

(1982) 01 KAR CK 0018

In the Karnataka High Court

Case No : W.P. 10520, 11049, 11050 and 11773/81

Subramanyam, G.

APPELLANT

Vs

Divisional Commr., Gulbarga and Another

RESPONDENT

Date of Decision : 15-01-1982

Acts Referred:

Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972
— Rule 12

Karnataka Municipalities Act, 1964 — Section 320

Citation : (1982) 2 KarLJ 287

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. As common questions of law arise for for determination in these cases, I propose to dispose of them by a common order,
2. All the petitioners were working in one or the other capacity in the City Municipality of Bellary (hereinafter referred to as "the Municipality"). In the impugned order, the Divisional Commissioner, Gulbarga Division, Gulbarga (hereinafter referred toas "the Commissioner") has transferred the petitioners from Bellary Municipality to certain other City or Town Municipalities situated in his division against equivalent posts on administrative grounds or in public interest.
3. Firstly, the petitioners have urged that their transfers are in contravention of R, 12 of the Karnataka Municipalities (Condition of Service of Officers and Servants) Rules, 1972 (hereinafter referred to as "the Rules") framed under the provisions of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act"). Secondly, the petitioners have urged that they had been appointed in the Municipality prior to the promulgation of the Act and therefore, they cannot be transferred from that Municipality to any other Municipality. Lastly, the petitioners have alleged that Government had withdrawn the power conferred on the Commissioner to make transfers and, therefore, It was not open to him to make transfers.

4. In a common return, the Municipality respondent No. 2 has supported the orders made by the Commissioner. Respondent No. 2 while admitting that the petitioners were its employees appointed prior to the Act came into force, has urged that the Act or R. 12 of the Rules has not placed any restriction on Government or its delegates to transfer employees of one Municipality to another Municipality, Respondent No. 2 has alleged that the power conferred on the Commissioner to effect transfers has not been withdrawn and, therefore, he was competent to transfer the petitioners on administrative grounds.

5. The Commissioner who is respondent No. 1 adopts the return of respondent No. 2 and has supported his order.

6. Sri H. Subramanya Jois, learned counsel for the petitioners, contends that R. 12 of the Rules restricts the transfers of Municipal employees only to two cases viz., as a measure of punishment and on request and cannot be exercised by Government or the Commissioner in any other case. In support of his contention Sri Jois strongly relied on an unreported ruling of this Court in K. Subramanya v. Divl. Commr., Gulbarga, W.P. 4651 & 4652/71 dt, 3-8-72.

7. Sri S.V. Narasimhan, learned High Court Government Pleader appearing for respondent No. 1 and Sri N. Santosh Hegde, learned counsel appearing for respondent No. 2. contended at R. 12 of the Rules corresponding to R. 20 (A) of the Karnataka Civil Service; Rules (hereinafter referred to the KCSR"), though somewhat inaptly framed does not place any restriction on the power of transfer conferred on Government or its delegates by S. 320 of the Act and there are no Justifiable grounds for this Court to interfere with the impugned orders. In support of their contention, learned counsel for the respondents strongly relied on the rulings of this Court in Ramachandra Shetty v. State of Karnataka, (1979) 2 Kar.L.J. 173 and Gitrulingappa v. State of Karnataka, (1981) 2 Kar.L.J. 282.

8. R. 12 of the Rules corresponding to R, 20 A of the KCSR, on which strong reliance is placed by Sri Jois reads thus:

"Transfer of Municipal employees and his lien: (1) A Municipal employee may be transferred from one post to another provided that, except.

(i) as a penalty imposed for misconduct or (ii) on his written request.

An employee shall not be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien, or would hold a lien had his Hen not been suspended under R.11.

(2) Nothing contained in sub rule (1) shall operate to prevent the transfer of the employee to the post on which he would hold a lien had it not been suspended in accordance with the provision? of sub-rule (1) of R. 11.

A comparison of R. 20 A of the KCSR and R. 12 of the Rules reveals that in adopting the former, there have been many substantial alterations but making it very difficult to ascertain even its true import. Even without reference to R. 20 A

of the KCSR, R. 12 of the Rules when independently read assuming that the same is grammatically correct, its true meaning cannot be easily gathered.

9. Sri Jois while maintaining that R. 12 has placed a restriction on the power of transfer only to cases of penalties and requests found it extremely difficult to give a proper meaning to the said Rule. Learned counsel for the respondents while maintaining that the rule does not place any restriction on the power of transfer, also found the same difficulty that confronted the Court and Sri Jois.

10. On the above analysis, it is clear that the language of the Rule, which is not happily worded, requires to be properly interpreted, if it so becomes necessary by altering the structure and the language also. In this connection it is useful to bear in mind the principles enunciated by the Supreme Court in *State of Karnataka v. Hansa Corporation*, AIR 1981 SC 463, approving the principle stated by Lord Denning in *Seaford Court Estates Ltd. v. Asher*, (1949) 2 All. E.R. 155, which reads thus:

"There is always a presumption of constitutionality of a statute. If the language is rather not clear and precise as it ought to be, attempt of the Court is to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly untenable. However, where one has to look at a section not very well drafted but the object behind the legislation and the purpose of enacting the same is clearly discernible, the Court cannot hold its hand and blame the draftsman and chart an easy course of striking down the statute. In such a situation the Court should be guided by a creative approach to ascertain what was intended to be done by the Legislature in enacting the legislation and so construe it as to give force and life to the intention of the legislature. This is not charting any hazardous course but is amply borne out by an observation worth reproducing in extenso in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All. BR 135 at p. 164. It reads as under:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and

then he must supplement the written word so as to give "force and life" to the ingestion of the legislature. That was clearly laid down (3 Co Rep 7b) by the resolution of the judges (Sir Roger Monwood, C.B., and the other barons of the Exchequer) in Heydon's case (1584) (3 Co Rep 7a), and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his note (2 Plowd 465) to Eyston v. Studd (1574) 2 Plowd 463. Put into homely metaphor it is this: A Judge should ask himself the question how, if the makers of the Act had them selves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases". This view was reaffirmed in Norman v. Norman (1950) 1 All ER 1082."

Bearing these principles and other well settled principles of construction of statutes, it is necessary to ascertain the true scope and ambit of R. 12 of the Rules

11. S. 320 of the Act, the validity of which has been upheld and the scope of which has also been explained by this Court in Ramachandra Shetty's case, (1979) 2 Kar.L.J. 173, in unambiguous terms confers power of transfers on Government or its delegates. S. 320 of the Act does not place any restriction on the power of transfer. S. 320 does not restrict the power of transfer to cases of penalties or request referred to in R. 12 of the Rules. A rule made by Government cannot curtail or restrict the power of transfer conferred by the Act. A rule made by Government must be read as consistent and carrying out the purpose and object of the Act.

12. The object of making R. 12 was to empower the competent authority to transfer on employee from one post to another with the attendant safeguards thereto. The main clause or part of the Rule sought to confer or reserve the power of transfer from one post to another is the same Municipality or to another Municipality if the circumstances be justified. After making such provision, the Rule naturally and very rightly sought to provide the safeguards to an employee to be transferred or transferred. The clauses or sentences following the main rule sought to safeguard the lien and status of a Municipal employee transferred under the main enacting part of the Rule or by providing that in such a case there shall be no reduction in rank, status and pay of such an employee. For this, the Rule also sought to provide an exception and the exception being cases of an employee transferred as a measure of punishment and on his own request. Unfortunately the Rule as framed is a jumble of words and has given rise to this needless controversy.

13. As I apprehend, the Rule if worded as hereunder would have achieved all those objects:

"Transfer of Municipal employee? and his lien:-A Municipal Employee may be transferred from one post to another. Provided that an employee shall not be transferred substantively to or appointed to officiate in a post carrying less pay

than the pay of the post on which he holds a lien or would hold a lien had his lien not been suspended under R. 11,

Except-(i) as a penalty imposed for on misconduct (ii) on his written request". Whether the Rule should be suitably amended or a fresh Rule should be incorporated in place of the existing Rule has matter for Government to examine and decide.

14. But one thing that is clear is that R. 12 of the Rules cannot be pressed into service by the petitioners to contend that they cannot be transferred except as a measure of penalty and on their request only.

15. The ratio is Subramanya's case, W.P. 4651 & 4652/71 dt, 3-8-72, dealing with promotions, does not bear on the point and assist the petitioners, For all these reasons, I see no merit in the contention of Sri Jois and I reject the same.

16. Sri Jois next contends that the petitioners appointed in the Municipality prior to the Act came into force, cannot be transferred from that Municipality to another Municipality. In support of his contention Sri Jois strongly relies on the ruling of this Court in N.S. Giri v. Divl. Commr., Mysore, (1972) 1 Mys. LJ 559.

17. S. 320 of the Act confers general power of transfer on the Government or its delegate. The non-obstacle clause occurring in the opening part of S. 320 of the Act is intended to give effect to the power of transfer conferred on Government even if there is any restriction placed in any provision of the Act or in any other law. S. 320. of the Act does not restrict it only to employees appointed on or after the Act came into force or to the persons that were recruited after the recruitment Rules came into force. S. 320 is a general power conferred and can be exercised in respect of every Municipal employee, whether appointed before the Act came into force or thereafter. The fact that a person has been appointed prior to the Act came into force, does not take away the power of Government or its delegates to transfer him from the Municipality to another Municipality.

18. In Ramachandra Shetty's case, (1979) 2 Kar.L.J. 173, the Division Bench while dealing with the validity of S. 320 has expressed the same view. Hence, I find it difficult to uphold this contention of Sri Jois.

19. In Giri's case, (1972) 1 Mys. LJ 559, this Court was examining a peculiar case of a person appointed under a separate enactment which was still in force in the erstwhile State of Madras area and the power of transfer exercised by the Divisional Commissioner. As I apprehend, this Court in Giri's case, (1972) 1 Mys. LJ 559, has proceeded on the assumption that the Act is a general Act and the Madras Public Health Act, 1939 under which Gin had been appointed was a special Act and has given effect to the well known interpretation of statutes viz., "special" shall prevail over the "general". But, that is not the position in the present case. In my view, Giri's case, (1972) 1 Mys. LJ 559, cannot be read as restricting the power of transfer to cases of employees appointed prior to the Act came into force and the ratio therein does not really bear on the point and assist

Sri Jois. I, therefore, reject this contention of Sri Jois.

20. Sri Jois contends, that the power conferred on the Commissioner to effect transfers had been withdrawn by Government in its Notfn. No. HMA 99 MLR 73 dated 15-6-1974 and, therefore, it was not open to the Commissioner to transfer the petitioners.

21. In Gurulingappa Shivananappa's case, (1981) 2 Kar.L.J. 282. Rama Jois, J. has examined a similar contention and has found that the power of transfer conferred on the Divisional

Commissioner had not been withdrawn is the Notfn. dated 14-6-1974. On the question Rama Jois, J. has expressed thus:

"Learned counsel for the petitioners next contended that the power which had been delegated to the Divisional Commissioner to transfer Municipal servants had been withdrawn by circular dated 14-6-1974 produced as Annexure-D to the petitions. Sri S.V. Narasimhan, learned High Court Government Pleader appearing for the respondents clarified that the power of transfer had not been withdrawn and it continued to be delegated to the Divisional Commissioner. In support of this submission, the produced a circular dated 8th March 1979. A reading of this circular clearly indicates that the power to transfer Municipal servants, which had been delegated to the Divisional Commissioners earlier had not been withdrawn and, therefore, the Divisional Commissioner was competent to issue transfer orders. Therefore, there is no substance in the second contention urged for the petitioners".

On these principles, the contention of Sri Jois is liable to be rejected.

21. Even otherwise, the power of transfer delegated by Government to the Commissioner in its Notfn. No. P1M 28 MLR (1) 65 dated 17-1-1966 has not been withdrawn to any time. In the Notfn. dated 14-6-1974 two other earlier notifications placing certain restrictions on the power of transfer only have been withdrawn and not the notification delegating the power of transfer. In this view also there is no merit in this contention of Sri Jois and I, reject the same.

23. As all the contentions urged for petitioners fail, these writ petitions are liable to be dismissed.

24. While issuing rule nisi in these cases this Court had stayed the operation of the impugned orders as against the petitioners only. With the dismissal of these writ petitions, the interim orders issued by this Court will stand terminated and the petitioners are bound" to be relieved, if not already relieved, and report themselves for duty at the new places. Sri Jois prays that the petitioners be permitted to avail Accessary joining time and report for duty at the new places. As each of the petitioners has been transferred to different places situated outside Bellary town, they are undoubtedly entitled to the joining time. Hence, no writ, direction or order is necessary to be issued. But, in order to enable the petitioners to report for duty at the new places, the Municipality, I have no

doubt, will issue relief orders and the last pay certificates that are necessary in that behalf.

25. In the light of my above discussion, I hold that these writ petitions are liable to be dismissed. I, therefore, dismiss these writ petitions and discharge the rule issued in all these cases. But, in the circumstances of the cases, I direct the parties to bear their own costs.

26. Sri S.V. Narasimhan, learned High Court Government Pleader is permitted to file his memo of appearance for the respondents within 15 days from this day.

27. Let copies of this order be communicated to Government, Divisional Commissioner, Gulbarga Division, Gulbarga and City Municipality, Bellary within seven days from this day.