S. Balakrishnaiah. The matter did not end there. Subsequently, on 18-6-2016, once again, an order came to be passed for posting of one Sri V. Hanumantarayappa at Bengaluru North Taluk, where petitioner was to work on account of the aforesaid cancellation vide order dated 17-6-2016.

4. As such, when the post of the petitioner at Bengaluru North Taluk, when was not vacant, no order could be passed by the Under Secretary under the instruction of Deputy Secretary, Revenue Department, for posting of Sri V. Hanumantarayappa.

5. It, prima facie, appears to us that when the post of Tahsildar, Grade I, Bengaluru North Taluk, was not vacant, there was reason for posting another officer at the same post. Further, Principal Secretary of the Revenue Department has no pow to override the decision of the department duly approved by the Chief Minister is also an aspect, which may deserve consideration

6. We take a serious note of the aforesaid aspects, but before we make appropriate observations for issuing suitable directions, it would be necessary to hear the aforesaid officers as well as Sri V. Hanumantarayappa. Hence, the following persons are ordered to be impleaded as party - respondents in these petitions:

1. Sri. Basavaraj, Principal Secretary, Revenue Department.

2. Sri. S. Balakrishnaiah, Deputy Secretary, Revenue Department.

3. Sri V. Hanumantarayappa, Tahsildar, Grade I, Bengaluru North Taluk, Bengaluru Urban District.

4. In-charge Under Secretary, Revenue Department, since it has been stated that the then Under Secretary, Sri. H.K. Sreepadaraao, has retired from service.

7. Necessary amendment be carried out in the cause title of the memorandum of writ petition.

8. Office shall send notice to the aforesaid persons forthwith returnable on 18-8-2016. The aforesaid officers, namely, Principal Secretary, Deputy Secretary and Under Secretary, of the Revenue Department, shall report to this Court as to why appropriate directions should not be issued for initiation of departmental action against them for such non-application of mind. They shall also remain personally present before this Court.

9. The original file is directed to be kept with the Registrar (Judicial) of this Court.

10. Learned AGA shall immediately communicate this order to the concerned officers of the Revenue Department for compliance. Office to supply copy of this order to him.

11. Learned AGA, is at liberty to take out Xerox copy of the original file."

5. This matter was yesterday on Board and the Principal Secretary, Deputy Secretary and Under Secretary were present as conveyed to us by the learned Additional Advocate General. The matter was heard for sometime and this Court did express the view that once the order was passed by the Hon''ble Chief Minister, the Principal Secretary or the Deputy Secretary or Under Secretary had no authority to pass any order. Tire attempt was made by fire learned Additional Advocate General to convey that when the Principal Secretary passed the order on 16-6-2016, telephonically the intimation was given to the Hon''ble Chief Minister, hut when we enquired about such noting in the file, they were unavailable. Hence, this Court expressed the view that unless the order of the Hon''ble Chief Minister dated 15-6- 7016 is complied with, the illegality will be further perpetuated. The learned Additional Advocate General had requested for time till today. Hence the matter was kept today.

6. When the matter is taken up today for hearing, the learned Additional Advocate Genera has tendered the order dated 18-8-2016 passed by the Under Secretary, Revenue Department, and it is stated that the same is passed after approval of the Hon''ble Chief Minister and the Minister of the concerned Department and as per the said order, the petitioner will be required to join the duty at Bangalore North (Additional) Taluk, Yelahanka, as per the first order dated 15-6-2016 and the subsequent order passed on 18-6-2016 for posting of respondent 3-Sri Manjunath, at Bangalore North (Additional) Taluk, Yelahanka, is cancelled. He submitted that resultantly, the order of tire Hon''ble Chief Minister is maintained, but he also submitted that in future, if airy contingency arises in public interest, the Government should be at the liberty to pass appropriate order for transfer in accordance with law.

7. Mr. K.N. Puttegowda, learned Counsel appearing for respondent 3 emphatically

resisted the action taken by the Government for cancellation of his transfer order contending inter alia that there was large number of material against the petitioner and therefore the order of the Hon"ble Chief Minister was kept in abeyance and respondent 3 was posted at that place. He submitted that the respondent 3 is made to suffer on account of the so-called deficiency in the authority of the Officer in passing transfer order dated 18-6-2016. He submitted that the order dated 18-8-2016 whereby the transfer order of the respondent 3 dated 18-6-2016 may not be treated as cancelled and he may not be compelled to go at the newly transferred place i.e., Tahsildar (KUIDFC).

8. We have considered the matter. It appears to us that there cannot be second opinion on the aspects that once the order is passed by the Hon"ble Chief Minister, the Principal Secretary or Deputy Secretary or the Under Secretary or the Minister of the concerned Department have no power or authority to nullify the effect of the order nor any power to keep the order in abeyance. We would have further considered the matter. However, as the mistake of the Principal Secretary as well as the Deputy Secretary and the concerned Minister is corrected by passing the order dated 18-8-2016 and as it has been declared as per the said order that the petitioner will stand transferred to the post of Bangalore North (Additional) Taluk, Yelahanka and the respondent 3 shall stand transferred and posted at a different place i.e., Tahsildar (KUIDFC), we find that no further discussion may be required.

9. So far as the grievance raised by learned Counsel for respondent 3 is concerned, if the benefit is derived to respondent 3 pursuant of the aforesaid order which was lacking authority, he cannot maintain the rights pursuant to the said transfer order dated 18-6-2016 which is now cancelled vide order dated 18-8-2016. Hence, we do not find that the grievance voiced can be accepted in law.

10. However, there is substance in the submission of the learned Additional Advocate General that if any contingency arises in future for transfer of the petitioner, the State should be at the liberty to pass appropriate order in accordance with law.

11. Mr. Jayakumar S. Patil, learned Senior Counsel appearing for the petitioner has also not objected for such a course to be undertaken, provided the order is passed in accordance with law.

12. In view of the aforesaid, we pass the following order:

(i) The impugned order passed by the Tribunal shall stand set aside with the further direction that the petitioner was earlier transferred from Bangalore North Taluk, to Bangalore North (Additional) Taluk, Yeiahanka, as per the order dated 15-6-2016, shall be entitled to join the duty at Bangalore North (Additional) Taluk, Yeiahanka, as per the transfer order dated 15-6-2016 read with the order dated 18-8-2016 passed by the Government and tendered on record today.

(ii) As per the order dated 18-8-2016, since respondent 3 who was earlier posted at Bangalore North (Additional) Taluk, Yelahanka, is now transferred as Tahsildar (KUIDFC) he, resultantly would be required to join the duty as the Tahsildar (KUIDFC).

(iii) Both the Officers namely the petitioner as well as respondent 3 shall join duty at the aforesaid respective places within 48 hours.

(iv) It is observed that the present order shall not operate as a bar to the State Government for passing any subsequent transfer order either for the petitioner or for respondent 3 in accordance with the transfer policy and also in accordance with law.

13. The petition is disposed of in terms of the aforesaid direction. Rule made absolute to the aforesaid extent. No order as to costs.

14. The original file which was kept in the safe custody of the Registrar (Judicial) is returned to the learned Additional Advocate General.

15. In view of the disposal of the main petition, I.A. No. 1 of 2016 stands disposed of accordingly.