

(2007) 11 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 14548 of 2007

Sri P.G. Ramesh Reddy

APPELLANT

Vs

The State of Karnataka, Urban Development Department,
The Deputy Commissioner and Sri K.B. Veerapura

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 365 (1)

Citation : (2008) ILR (Kar) 8 : (2008) 1 KarLJ 13 : (2007) 4 KCCR 2846

Hon'ble Judges : Cyriac Joseph, C.J.; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : K. Subba Rao for Anandaramu and Associates, for the Appellant;
M.S. Rajendra Prasad Associates, for C/R3 and B. Sreenivasa Gowda,
Government Advocate for R1 and R2, for the Respondent

Judgement

Cyriac Joseph, C.J.—This writ petition challenging the order passed by the Karnataka Administrative Tribunal in Application No. 4224 of 2007 was admitted on 19.9.2007. Respondents were given two weeks to file counter-affidavit. Though Respondent No. 3 has filed statement of objections, Respondents 1 and 2 have not filed any counter-affidavit.

2. The challenge in Application No. 4224 of 2007 was against the transfer of the applicant (3rd respondent herein) as Commissioner, Shimoga Urban Development Authority. Admittedly there was no stay of the impugned transfer during the pendency of Application No. 4224/2007. Consequently the impugned order of transfer had taken effect and the 3rd respondent has been functioning as Commissioner, Shimoga Urban Development Authority and the petitioner is not working anywhere as he has not been given any posting.

3. According to Sub-section (1) of Section-365 of the Karnataka Municipalities Act 1964 (hereinafter referred to as the Act), notwithstanding anything contained in the Act or in any other law for the time being in force, such posts under every local authority as may be specified by Government shall be filled by appointment

of officers belonging to the Karnataka Municipal Administrative Service. The Government of Karnataka had issued order No. HUD 110 EMC 95(I) dated 5.3.1996 notifying the City Municipal Councils which are legally entitled to have a Municipal Commissioner Grade-I borne on the Karnataka Municipal Administrative Service. Urban Development Authority, Shimoga is one of such City Municipal Councils notified by the Government as per order dated 5.3.1996. Hence in view of the provisions contained in Sub-section (1) of Section - 365 of the Act only an officer belonging to the Karnataka Municipal Administrative Service shall be appointed as Commissioner, Urban Development Authority, Shimoga. The 3rd respondent is not a member of the Karnataka Municipal Administrative Service. He is an officer belonging to the Karnataka Cooperative Administrative Service. Therefore the 3rd respondent is not eligible to be appointed as Commissioner of Shimoga Urban Development Authority.

4. The petitioner is admittedly an officer belonging to the Karnataka Municipal Administrative Service. Learned Government Advocate appearing for Respondents 1 and 2 could not point out any valid reason for replacing an officer belonging to the Karnataka Municipal Administrative Service with an officer of the Karnataka Cooperative Administrative Service as Commissioner, Shimoga Urban Development Authority. Hence the posting of the 3rd respondent as Commissioner, Shimoga, Urban Development Authority, in the place of the petitioner was illegal and arbitrary and was liable to be quashed by the Karnataka Administrative Tribunal.

5. In the above circumstances, we do not find any valid and sufficient reason to allow the 3rd respondent to continue as Commissioner, Shimoga Urban Development Authority.

6. Hence the writ petition is disposed of in the following terms:

(i) Annexure-A order dated 7.9.2007 passed by the Karnataka Administrative Tribunal in Application No. 4224/2007 is set aside.

(ii) Annexure-A4 - Notification dated 4.9.2007 deputing and posting the 3rd respondent as Commissioner of Shimoga Urban Development Authority in the place of the petitioner is quashed.

(iii) The 3rd respondent is directed to relinquish charge of the Commissioner, Shimoga Urban Development Authority forthwith and the petitioner is permitted to resume duty as Commissioner, Shimoga Urban Development Authority.

(iv) It will be open to the Government of Karnataka or any other competent authority to transfer the petitioner from the post of Commissioner, Shimoga Urban Development Authority to any other post in accordance with the rules and the Government Orders relating to transfer, if it is found necessary in public interest or for administrative reasons.

(v) Since the petitioner was not given any alternative posting pursuant to Annexure-A4 order, the period during which he has been kept out of service on

the basis of Annexure-A4 order till he resumes duty as Commissioner, Shimoga Urban Development Authority on the basis of this order, shall be treated as period spent on duty for all purposes.

(vi) The Government of Karnataka may give a suitable posting to the 3rd respondent forthwith.