

(2000) 08 KAR CK 0079
In the Karnataka High Court
Case No : Writ Petition No. 19968 of 2000

Y. Ravikantha Bhat

APPELLANT

Vs

Mangalore University and Another

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Karnataka State Universities Act, 1976 — Section 35 (m), 36

Citation : (2000) 4 KCCR 2677

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Subba Rao and Company, for the Appellant; P.S. Rajagopal, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—An Official of the Mangalore University is before this Court challenging the order No. MU 6:EST(2):2000-2001, dated 5.6.2000 (Annexure-D), on the following facts:

Petitioner was initially appointed as First Division Assistant to the Mangalore University in the year 1984. He was promoted as Senior Assistant in 1990. Subsequently he was promoted as Superintendent in the year 1993 in the pay scale of Rs. 6,000- 150-7,200-8,800-260-10,880-320-11,200. He says that he is the President of Mangalore University Non-teaching Staff Employees Association in the year 1991-92. He is an active trade unionist having undertaken several causes of the employees with the University. He says that he has filed certain disputes with regard to another group of employees and the same is pending before the Civil Court, Mangalore. According to him at the instance of certain vested interests he is transferred to Field Marshall K.M. Cariappa College, Madikeri by the impugned order. It is this order that is questioned by the Petitioner in this Court. Petitioner states that though the Field Marshall K.M. Cariappa College, was brought within the administrative control of the University, the Lecturers and the non-teaching staff in the University are treated as different

for all practical purposes. He has pointed out the difference in pay scale, conditions of service and method of work. According to him there is only one sanctioned post of Superintendent in the college at Madikeri and one Smt. Bojamma is working in the said post and she is not transferred. Since there is no sanctioned post at Madikeri, there is no need for transfer. According to the Petitioner the transfer is contrary to the Universities Act.

2. Notice was issued and the Respondents have entered appearance and they have filed their detailed counter justifying their stand in the matter. They say that the present transfer has been effected in public interest. University has also denied the various allegations made by the Petitioner. They have assured that the service conditions of the Petitioner would be protected. A rejoinder statement has been filed by the Petitioner and the Respondent-University has filed additional documents and the matter is heard at great length on several days.

3. Learned Counsel for the Petitioner argued at great length to convince me in this case. According to him the transfer is not bonafide and the transfer was effected to see that the trade union activities of the Petitioner are curtailed at Mangalore. His further argument is that there is no post as such existing in Madikeri. Present transfer of the Petitioner with the post is nothing but creation of a post which is contrary to Section 35(m) and Section 36 of the Universities Act. He has also taken me through various case laws which have been discussed in the subsequent paragraphs.

4. Per contra, Mr. P.S. Rajagopal, learned Counsel for the respondent was equally emphatic in putting forth his case. He argued that the college has been taken over and on account of need they have deployed the Petitioner to meet the immediate needs of Madikeri College. According to him the post as such at Mangalore is not abolished and therefore there is no violation of any of the provisions of the Universities Act.

5. From the material facts placed before this Court it is clear that the Petitioner is working as a Superintendent in Mangalore University, Library, at Mangalore. He has now been issued with an order at Annexure-D dated 5.6.2000 in which it is stated that the Petitioner is transferred along with the Post with immediate effect.

6. From the pleadings and the documents placed before me two questions arise for consideration;

1. Whether the order of transfer is contrary to law.

2. Whether the transfer is a malafide one.

7. Petitioner contends that the order of transfer at ANNEXURE-D dated 5.6.2000 would show that the Petitioner has been transferred with the post. This according to the Petitioner would result in creation of post and therefore the same is hit by Section 35(m) and Section 36 of the Universities Act. Petitioner also states that even on facts the post of Superintendent in the cadre of Non-Teaching Staff at the Filed Marshall K.M. Cariappa College is in the pay scale of Rs.

6,000-11,200/-, whereas at the University the pay scale of Superintendent is Rs. 5,200- 9,580/-. The service conditions differ when compared to the University is the contention urged before me. Petitioner also placed on record the documents Annexures-A and B, evidencing the same.

8. Respondents on the other hand contended that there it is only a transfer in Public Interest.

9. At the first blush, it may appear that the Petitioner is transferred with the post. The argument of the Petitioner is that there is only one post of Superintendent i.e., of Smt. Bojamma in non-teaching staff in the college of Madikeri. Petitioner has also relied on the seniority list to show that the University and the College are the two independent establishments and any transfer as has been done in the case on hand is nothing but creation of additional post. It is no doubt true in Annexure-A it is shown as one post of Superintendent in the College, but the University has placed on record material to show that the said contention is not based on facts. The University has placed the schedule of establishment for the year 1998-99, 1999-2000 and 2000-2001. It is seen that there are two posts of Superintendents in the College at Madikeri. Therefore it can safely be presumed that there are two posts of Superintendents available at the Madikeri College. The Respondent-University has chosen to transfer the Petitioner on account of the need due to admission period for the academic year 2000-2001. It is also on record, that in this College and the Government College, Mangalore, employees were transferred to the University as constituent Colleges. The notification dated 27.8.1994 categorically showed that the Chancellor has given assent to the vesting of the entire establishment of the College of Madikeri. The statute also provides for the transfer of the employees of the Government College, Madikeri to other constituent Colleges and the main campus and visa-versa. In the light of the statute and in the light of the availability of two posts of Superintendents in Madikeri College it cannot be said that by virtue of the present transfer a post is sought to be created contrary to Sections 35(m) and 36 of the Act, as vehemently contended by the learned Counsel for the Petitioner.

10. The power of transfer is not challenged before me. What is challenged is the creation of a post by the said transfer. Now I have come to a conclusion that there is no creation of post as such. The argument of the Counsel that the impugned order runs counter to the Universities Act is not available in view of the finding in para 9 of the order.

11. Petitioner's Counsel invites my attention to the differences in salary and other service conditions between the Madikeri College and the University to contend that the Petitioner would be suffering on account of the present order of transfer. So far as this matter is concerned I would only reproduce what is stated in the counter statement in para 6.

The University in para 6 at page 8 has stated here under:

This disparity is due to the reason that the posts of superintendents in the Colleges were under Government pay scales and the posts of Superintendents at the main campus have always been in the University pay scales. This Respondent to protect the interests of the Petitioner, while transferring him to Madikeri the post held by him has also been transferred and this Respondent submits that he will continued to be paid the salary allowances and other benefits in the pay scale of Rs. 6,000-11,200 and he shall continue to maintain his seniority and his further promotions will be considered in accordance with the post held by him as per Rules and Statutes.

Again in para 7 to reiterate their stand with regard to para 6 it is stated as under:

The salary, allowances, pay scale, seniority and promotional opportunities that are available to the Petitioner as an employee of the University will be protected and there be no curtailment of any benefit or allowance pursuant to the present transfer.

A reading of the averments made in paras 6 and 7 would show that the University has agreed to maintain the pay scales of the Petitioner in addition to maintaining his seniority. They have also agreed to provide promotion in accordance with post held by the Petitioner as per rules and statute. The apprehension of the Petitioner of his deprivation of the present scale and seniority is fully protected by this statement of the University.

12. Petitioner's Counsel also stated that a reading of the various orders would show that the order is not in public interest. I have carefully gone through the documents filed by the University and the Petitioner in the case on hand. The correspondence between the University and the College would show that there is an imperative need of an experienced hand to take care of the admission in Post Graduation Course at the beginning of the academic year at Madikeri. The Registrar had issued the transfer order which has been subsequently ratified by the Syndicate. In these circumstances, it cannot be said that the said order runs in any way counter to any statutory provision as contended by the Petitioner. This argument is rejected.

13. Learned Counsel for the Respondents states that there are several transfers that have been effected in the past between the University and the College and they have mentioned the same in detail in the counter statement filed before this Court. Hence in my view the contention that the Petitioner alone has been picked up by the University for transfer to Madikeri College is nullified.

14. Petitioner also questions the need of the Petitioner at the College. It is well settled that transfer is an incident of service. It is for the authorities to decide their state of affairs and it is not for this Court to interfere in the decision of transfer unless otherwise the same is tainted by mala fide intentions.

15. Mr. Rajagopal, learned Counsel for the Respondents has invited my attention to the dictionary meaning of the word "abolish".

In Black Law's dictionary the word abolish" has been explained as under:

Abolish - to do away with wholly; to annul; to repeal; to rescind; to abrogate; to dispense with.

In the case on hand, the meaning of the words "transferred with the post" does not by itself mean abolition of the post at Mangalore and creation of a post at Madikeri as contended by the Petitioner on the facts of this case.

16. In these circumstances the first argument of the Petitioner is rejected.

17. The second argument of the Petitioner is, even assuming that the transfer is valid, it is on account of the Petitioner being an active trade unionist, he has been victimized by transfer. It is no doubt true that the Petitioner is a trade unionist as is evident from his pleadings but it does not give him a no transfer for all time to come. No Rules or procedure has been brought to my notice providing for no transfer in the case of trade unionist officials. A trade unionist is also an employee who is also bound by the rules and regulations as are applicable to such other members of the staff. Petitioner though has stated that it is a malafide transfer at the instance of vested interest but he has not chosen to implead those persons as Respondents. Being a President/Director of a society by itself does not give him any immunity from being transferred.

18. In these circumstances, I do not find any ground to set aside the transfer order on the ground of malafides.

20. Learned Counsel for the Petitioner has placed various case laws in support of his case.

(a) The first case is reported in Arvind Dattatraya Dhande Vs. State of Maharashtra and others, . A reading of the judgment would show that the Hon"ble Supreme Court was concerned with regard to transfer of an official at the instance of an aggrieved contractor. The said judgment is not applicable to the facts of the case. In the case on hand the transfer is not effected at the instance of anybody.

(b) The case of Om Prakash Rana Vs. Swarup Singh Tomar and Others, was pressed into service for the purpose of this case. In that case the Court was concerned with regard to the Services Commission Act and the Education Act. Facts of the case would show that a transfer of Principal from one Educational Institution to another by invoking Section 16(G)(2)(c) of the Education Act after commencement of the Services Commission Act is not permissible. Court has considered both these Acts and ruled that after commencement of the Service Commission Act transfer is permissible under the Education Act. This judgment is again of no assistance to the Petitioner.

(c) Petitioner has also placed on record the famous case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Since I have already given a finding of fact that there is no arbitrariness I need not

dwelling on the principles relied in this case.

(d) Petitioner has also relied on the case of 1960 SC 650 (M/s. Kundan Sugar Mills v. Ziauddin and Ors.) that was a case of right to transfer an employee from one concern to another which was commenced subsequent to the date of the employment of the Petitioner. The Court considered the power of an employer to transfer an employee to a new concern.

In the case on hand, the Chancellor has given his assent to the statute as referred to earlier in the matter of Government College, Madikeri with Mangalore University. The statute is not challenged and the power to transfer is also not challenged, therefore, Kundan Mills Case may not come to the rescue of the Petitioner.

(e) Petitioner has placed reliance on the judgment of the Kerala High Court (1989) 6 SLR 245 (Babu v. Chief Engineer, (1984) LIC 131 (P. Krishna Rao v. AP Co-operative Agricultural Development Bank Limited and (1983) 4 SLR 349 (Ramadhar Pandey v. State of Uttar Pradesh); to contend that the transfer is effected by way of victimisation.

I have on facts held that there is no victimization as such. Judicial notice can be taken that if there is any tainted or mala fide transfer the Courts can certainly interfere. But a mere label of trade unionist by itself does not convert a transfer as tainted, as sought to be made out by the Petitioner. Petitioner's only grievance is that he has already initiated certain proceedings at Mangalore and it may not be possible for him to attend to those cases. Since Mangalore is situated very near to Madikeri, it cannot be said that the distance would come in the way of the Petitioner contesting his case. Looking from any angle the theory of victimization cannot be accepted.

21. In the result, I reject the contentions urged by the Petitioner and uphold the impugned transfer order with the undertaking of the Respondents of maintaining his pay scales other allowances in addition to the undertaking to maintain the seniority / promotion to him.

22. Before concluding, from the material on record it is seen that the Petitioner's services are placed at the disposal of the Madikeri College to meet the immediate need of admission to the Post Graduation Course at the beginning of the academic year. In the course of argument it was brought to my attention that the admission procedure may come to an end by the end of October, 2000. If that is so, I deem it proper to direct the Petitioner, if so advised to submit a representation to the authorities and if the authorities are convinced of the same, they may consider his case sympathetically and transfer the Petitioner from Madikeri to Mangalore without in any way being influenced by this order. I make it clear that this order shall not be construed to come in the way of consideration of the representation of the Petitioner by the University.

In the result, writ petition is rejected without any order as to costs.

ORDER

1. After pronouncement of the order Petitioner's Counsel submitted that in the light of the proceedings before this Court he did not report for duty. He apprehends that the Respondent may not take him at the transferred place now and he further apprehends that Respondent may take action against him. I deem it proper to direct the Respondents on the peculiar facts and circumstances of this case to permit him to report for duty at Madikeri within 15 days from today. It is also made clear that the University shall not take any disciplinary action against the Petitioner for his non- reporting at Madikeri on the facts of the case.

2. Ordered accordingly.