

(1998) 07 KAR CK 0057
In the Karnataka High Court
Case No : Writ Petition No. 23223 of 1996

Venkatesh Pillai

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Karnataka Urban Water Supply and Drainage Board Act, 1973 — Section 16, 17, 53, 69, 9

Citation : (1999) ILR (Kar) 517 : (1999) 2 KarLJ 250 : (2000) 3 KCCR 87 SN

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri G.K. Kulkarni, for the Appellant; Smt. V. Vidya, High Court Govt. Pleader and Sri N.S. Srinivasan, for the Respondent

Judgement

1. Heard Mr. G.K. Kulkarni, learned Counsel for petitioner, Mrs. V. Vidya, learned HCGP for respondent 1, and Mr. N.S. Srinivasan, learned Counsel for respondents 2 to 8.

2. The present writ petition is directed against the notification dated 26/27-7-1996 (Annexure-B) passed by the 2nd respondent-Karnataka Urban Water Supply and Drainage Board (in short, the "Board") transferring the petitioner from Bellary and posting him as Executive Engineer (Planning and Designs), Central Office, Bangalore.

3. At the first instance, the impugned order was stayed by this Court by the order dated 20-8-1996 for a period of eight weeks and subsequently it was continued for further periods. However, by the order dated 13-1-1998, the stay was vacated. Subsequent thereto, the Managing Director of the respondent-Board passed another order dated 13-2-1998 retransferring the petitioner to the post of Technical Assistant to the Executive Engineer, Bangalore.

4. It is not in dispute that despite vacation of the interim order and passing of order of retransfer, the petitioner has not reported for duty on the ground that

the Managing Director of the respondent-Board had no competence to pass the order of transfer in respect of the petitioner. To substantiate the said ground, he has relied on the order dated 31-1-1995 (Annexure-C) wherein it was inter alia directed that the Assistant Executive Engineer and other officers of the equivalent cadre in the establishment of the Board can be transferred by the Managing Director subject to approval of the Chairman of the Board and in respect of the Executive Engineers and above, the Government alone can transfer.

5. According to the petitioner, he had been promoted by the Government from the cadre of Assistant Executive Engineer to that of the Executive Engineer pursuant to the Government notification dated 13-6-1995 (Annexure-A) which reads thus.-

"Rescinding the orders issued in Notification No. HUD 43 UWE 93 (P), dated 10-10-1994 and Notification No. HUD 43 UWE 93 (P), dated 22-10-1994 and in supersession of all directions issued in this behalf, Sri Venkatesh Pillai, waiting for postings is hereby transferred and appointed in public interest, posted with immediate effect and until further orders in the existing vacancy as Executive Engineer (Independent Charge) Karnataka Water Supply and Drainage Board, Bellary Division, Bellary vice Sri G.M. Madegowda, who was transferred".

6. The short but important question which tails for my consideration in this writ petition is as to whether the State Government has any power of recruitment/promotion/transfer of the employees/officers of the Board which is governed by the provisions of Karnataka Urban Water Supply and Drainage Board Act, 1973 (in short, "the Act") and Rules framed thereunder.

7. As per the preamble of the Act, the Board was established for regulation and development of drinking water and drainage facilities in the urban areas of the State of Karnataka. The Board has been created u/s 3 of the Act as a body corporate. Its functions are defined under Sections 16 and 17 of the Act. Section 9 of the Act provides for appointment of the officers and servants of the Board. It reads thus.-

9. Appointment of Secretary, Chief Engineer, Accounts Officer and other officers and servants of the Board.--(1) The Board may appoint a Secretary, a Chief Engineer, an Accounts Officer and such other officers and servants as it considers necessary for the efficient performance of its functions:

Provided that the appointment of the Secretary, Chief Engineer and the Accounts Officer shall be made with the previous approval of the Government:

Provided further that in case of emergency.-

(a) the Managing Director may appoint, temporarily, for a period not exceeding three months such officers or servants as may, in his opinion, be required for the purpose of this Act, and the employment of whom for any particular work had not been prohibited by any resolution of the Board; and

(b) every appointment made under clause (a) shall be reported by the Managing Director to the Board at the next meeting.

8. Section 69 of the Act empowers the Board to frame Regulations. Admittedly, the petitioner had entered into service as an Assistant Executive Engineer. As per Schedule II to the Karnataka Urban Water Supply and Drainage Board Services (Cadre and Recruitment) Regulations, 1985 (in short, "the Regulations"), the post of Assistant Executive Engineer and Executive Engineer both fall under Group "A" and the posts of Executive Engineers, as per Sl. No. 5 of Schedule I to the Regulations, are to be filled 50% by promotion from the cadre of Graduate Assistant Executive Engineers of the Board on the basis of seniority-cum-merit and subject to fulfilment of other conditions indicated therein. As per Regulation 11(iii) of the Regulations, the "Board" is the appointing authority for Group "A" and "B" posts. Admittedly, in the present case, the Board has not promoted the petitioner from the post of Assistant Executive Engineer to that of Executive Engineer. In the statement of objections filed by the State Government it has been clearly stated that the Government cannot even purport to do.

9. In my opinion, even if the Government at all intended to promote the petitioner, it was beyond its competence and therefore it has to be taken as final that the petitioner was never promoted to the post of Executive Engineer and is still a member of the cadre of Assistant Executive Engineers. It may be relevant to state here that admittedly the Board under its resolution dated 27-6-1988 has empowered the Managing Director of the Board to effect transfer of any of its employees and therefore no fault can be found with the exercise of power by the Managing Director of the Board to transfer the petitioner. At this stage, I find it relevant to delineate the powers of the State Government as envisaged under the Act. Section 53 of the Act provides for the power of the Government to issue orders and directions to the Board and it reads thus.-

53. Power of the Government to issue orders and directions to the Board or local authorities.--The Government may issue to the Board or to the local authority concerned such orders and directions as in its opinion are necessary or expedient for carrying out the purposes of this Act and the Board or such local authority as the case may be, shall give effect to all such orders and directions.

10. Reading of the aforesaid section makes it quite clear that the above powers can be exercised by the State Government only for giving general directions with regard to the functions of the Board. Under the said power, the Government cannot vest unto itself the powers of the Board or the Managing Director as envisaged under the Statutory Regulations regarding appointments and transfers which are matters of day-to-day administration.

11. In the case of Managing Director, Orissa Industrial Infrastructure Development Corporation, Bhubaneswar Vs. Sarat Chandra Patnaik and Another, , it has been held that Government pursuant to its statutory powers of giving directions as to policy cannot issue any direction in day-to-day

administration of the corporation otherwise the very authority of the corporation gets eroded and contrary to legislative intendment the corporation would become a wing of the Government Department.

12. For the said reasons, the petitioner is not entitled to the reliefs as claimed in the writ petition which is accordingly dismissed.