
(1986) 08 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 10512 of 1986

Yohana

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) ILR (Kar) 4016

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; N. Santosh Hegde, General for R-1, S.V. Narasimhan, HCGP for R-2 to 4 and H. Subrahmanya Jois, for R-5., for the Respondent

Judgement

K.A. Swami, J.—In this petition under Article 226 of the Constitution, the petitioner has sought for quashing the order dated 19-6-1986 passed by the Deputy Commissioner, Mysore District, in No. 50/86-87, produced as Annexure-C. By the impugned order, the petitioner has been transferred from Hinkal to Alagodu. The 5th respondent has been transferred from Duddagere to Hinkal. The petitioner was functioning as Village Accountant at Alagodu. He came to be transferred on 13-9-1985 to Hinkal. Pursuant to the order of transfer, he handed over the charge of the office and reported to duty at Hinkal; and thereafter the impugned order has been passed.

2. The case of the petitioner is that the 3rd respondent has misused his official position, as Special Officer to the Chief Minister, and has sent a communication to the Deputy Commissioner, Mysore, as per Annexure-G dated 6-6-1986 informing him that the Chief Minister has directed that the 5th respondent be transferred to Hinkal. There are other orders referred to and averments made, in the Writ Petition. It appears to me, for the purpose of this order, it is not necessary to refer to them. In view of the allegations made by the petitioner, learned Government Pleader was asked to ascertain the true facts. Learned

Government Pleader was also asked to take notice on behalf of the 3rd respondent. Pursuant to that, the 3rd respondent has filed the statement of objections denying the allegations made by the petitioner. In addition to this, learned Advocate General appearing for the State, on receiving the instructions from the Chief Minister, submits that the communication dated 6-6-1986 was issued by the 3rd respondent on the oral instructions issued by the Chief Minister. It is submitted that normally the Chief Minister entertains the representations by the public regarding their grievances. During such course, the representation made by the wife of the 5th respondent was also received and the Chief Minister being convinced of the difficulties pleaded by the wife of respondent-5, orally instructed the 3rd respondent to direct the Deputy Commissioner to transfer respondent-5 to Hinkal. It appears to me that there is no reason to reject the submission made by learned Advocate General.

3. Sri K. Subba Rao, learned Counsel for the petitioner submits that oral instructions have DO value in the eye of law; therefore, such instructions cannot be construed to be an order; hence the communication dated 6-6-1986 issued by the 3rd respondent cannot have any value and the order of transfer passed by the 2nd Respondent pursuant to that cannot be considered to be valid order. It is not possible to accept this contention. There is a distinction between the orders which are purely administrative in nature and the orders which affect the rights of the parties and which relate to several other matters. For the purpose of this case, it is not necessary to refer to them in detail. The oral instructions issued by the Chief Minister, in the instant case, fall within the category of purely administrative in nature as the same relate to a matter of transfer. A Government-servant has no right to serve at a particular place ; therefore, he has no right to claim that he should be retained at a particular place. A Government servant appointed to a cadre of transferable post such as the petitioner and Respondent-5, is amenable to transfer from place to place and cannot claim a right to stay in one place throughout his service. Therefore an order of transfer cannot be held to affect the rights of a Government servant. As such, any instructions issued in this regard by the higher authority to the concerned authority regarding transfer, cannot be construed as affecting the right of a Government servant. In such a situation, if the oral instructions issued by a higher authority, are reduced to writing by a subordinate, and communicated to the concerned authority, that becomes an order passed by the authority on whose oral instructions it is issued, The validity or credibility of it can be lost only if it is proved that there were no such oral instructions given by the concerned authority. In the instant case, I have already held that the Chief Minister has issued oral instructions to the third Respondent and on the basis of that he has addressed a letter dated 6-6-1986 (Annexure-G). Therefore, the contention of the petitioner that the order of transfer is vitiated in view of the allegations of mala fides made against the 3rd Respondent must fall to the ground.

4. However, it is necessary to make it clear that the aforesaid conclusion does not and shall not be construed to mean that the practice of Issuing oral

instructions in matters like this, is approved by this Court. It is always better that the instructions are issued in writing in some form or the other, which the authority issuing instructions may find it convenient to adopt. Such a course eliminates the possibility of misuse of the authority by the persons to whom the instructions are issued.

5. The next submission made by Sri Subba Rao, learned Counsel for the petitioner, is that the oral order of the Chief Minister is obtained by the wife of the 5th respondent on a misrepresentation. The summary of the representation is stated in the communication dated 6-6-1986 (Annexure-G) issued by the 3rd respondent. It states thus :

The petitioner has now produced the endorsements issued by the Head Masters of Government Lower Primary School and Higher Primary School at Hinkal dated 16-7-1986, as Annexures H and J respectively. These endorsements state that during the years 1984-85 and 1985-86, no children of the 5th respondent had been admitted in their schools. Therefore, the question now arises for consideration is, whether the wife of respondent-5 has obtained the order from the Chief Minister on a misrepresentation. Sri Subrahmanya Jois, learned Counsel for the 5th respondent, submits that this aspect may be verified by the Government and in the event it is found that the representation made by the wife of the 5th respondent is not correct, it is open to the State Government to take appropriate action. There is no doubt that an order obtained whether it be from the Government or from any authority, and it be of any nature whether administrative or otherwise, if it is proved that it is obtained on misrepresentation, it gets vitiated and such an order is liable to be revoked. Under these circumstances, it is open to the petitioner to make appropriate representation before the Government enclosing the documents produced herein as Annexure-H and J requesting the State Government to recall the order. On receipt of such a representation, the Government shall call a report from the concerned Deputy Commissioner and take action in accordance with the report.

6. Accordingly, this Writ Petition is disposed of in the following terms :

It is open to the petitioner to make a representation before the Government enclosing the endorsements produced herein as Annexure-H and J, to recall the order of transfer of the petitioner and that of the 5th respondent and post him to Hinkal on the ground that the same is obtained by the 5th respondent and his wife on misrepresentation. On receipt of such representation, the Government shall call for the report from Deputy Commissioner of the concerned District and take action in accordance with the report. The representation be disposed of within one month from the date of its receipt.