

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 29TH DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.24228 OF 2021(S-KSAT)

BETWEEN:

1. DR.S.KALLAPPA
S/O REVANAPPA
AGED ABOUT 59 YEARS
WORKING AS DEPUTY DIRECTOR
ANIMAL HUSBANDRY AND
VETERINARY SERVICES
SHIVAMOGGA – 577 201.
SHIVAMOGGA DISTRICT
R/ATB-112, RENUKAMBAKRUPA
80' ROAD, SWAMI VEVAKANANDA
BADAVANE, SHIVAMOGGA.
2. DR G M HANUMANAPPA
(WRONGLY TYPED AS DR.G.M.HANMANTHAPPA)
S/O LATE MADAPPA
AGED 59½ YEARS
ANIMAL HUSBANDRY AND VETERINARY SERVICES
HOLALKERE ROAD
CHITRADURGA
R/AT SHREE SADANA
GOVINDAIAH LAYOUT, T R NAGAR
BEHIND BAPUJI COLLEGE
CHALAKERE TALUK AND POST
CHITRADURGA DISTRICT – 515281.

...PETITIONERS

(BY SRI VIJAYAKUMAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
ANIMAL HUSBANDRY AND FISHERIES

DEPARTMENT, VIKAS SOUDHA
BANGALORE – 560 001.

2. THE COMMISSIONER
ANIMAL HUSBANDRY AND FISHERIES
DEPARTMENT, BANGALORE – 560 024.
3. THE DIRECTOR
HUSBANDRY AND FISHERIES
DEPARTMENT, HEBBAL,
BANGALORE – 560 024.

... RESPONDENTS

(BY SRI S RAJASHEKARA, AGA FOR R.1 TO 3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 22.12.2021 PASSED IN APPLICATION NOS.5724-25/2021 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BANGALORE VIDE ANNEXURE – A AND ALLOW THE APPLICATIONS AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, **KRISHNA S. DIXIT.J.**, MADE THE FOLLOWING:-

ORDER

This petition seeks to call in question the judgment & order dated 22.12.2021 passed by the Karnataka State Administrative Tribunal in Application Nos.5724 & 5725/2021 whereby the challenge to their transfer order has been negated.

2. Learned Additional Government Advocate on request having accepted notice for the official respondents, opposes the petition making submissions in justification of the impugned order and the reasons on which it has been constructed.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter broadly agreeing with the reasonings of the Karnataka State Administrative Tribunal as given in paragraph 4 of the judgment which reads as under:

“4. In the instant case, the transfer has been effected after the transfer period. The transfer order requires the prior approval of the Hon’ble Chief Minister. The transfer order of 20-09-2021 was effected without securing the prior approval of the Hon’ble Chief Minister as required by the transfer guidelines of 7-06-2013 and hence the order itself is void ab-initio and non-est in the eyes of law. The applicant’s reliance on such an order is untenable under the transfer guidelines since the order of 20-09-2021 is issued in complete violation of the transfer guidelines and there is no prior approval of the Hon’ble Chief Minister to the said order of 20-09-2021 as at Annexure A1 which is mandatory in terms of the transfer guidelines. The order of 20-09-2021 is therefore, non-est in the eyes of law since it does not have the mandatory prior approval of the competent authority, Hon’ble Chief Minister. Therefore, the denial of post facto approval by the Hon’ble Chief Minister cannot be faulted”.

4. The submission of the learned counsel for the petitioners that the rigour prescribed in the Transfer Guidelines of obtaining the prior permission of Chief Minister would not apply when the posts in question are vacant, is bit difficult to countenance. Such a

construction of paragraph 9(b) of the Transfer Guidelines cannot be made without manhandling its text & context; which reads as under:

“9(b). However, before effecting any premature transfers and for making any transfer after the transfer period, and also for extending the tenure of a Government servant for the reasons stated above, prior approval of the Hon’ble Chief Minister must be obtained without fail by the concerned Administrative Department of the Secretariat. The Principal Secretaries/ Secretaries to Government should not under any circumstances issue transfer orders and later seek ratification/ post facto approval of the Chief Minister.”

In the above circumstances, writ petition being devoid of merit is liable to be rejected and accordingly, it is, costs having been made easy.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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