

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

Dated this the 30th day of June 2020

Present

THE HON'BLE MR. JUSTICE S.G. PANDIT

and

THE HON'BLE MR. JUSTICE V. SRISHANANDA

Writ Petition No.147022 of 2020 (S-KAT)

Between

Sri.Suryakanth M. Sangolli,
S/o Mallikarjuna Sangolli,
Aged: 59 Years,
Assistant Conservative of Forest,
Office of the Assistant Conservative
of Forests, Belgavi Sub-Division,
Forest Compound, Old PB Road, Belagavi,
R/a: 599, TV Centre, Sector,
Belagavi-590013. ...Petitioner

(By Sri. Guru Math, Senior Counsel, for Sri
Mallikarjunswamy B. Hiremath, Advocate)

A n d

1. The State of Karnataka
Rep. by its Principal Secretary,
Forest, Ecology And Environment
Department, M.S. Building,
Bengaluru-560001.
2. The Principal Chief Conservator

of Forest & Chief of Forest Force
Aranya Bhavan,
18th Cross, Malleswaram,
Bengaluru-560003.

3. The Chief Conservator of Forests
Belagavi Circle,
Belagavi-590001.
4. The Deputy Conservator of Forests
Belagavi Division,
Belagavi-590001.
5. Sri. Mallinath B. Kusunal
Age: Not Known,
Assistant Conservative of Forest
(Under Rule 32),
office of the Assistant Conservative
of Forest, Mobile Squad,
Belagavi-590016.

...Respondents

(By Sri. G.K. Hiregoudar, Govt. Advocate for R1 to R4
Sri. Raviraj C.Patil and Shri Shripad J.Joshi,
Advocates for C/R5)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to issue a writ of certiorari quashing the order dated 24.06.2020 passed by the Karnataka State Administrative Tribunal., at Belagavi in Application No.10512/2020 produced and marked as Annexure-B consequently allow the said application.

This Writ Petition coming on for Preliminary Hearing through Video Conference due to covid-19, this day, **S.G. PANDIT, J.**, made the following:

ORDER

The petitioner, who is an Assistant Conservator of Forest in the Department of Forest, Government of Karnataka, is before this Court under Article 226 of the Constitution of India assailing the order dated 24.06.2020 passed by the Karnataka State Administrative Tribunal, Belagavi (for short, 'the KSAT'), in Application No.10512 of 2020, by which his application challenging his transfer was dismissed.

2. Both – the petitioner and the respondent No.5 are working as Assistant Conservator of Forest in the Department of Forest. It is stated that the petitioner is a regular holder of the post of Assistant Conservator of Forest, whereas respondent No.5 is holding the post of Assistant Conservator of Forest under Rule 32 of the Karnataka Civil Service Rules (for short, 'the Rules'). The petitioner was posted to work as Assistant Conservator of Forest, Belagavi Sub-Division, Belagavi,

by order dated 31.01.2018, in pursuance of which he reported to duty on 23.03.2018. By notification dated 04.06.2020 (Annexure-A4), respondent No.5 was posted in place of the petitioner and the petitioner was also posted as Assistant Conservator of Forest, Forest Mobile Squad, Belagavi. The said order of transfer and posting of respondent No.5 was challenged in Application No.10512 of 2020 before the KSAT. Before the KSAT, it was contended that the petitioner is a regular holder of the post of Assistant Conservator of Forest, whereas respondent No.5, holder of the post of Assistant Conservator of Forest under Rule 32 of the Rules and as such, respondent No.5 could not have been posted in the place of the petitioner, by relying on the decisions of this Court rendered in *Raghurama Shetty Vs. The State of Karnataka and another* (W.P. No.14393/2012 decided on 07.06.2012) and in *Sri Krishna Agnihotri Vs. The State of Karnataka & others* (W.P. No.204350/2019, decided on 28/11/2019), produced as Annexures-A5

and A6. Before the KSAT, respondent No.5 as well as the Government defended the order of transfer and by relying on the decision of this Court in the case of **B.Madesh Vs. State and Others** reported in **(2015)1 KCCR 47**, they contended that even a person holding a post under Rule 32 of the Rules could be posted to function, as he also discharges the same function. Further, they contended that the petitioner had already completed his tenure as an Assistant Conservator of Forest in Belagavi Sub-Division, Belagavi, hence, he has no right to continue in the said post after completion of his tenure. The KSAT, after considering the rival contentions of the parties, by its detailed order, dismissed the application which is impugned in this writ petition.

3. Heard learned Senior Counsel, Sri Guru Math for Sri. Mallikarjunswamy B.Hiremath, learned counsel for the petitioner, Sri G.K.Hiregoudar, learned Government Advocate for respondent Nos.1 to 4, and Sri. Raviraj C.Patil and Sri Shripad J.Joshi, learned

counsel for caveator/respondent No.5. Perused the writ petition papers.

4. Learned Senior Counsel appearing for the petitioner submitted that the petitioner is a regular holder of the post of Assistant Conservator of Forest and respondent No.5, who is holding the post under Rule 32 of the Rules, temporarily, could not have been posted to disturb the petitioner. The learned Senior Counsel relied on the decision of this Court in W.P. No.204350/2019 *Sri Krishna Agnihotri Vs. The State of Karnataka & others*, which is placed on record as Annexure-A6. Further, the learned Senior Counsel submits that the petitioner is retiring within two years and the Government Order dated 07.06.2013 provides for posting such government servants to a place of his choice. Hence, he prays for allowing the writ petition.

5. Per contra, learned Government Advocate would submit that the petitioner has completed his

tenure at the present post and hence, on completion of his tenure, he has been shifted from the said post to a post within Belagavi itself. Hence, the petitioner cannot have any grievance. It is also his submission that no government servant has any right to continue in the same post on expiry of his tenure. The learned Government Advocate also distinguishes the decision of this Court in *Sri Krishna Agnihotri's* case (supra) stating that in the said case this Court was dealing the premature transfer of the petitioner, hence, the same would have no application to the present case.

6. Learned counsels appearing for respondent No.5 would submit that the petitioner has no right to continue in the post of Assistant Conservator of Forest, Belagavi Sub-Division, Belagavi, when he has completed the tenure of two years. They further submit that when the petitioner has no right to continue in the said post, he cannot object for posting of respondent No.5 who is also a holder of Assistant Conservator of Forest under

Rule 32 of the Rules who also discharges the same function as that of the regular holder of the post. Thus, they pray for dismissal of the writ petition.

7. On hearing the learned counsel for the parties and on perusal of the writ petition papers, we are of the view that no ground is made out by the petitioner to interfere with the order passed by the KSAT. Admittedly, the petitioner has completed his tenure at the present place of posting. The petitioner was posted to the said place as an Assistant Conservator of Forest on 31.01.2018 and the impugned order of transfer is passed on 04.06.2020. The Government Order dated 07.06.2013, which lays down the guidelines for transfer, prescribes a minimum period of two years for Group-A Officers and as such, the petitioner has no right to continue in the said post on completion/expiry of his term. Further, the contention that respondent No.5, who holds the post of Assistant Conservator of Forest under Rule 32 of the Rules, could

not have been posted to disturb the petitioner, holds no water in view of the decision of this Court in **Madesh's** case (supra). A Co-ordinate Bench of this Court in **Madesh's** case (supra) dealing with similar fact-situation, upheld the posting of a person who was holding the post under Rule 32 of the Rules. When the petitioner has completed two years as provided under the guidelines regulating the transfer of government servants, he cannot have any grievance with regard to posting of an Officer, who was holding the post under Rule 32 of the Rules to replace him. Once an Officer completes his tenure unless the person who replaces is sure to be ineligible otherwise in accordance with the cadre and recruitment rules, it cannot be said that his posting is bad in law.

8. The learned Senior Counsel tried to distinguish the present case by relying on the decision of this Court in *Sri Krishna Agnihotri's* case (supra), which is placed on record as Annexure-A6. In the case

of *Sri Krishna Agnihotri* (supra), this Court was considering premature transfer and the applicant therein had not completed his term. In *Sri Krishna Agnihotri's* case (supra), at para 11, this Court has clearly given a finding that respondent No.4 (applicant) before the KSAT was transferred prematurely in order to accommodate the petitioner. In the instant case, admittedly, the petitioner had completed his tenure and once the petitioner completes his tenure, he will have no right to remain or to continue in the said post. This view is supported by the decision of the Hon'ble Apex Court in the case of **Rajendra Singh and Others Vs. State of Uttar Pradesh and Others** reported in **(2009)15 SCC 178**.

Para 8 of the said judgment reads as follows:

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment

but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. v. Gobardhan Lal*, SCC p.406, para 7.)”

9. The other contention pressed into service by the learned Senior Counsel is that the petitioner is to retire within a period of two years and the Government Order dated 07.06.2013, which regulates the transfer, provides for posting of such person to a place of his choice. The said contention cannot be pressed into service in support of the petitioner’s case for the very fact that the petitioner is not transferred out of Belagavi where he was working since 2018. The petitioner has been posted from one office to another office in Belagavi itself. As such, it is as good as conceding to the petitioner’s request to post him at a place of his choice i.e., Belagavi itself. The KSAT has dealt with each and

every contention raised by the petitioner and has passed a reasoned order which requires no interference. Accordingly, the writ petition is dismissed.

**Sd/-
JUDGE**

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JUDGE**

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