
(2015) 11 KAR CK 0104

Karnataka High Court (Dharwad Bench)

Case No: W.P. No. 111896/2015 (S-TR)

Kashinath

APPELLANT

Vs

The Managing Director,
KPTCL and Others

RESPONDENT

Date of Decision: Nov. 7, 2015

Citation: (2015) 11 KAR CK 0104

Hon'ble Judges: R.S. Chauhan, J.

Bench: Single Bench

Advocate: Ravi Hegde, Advocate, for the Appellant; B.S. Kamate, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Chauhan, J.

The petitioner, Mr. Kashinath is aggrieved by the transfer order dated 6/10/2015, whereby the petitioner has been

transferred from Athani to Vijayapur.

2. Briefly, the facts of the case are that the petitioner happens to be an Executive Engineer working under respondent No. 2, HESCOM. By order

dated 20/6/2014, he was transferred to Athani. Subsequently, by order dated 11/9/2014, he was relieved from Vijayapur. Consequently, he

reported to Athani on 18/9/2014. He has been working there ever since then. By the impugned transfer order dated 6/10/2015 he has been again

transferred from Athani to Vijayapur. Hence, the present petition before this Court.

3. Mr. Ravi Hegde, the learned counsel for the petitioner, has raised the following contentions before this Court:--

Firstly, that the Government of Karnataka has issued a transfer policy. The said transfer policy is not only statutory in nature, but it is equally

binding in nature. According to the transfer policy, a person who works in "A Group" post cannot be transferred for a period of three years.

However, the petitioner is transferred prematurely after completion of one year at Athani to Vijayapur.

Secondly, before he can be transferred prematurely, the consent of the Hon"ble Chief Minister is required. However, the consent is conspicuously missing.

Thirdly, even if the transfer policy is held to be directory in nature, extraordinary reasons need to be stated in the transfer order for transferring the petitioner prematurely.

However, the impugned order dated 6/10/2015 does not reveal any cogent reasons for prematurely transferring the petitioner.

Fourthly, the petitioner has been transferred in the middle of the year. Although according to the transfer policy the transfer should have been made

only in the month of June, the transfer is causing difficulties for the family as the petitioner is required to shift his family in the middle of the academic

year. Therefore, the transfer order deserves to be set aside by this Court.

4. On the other hand, Mr. B.S. Kamate and Mr. Shivakumar S. Badawadagi, the learned counsel for the respondent Nos. 1 and 2, have pleaded

that although the transfer policy is statutory in nature, it is not mandatory in nature. Certain freedom has to be given to HESCOM to transfer its

employees from one place to the other. Therefore, the policy is merely directory in nature.

Secondly, while laying down the tenure period for the stay of an employee, the word which has been used is "ordinarily". The use of the word

"ordinarily" clearly indicates that a discretionary power is bestowed upon the HESCOM under the transfer policy. Therefore, the respondents are

free to transfer the petitioner even before the tenure period of three years is over.

Thirdly, that there is no requirement under the transfer policy that prior to transferring an employee prematurely, the approval by Hon"ble Chief

Minister is required. The approval of Hon"ble Chief Minister is required only if the period of tenure of stay is to be changed in the transfer policy.

Fourthly, that due to administrative exigencies or in the interest of the company or in the interest of the public, an employee can be transferred from

one place to another.

Fifthly, transfer order is not a quasi-judicial order or a judicial order, but, is an administrative order. Therefore, the reason for transferring the

employee need not be stated.

Lastly, since the transfer is an incident of service, mere hardship caused to the employee, or to his family is not a valid reason to interfere with a

transfer order. Therefore, the learned counsel for the respondents has supported the impugned transfer order.

5. Heard the learned counsel for the parties.

Although the guidelines has been issued for supervising the transfer of employees, although this Court has held in the case of Chandru. H.N.

Gowda Vs. State of Karnataka and Others, that the transfer policy is statutory in nature, but, it would not make the transfer policy mandatory in

nature. The transfer policy has been framed in order to control corruption, arbitrary action, and unfair and unjust action on the part of the

Government. But, by no means does the transfer policy tie the hands and feet of the employer. Therefore in the case of R. Suresh v. The State of

Karnataka & Others (W.P. No. 24622/2015 Dtd. 22.06.2015) this Court has clearly opined that the transfer policy is merely directory in nature,

and not a mandatory one. Thus, an employer does have the freedom to ignore the transfer policy if the needs so arises.

6. Clause 8 of the transfer policy clearly states, ""no Government servant shall ordinarily be transferred, if he has not completed his tenure of posting

in a place, as indicated in the transfer policy"". The use of the word "ordinarily" clearly bestows discretionary power on the employer to transfer an

employee under extraordinary circumstances. Moreover, Clause 8 merely requires the approval of the Hon"ble Chief Minister, in case tenure laid

in clause 8 were to be revised from time to time. Clause 8 does not require the approval of the Hon"ble Chief Minister, in case an employee were

transferred prematurely. Therefore, the contentions raised by the learned counsel that the consent of the Hon"ble Chief Minister is a sine quo non

condition, prior to transferring the petitioner, is acceptable.

7. Although the transfer policy does require to keep an employee for three years at the place of its posting, but as a discretionary power has been

bestowed, the petitioner can certainly be transferred even after the completion of one year.

8. Since the transfer orders are neither quasi-judicial order nor judicial order, there is no requirement in law that they must state the reason for

transfer. There is a presumption in law that any act done by an officer is done in accordance with law. Therefore, the contention raised by the

learned counsel that extraordinary reasons have to be assigned in the transfer order, the said contention is misplaced. For the plea presumes that

there is a requirement in law that the extraordinary reasons must be stated in the transfer order. Since transfer is an incidence of service, since the

transfer is well known to an employee and the possibility of transfer at any time, at any place, is within his knowledge, an employee cannot plead

that there is personal inconvenience. Even if he were permitted to plead such a cause, he must establish the said plea through cogent evidence. To

permit an employee to plead personal inconvenience as a valid ground for transfer, would lead to administrative problems. Therefore, the said plea

is unacceptable.

9. For the reasons stated above, this court does not find any illegality or perversity in the order dated 6/10/2015. Hence, this petition is devoid of

merits. It is, hereby, dismissed.