



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF DECEMBER, 2023

PRESENT

THE HON'BLE MR. JUSTICE R. NATARAJ

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION No. 29150 OF 2023 (S-KSAT)

BETWEEN:

1. SMT. REKHA S.,
W/O SRI MANJUNATH K. V.,
AGED ABOUT 43 YEARS,
WORKING AS ASSISTANT EXECUTIVE ENGINEER,
MINOR IRRIGATION QUALITY CONTROL
SUB DIVISION,
SHIMOGA 577201.
(NOW ASKED TO REPORT THE
GOVERNMENT SEEKING POSTING)

...PETITIONER

(BY SRI NAGARAJ D., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF MINOR IRRIGATION AND
UNDERGROUND WATER DEVELOPMENT (SERVICES),
VIKASA SOUDHA,
DR. B. R. AMBEDKAR ROAD,
BANGALORE 560001.

Digitally
signed by
SUMA
Location:
HIGH
COURT OF
KARNATAKA



2. SRI BHASKARA BABU,
S/O NOT KNOWN,
WORKING AS ASSISTANT EXECUTIVE ENGINEER,
MINOR IRRIGATION AND UNDERGROUND
WATER QUALITY CONTROL SUB DIVISION,
MYSORE 570001.
NOW ON TRANSFER TO THE POST OF ASSISTANT
EXECUTIVE ENGINEER,
MINOR IRRIGATION QUALITY CONTROL
SUB- DIVISION,
SHIMOGA 577201.

...RESPONDENTS

(BY SRI DEEPAK K. BAJANTRI, ADVOCATE FOR
SRI VIJAY KUMAR, ADVOCATE FOR C/R2;
SRI NAVEEN CHANDRASHEKAR, AGA FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT AS THIS HON'BLE COURT DEEMS FIT SETTING ASIDE THE IMPUGNED ORDER DATED 13/12/2023 PASSED BY THE LEARNED KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BENGALURU IN APPLICATION No.4071/2023 VIDE ANNEXURE-A.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, **R. NATARAJ J.**, MADE THE FOLLOWING:

ORDER

The petitioner has challenged an order dated 13.12.2023 passed by the Karnataka State Administrative Tribunal, Bengaluru in application No.4071/2023, by which it refused to accept the challenge of her transfer and her



services being placed at the disposal of the State Government.

2. The facts in brief are as under:

The petitioner was transferred as an Assistant Executive Engineer, Minor Irrigation Quality Control Sub-Division, Shimogga in terms of an order of transfer dated 05.08.2021. After she completed her tenure of two years in the same post, the respondent No.1 invoked Rule 32 of the Karnataka Civil Services Rules (hereinafter referred to as 'the KCSR Rules' for short) and posted the respondent No.2 herein in place of the petitioner and placed the services of the petitioner at the disposal of the State Government. Being aggrieved by the same, the petitioner approached the Tribunal.

3. It was contended before the Tribunal that the petitioner could not be displaced by another Officer under Rule 32 of the KCSR Rules. The Tribunal considering the contentions urged, held that the petitioner had completed



her tenure and therefore, she had no right to be continued in the same place and that the respondent No.1 was entitled to post any Officer to be in charge of the post occupied by the petitioner.

4. Nonetheless, having regard to the fact that the petitioner was not provided with a posting, it directed the respondent No.1 to provide a posting to the petitioner within two weeks from the date of receipt of copy of the order. Until then, it directed the respondent No.1 to continue the services of the petitioner at the same post. Being aggrieved by the same, petitioner is before this Court.

5. Learned counsel for the petitioner submits that the petitioner was holding a substantive post and therefore, even after her tenure in the post expired, the respondent No.1 could not have invoked Rule 32 of the KCSR Rules to post the respondent No.2. He relied upon the judgment of the Division Bench of this Court in the



case of **Shri. Bhoja Raja Vs. Shri. Hombalaoaj and Others and connected writ petitions** where, the co-ordinate bench of this Court at paragraph No.8 held that:

8. *Note – 3 set out above states that the period for which the incharge arrangements can be made depending upon the nature of the posts. The period prescribed is the maximum period, for which a person can be posted under this Rule. It is because, when a post becomes vacant, a suitable person for the said post is to be found and posted. It takes some time. In the meanwhile, Administration should not suffer. A person, who is working in the said department, who possess the requisite qualification, to be promoted to the said post, is appointed for a temporary period. This object is behind this Rule. But unfortunately, we see this provision is breached by the authority with impunity and contrary to the spirit of this Rule. The persons are placed incharge under this Rule by way of transfer to a post, which is not vacant and to accommodate these persons incumbent holding the post is transferred. The time-schedule prescribed in Rule III is to be adhered to. In exceptional cases, the said period could be extended beyond six months. But, that does not mean that these persons could be continued in the post by way of incharge arrangement for years. This is not contemplated under this Rule. If such procedure is*



resorted to, then it amounts to abuse of these provisions. It will have no legal foundation. Therefore, on 30.04.2012 when Bhoja Raja was working at Gowribidanur as Incharge Sub-Registrar under Rule 32 of the Rules and when respondent No.1 was working as a Senior Sub-Registrar at Vijayanagar, Bangalore, the transfer of the petitioner to the post held by respondent No.1 is contrary to Rule 32, because the post of a Sub-Registrar was not vacant at Vijayanagar. A vacancy cannot be created by transferring the incumbent persons to another office and incharge Sub-Registrar cannot be placed in his place to be there again as an incharge Sub-Registrar. In other words, when a person is posted as an incharge arrangement, he should be at the place where he was working in the earlier office. Therefore, the said order insofar as the petitioner is concerned, is illegal, and requires to be set aside and accordingly, it is set aside. Consequently, the order dated 10.5.2012 transferring Sri.Hombalaiah to the head office is also quashed. However, it is made clear that Hombalaiah has completed two years of service in Vijayanagar. If the authorities choose to transfer him due to exigency of service, they are at liberty to do so and this order would not come in their way.

6. He therefore contends that the impugned order transferring the petitioner out of the post and posting the



respondent No.2 in exercise of power under Rule 32 of the KCSR Rules is illegal and warrants interference.

7. Per contra, learned counsel for the respondent No.2/caveator submits that the petitioner had already completed her tenure in the post and therefore, she has no right to continue in the same post beyond the period of two years. He submitted that once she completed the tenure, she could be transferred at the discretion of the respondent No.1 and the respondent No.1 in its wisdom had deemed it appropriate to post the respondent No.2 in the place of the petitioner. He contends that there is no prohibition in law for the respondent No.1 to exercise power under Rule 32 of the KCSR Rules to post any suitable officer in the place of the person whose tenure is completed. He relied upon the judgment of the co-ordinate bench of this Court in the case of ***B. Madesh Vs. State of Karnataka and Others.***¹

¹ (W.P. No.44916/2014 (S-KAT))



8. Learned counsel for the petitioner further contended that the husband of the petitioner is posted at Sringeri and there are attempts by the respondent No.1 to transfer the petitioner to a post in Koppal, which can hamper the education of the children of the petitioner, as the order of transfer is passed during middle of the academic year. In this regard, he relied upon the judgment of the Hon'ble Apex Court in the case of ***Director of School Education, Madras and Others Vs. O. Karuppa Thevan and Another***². He further contended that it is incumbent upon the respondent No.1 to provide a posting to the petitioner and she cannot be left in the lurch.

9. The learned AGA submitted that the Tribunal has directed the respondent No.1 to give a posting and until then not to disturb the petitioner. He submits that the petitioner would be given a posting. Alternatively, the petitioner may submit a representation seeking for a

² 1994 Supp (2) SCC 666



posting to a place which is vacant and that the respondent No.1 would consider posting the petitioner at such place.

10. After considering the submissions made by the learned counsel for the petitioner as well as learned counsel for respondent No.2, it is undisputed that the petitioner had served as an Assistant Executive Engineer, Minor Irrigation Quality Control Sub-Division, Shimogga for more than two years and therefore, the respondent No.1 could consider transferring the petitioner. The petitioner did not have any right to challenge the authority of the respondent No.1 and claim that she was entitled to be continued in the same post. The respondent No.1 was always entitled to transfer out the petitioner and due to exigencies within its wisdom, it could exercise jurisdiction under Rule 32 of the KCSR Rules to appoint a suitable person in the place of the petitioner. In the case on hand, the respondent No.2 was equally qualified and therefore, was eligible to be placed in charge of the post occupied with petitioner. Nonetheless, the respondent No.1 could



not have placed the services of the petitioner at its disposal without even indicating a place of posting. The services of the petitioner cannot be left in suspended animation but there should be some certainty to the place where the petitioner would be posted. This is also the law declared by the Division Bench of this Court in the case of ***Seema H. Vs. The State of Karnataka and Others.***³

11. The Tribunal after considering the same, has rightly directed the respondent No.1 to provide a posting to the petitioner within a period of two weeks from the date of receipt of copy of the order and till then, her services at the present post were ordered to be continued. Now the learned AGA has made a submission that having regard to the fact that the petitioner's husband is working at Sringeri, the petitioner may file an appropriate representation before the respondent No.1 to transfer the petitioner to a place near to her husband's place of work and that the said representation would be considered

³ LAWS(KAR)-2016-9-106, W.P. No.48499/2016 (S-KAT)



expeditiously and till then, the services of the petitioner would be continued at the same post.

12. Hence, this writ petition is ***disposed off*** directing the petitioner to file a representation on the aforesaid terms within one week and if such representation is filed, the respondent No.1 shall consider the same in accordance with law at any rate within a period of fifteen days from the date of filing of the representation. Till then, the services of the petitioner shall be continued in the same place. The respondent No.1 shall thereafter issue appropriate orders filling up the post that may be vacated by the petitioner.

Sd/-
JUDGE

Sd/-
JUDGE