



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2022

PRESENT

THE HON'BLE MR. JUSTICE G.NARENDAR

AND

THE HON'BLE MR. JUSTICE C M JOSHI

WRIT PETITION NO.11934/2022 (S-KSAT)

BETWEEN:

SRI R D RAMADAS

... PETITIONER

(BY SRI MANJUNATHA P.V, ADV.)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY IT'S
UNDER SECRETARY,
RURAL DEVELOPMENT AND
PANCHAYATH RAJ DEPARTMENT,
M.S BUILDING,
BANGALORE - 560 001.
2. THE CHIEF EXECUTIVE OFFICER,
ZILLA PANCHAYATH, MYSURU TALUK,
MYSURU DISTRICT -570 023.

3. THE EXECUTIVE OFFICER,
TALUK PANCHAYATH,
MYSORE TALUK,
MYSURU DISTRICT - 570 023.
4. SRI. KULLEGOWDA

... RESPONDENTS

(BY SMT. SHILPA S.GOGI, HCGP FOR R1 TO R3,
DR. LOKESH B.N, ADV. FOR C/R4.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT OR ORDER OR DIRECTION QUASHING THE ORDER DATED 30/05/2022 MADE IN APPLICATION NO.1650/2022 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BENGALURU, BEING ARBITRARY, ERRONEOUS AND OPPOSED TO LAW EQUITY AND JUSTICE (ANNEXURE-A) ETC.

THIS WRIT PETITION COMING ON FOR "PRELIMINARY HEARING" THIS DAY, G.NARENDAR J, MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned High Court Government Pleader for respondent Nos.1 to 3 and the learned counsel for caveator/respondent No.4.

2. The petitioner is before this Court being aggrieved by the order dated 30.05.2022 rendered in Application No.1650/2022 passed by the Karnataka State Administrative Tribunal, Bengaluru.

3. The case of the petitioner is that he came to be transferred to the post held by respondent No.4 at Beerihundi Grama Panchayath, Mysuru Taluk, Mysuru. That respondent No.4 aggrieved by the same approached the Tribunal on the short ground of transfer being a pre-mature transfer.

4. It was contended that he had been posted to the said post on 02.03.2019 and he being a Group C Officer is entitled to a minimum assured stay of four years and in that view, the present order of transfer is a pre-mature transfer and there being no concurrence of Hon'ble Chief Minister, the same was in violation of the transfer Guidelines framed by the respondent State in 2013. The Tribunal accepting the case of respondent No.4 was pleased to allow the

application and set-aside the order of transfer on the short ground that the same is a pre-mature transfer and is contrary to the law laid down by this Court in the case of *M. Rajashekar vs. State of Karnataka and Others* passed in *W.P.No.45916/2018*. Aggrieved by the order of the Tribunal, the instant petitioner is before this Court.

5. We have heard the learned counsel for the petitioner and the learned High Court Government Pleader for respondent Nos.1 to 3 and the learned counsel for caveator/respondent No.4.

6. We had also directed the learned High Court Government Pleader to secure the records relating to the transfer as it was vehemently contended by the petitioner that the Tribunal erred in not noticing the fact that the order of pre-mature transfer is preceded by a concurrence or prior approval of the Hon'ble Chief Minister. In that view, the records are placed today. We have perused the records.

7. The records clearly indicate that the Chief Minister has given his prior approval on 04.09.2021 and thereafter, it is followed with the impugned order of transfer on 12.04.2022. In fact, the dates would reveal the transfer has been effected after enduring the regular transfer session. In that view of the matter, the finding of the Tribunal that the same is a pre-mature transfer and contrary to the law laid down by this Court is wholly unsustainable. This Court has oft and repeatedly held that a pre-mature transfer is vitiated only in the absence of it being preceded by prior approval of the Hon'ble Chief Minister.

8. In the instant case, it appears that the Tribunal in its desire to dispose of the case has neither summoned nor waited for production of the records by the respondent-State. What is even more disconcerting to the Court is the fact that both the posts are within the same Taluk i.e., Mysuru Taluk abutting Mysuru City.

9. On a query, we are informed that two posts are separated by a distance of meager 40 kms. It, in our opinion, is a communicable distance, more so, in the backdrop of the fact that the posts are lying in an area abutting a fully developed City like Mysuru. Despite this, the Tribunal has proceeded to mechanically apply the law laid down by this Court without reference to the facts which are peculiar to the case on hand.

10. It is high time that the respondent-State also takes up some responsibility in having a re-look into 2013 Transfer Guidelines. The State being the largest litigant owes a duty to the justice delivery dispensation.

11. On a query, we are informed by learned counsels that transfer applications occupy a major chunk of the litigation before the Tribunal and it is time for the respondent-State to look into the concept of communicable distance and also the distinction between areas, which are well equipped with all the basic necessities like Hospitals,

Schools, Colleges, residential accommodation etc and remote and inaccessible areas involving Hilly Terrain, Towns and Villages surrounded by forest etc or towns and villages in highly undeveloped or under-developed parts of the State.

12. In the instant case, it is indisputable that the places are within very short distance of Mysuru City, which has a well developed network of Transport facility, Hospitals, residential accommodation etc. Despite the same, we find the government servants rush to the Court that they have been transferred to posts, which are within a communicable distance and in this particular case, a meager 40 kms. That apart, in our opinion, the Guidelines were framed only to prevent the arbitrary exercise of power or by turning transfers into a tool of harassment or to mitigate any personal hardship that may be suffered by parties. In the instant case, we do not see even a plea that the transfer is arbitrary or has been resorted to as a measure of harassment nor is there a plea to demonstrate

any hardship that would be faced by the applicant/respondent No.4 herein.

13. In that view, we are of the considered opinion that the Principal Secretary, DPAR shall look into the observations made by this Court and draw appropriate measures and place them before the Government for taking steps and have a re-look into the 2013 Guidelines. We are of the considered opinion such positive measures can prove fruitful in saving the precious judicial time of both the Tribunal and this Court. The Principal Secretary, DPAR shall forward his recommendations to the Government within eight weeks with a copy to this Court.

14. In the facts and circumstances, we are of the considered opinion that though the transfer is premature, the same is not vitiated as the respondents have effected the transfer after obtaining the prior approval of the Hon'ble Chief Minister. The records reveal various communications, which would demonstrate that the respondents were

satisfied that the transfers were required in public interest. In that view of the matter, the order of the Tribunal dated 30.05.2022 made in Application No.1650/2022 is set-aside. The transfer order dated 12.04.2022 is affirmed.

15. The parties shall forthwith abide by the order of transfer dated 12.04.2022 within a period of two weeks from today.

A copy of this order be forwarded to the learned Advocate General and the Chief Secretary.

Sd/-
JUDGE

Sd/-
JUDGE

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