

(2014) 04 KAR CK 0199
In the Karnataka High Court
Case No : Writ Petition No. 6577/2014 (S-TR)

Sri Somanna

APPELLANT

Vs

The Commissioner, B.B.M.P., The Deputy Commissioner
(Administration), B.B.M.P. and Megaraj

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipal Corporations Act, 1976 — Section 69

Citation : (2014) 2 AKR 649 : (2014) 4 KarLJ 207 : (2014) 2 KCCR 1766

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : S.N. Bhat, Advocate for the Appellant; M.R. Shailendra, Advocate for R1 and R2 and Sri B.K. Sampath Kumar, Advocate for R3, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.N. Venugopala Gowda, J.—The petitioner and the respondent No. 3 are working as Work Inspectors in Cotton Pet Sub-Division of Bruhat Bangalore Mahanagara Palike. By an Office Order dated 03.02.2014 vide Annexure-D, the petitioner having been posted to Ward No. 121 and the respondent No. 3, who was working in Ward No. 121, having been posted to Ward No. 109, this writ petition was filed assailing the order as at Annexure-D.

2. Sri S.N. Bhat, learned advocate, contended that the impugned order of transfer is arbitrary, since, there is frequent shifting of the petitioner from one Ward to another, on account of interference of politicians and at the behest of the respondent No. 3 and hence, interference is called for.

3. Sri M.R. Shailendra, learned advocate, for respondents 1 and 2, on the other hand, contended that the impugned order was issued in exigencies of the service and being an administrative decision and also that the offices of Ward Nos. 109 and 121 being in one and the same building, cannot be construed as transfer and

cannot be permitted to be assailed in the writ jurisdiction under Article 226 of the Constitution of India.

4. Sri B.K. Sampath Kumar, learned advocate, for respondent No. 3, submitted that there being no rules framed by the BBMP in respect of transfers and that the transfers being effected on the basis of Councilors' working relationship with the Work Inspectors and the petitioner having wielded political influence and got his transfers effected earlier, cannot assail the order as at Annexure-D.

5. While hearing the case, after noticing from the record that the petitioner and the respondent No. 3 had been posted as against each other's post frequently and since, both the petitioner and the respondent No. 3 had secured recommendations from the Corporators, MLAs and also Ministers, for their retention and postings, the Commissioner of BBMP was directed to appear before the Court. Sri Lakshmi Narayana, Commissioner, BBMP, appeared on 10.03.2014. In view of the displeasure expressed on the frequent transfers and postings effected, though within the same zone, but on the basis of the recommendation letters issued by the politicians, which is not in administrative exigencies, the Commissioner was directed to come up with a proposal to avoid the frequent transfers and to prevent the political interference. The Commissioner submitted that a resolution dated 30.08.2012 was adopted by the BBMP with regard to the minimum tenure of Group "A" and "B" Officers, as two years and in respect of Group "C" and "D" Cadres, as three years, in a place. The Commissioner submitted that, within the zone, the power to transfer has been delegated to the Joint Commissioners and in view of the developments noticed in this case, he assured that a Circular would be immediately issued, restricting the transfer and posting of Group "C" and "D" employees, within a zone, for a period of three years.

6. Sri M.R. Shailendra, filed a Memo and produced a Circular bearing No. B12(6A)/PR/363/2013-14, dated 20.03.2014, issued by the Commissioner, BBMP and submitted that, henceforth, the transfers/postings of Group "C" and "D" employees would be regulated in terms of the said Circular.

7. In *Sarvesh Kumar Awasthi vs. U.P. Jal Nigam*, (2003) 11 SCC 740, Apex Court having noticed that transfers had been effected on the recommendations, either of Ministers or MLAs/MPs/MLCs, has held as follows:-

In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

8. In *Mohd. Masood Ahmad Vs. State of U.P. and Others*, , considering a contention that the impugned transfer order of the appellant was made at the

instance of an MLA and that the counter affidavit filed by the respondents stated that the appellant was transferred due to the complaints against him, Apex Court has held as follows:-

.....in our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case.

9. In the case of Sri Mruthyanjaya N.V., Vs. State of Karnataka and Others, W.P. No. 56276/2013 decided on 12.12.2013, a transfer effected from the Panchayat Raj Engineering Division, Bangalore Rural, to the office of the Executive Engineer, Hebbal Division, BBMP, Bangalore, having been assailed and upheld by the Karnataka Administrative Tribunal, when challenged in a writ petition, a Division Bench of this Court, by taking note of the definition of "transfer" under Rule 8(49) of the Karnataka Civil Services Rules, has held that the transfer from one office to another office within the same headquarters cannot be treated as transfer and none can make a grievance against such an order of transfer from one office to another office on the ground that it is premature or arbitrary.

10. Petitioner and the respondent No. 3 are holding transferable posts. Hence, the Commissioner or Delegated Authority, can effect the transfer/posting in exigencies of service and in the administrative interest and interference by the Courts, with the administrative decisions/transfer orders, should only be in rare cases, as has been held by the Apex Court in catena of decisions, (see B. Varadha Rao Vs. State of Karnataka and Others, , Mrs. Shilpi Bose and others Vs. State of Bihar and others, , Union of India and another Vs. N.P. Thomas, and Union of India and Others Vs. S.L. Abbas,), since, transfer is an incident of service and is made in administrative interest. However, if there is "malice" based on firm foundation of facts pleaded and established and not merely on insinuations and vague allegations, there can be interference.

11. In Rajendra Singh Vs. State of U.P. and Others, , Apex Court has held that the Courts are always reluctant to interfere with transfer of employees unless such transfer is vitiated by violation of some statutory provision or suffers from mala fides.

12. In the instant case, it is to be observed that the challenge to the impugned order of transfer is not based on the violation of any statutory provision regulating service conditions of the employee or by an Authority not competent to do so. The case of the petitioner is that there is frequent transfer and the same is arbitrary. The record of the case shows that both the petitioner and the respondent No. 3 have produced the minutes/notes of Ministers, MLAs and the

BBMP Councilors, in the matter of their posting, to a particular Ward. Undisputedly, the offices of both the Wards, wherein, the petitioner and the respondent No. 3 are working are situated in one and the same building. Thus, there can be no hardship of whatsoever nature either to the petitioner or to the respondent No. 3 on account of the transfer, though more than once in an year i.e., from the one Ward to another Ward in the same Sub-Division of BBMP.

13. S. 69 of the Karnataka Municipal Corporations Act, 1976 (for short "the Act"), reads thus:

69. Control over Corporation Establishment.- Subject to the provisions of this Act, rules and regulations, the Commissioner shall specify the duties of persons borne on the Corporation establishment and exercise powers of supervision and control over them and decide all questions relating to their conditions of service.

The Commissioner, BBMP, has issued the Circular bearing No. B12(6A)/PR/363/2013-14, dated 20.03.2014, in exercise of the power vested in him under the above provision. The material portion of the Circular reads as follows:

14. In view of the above and the undertaking given by the Commissioner of BBMP by way of affidavit filed in this case, that the transfers and postings of the employees in Group "C" and "D" Cadres, henceforth, would be regulated in terms of the said Circular, I find no justification to interfere with the impugned order of transfer.

Consequently, the challenge to the impugned order fails. However, the Commissioner/Delegated Authority, BBMP, henceforth, shall effect the transfers and postings, in terms of the Circular, extracted supra.

Writ petition is disposed of accordingly.

No costs.