

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE S.N. SATYANARAYANA

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WP NO.50415 OF 2019 (S-KSAT)

C/W

WP NO.51199 OF 2019 (S-KSAT)

Dated:17-12-2019

AJITH KUMAR RAI vs. THE STATE OF KARNATAKA and
Another

ORDER

S.N. SATYANARAYANA

The common order dated 22.10.2019 passed in Application Nos.5566/2019, 4675/2019 and 5135/2019 on the file of the Karnataka State Administrative Tribunal, Bengaluru ('the Tribunal' for short) is under challenge by two of the parties to the said proceedings. First writ petition in WP.No.50415/2019 is by petitioner – Ajith Kumar Rai, who is second respondent in Application No.5566/2013 and also 2nd respondent in Application No.5135/2013 on the file of the Tribunal. The second writ petition in WP.No.50415/2019 is filed by petitioner – Manjunath, who is applicant in Application No.5566/2013 and he is also second respondent in Application No.4675/2019. In the aforesaid three applications,

besides these two petitioners, there is one more contesting party, by name M.Rajanna. He is applicant in Application Nos.4675/2019 and 5135/2019 on the file of the Tribunal. It is the aforesaid three applications, which were clubbed together and disposed of by common order dated 22.10.2019.

2. The first impression of this Court by looking into the common order dated 22.10.2019 passed by the Tribunal in the aforesaid three applications and also the pleadings in these two writ petitions is as to how precious and important is the post of Tahsildar of Devanahalli Taluk for which Senior Advocates of this Court have kept apart their precious time to support and oppose the said order dated 22.10.2019 passed by the Tribunal.

3. Brief facts as could be seen leading to filing of the aforesaid three applications before the Tribunal and also one another application in application no.659/2009, which was filed at the earliest point of time and which is the root cause for these three applications, are as under:

The records would indicate that the office of Tahasildar, Devanahalli Taluk much coveted posting was given to M.Rajanna-second respondent in these two writ petitions on 28.12.2017. It is indicated that he continued

in that office without any disturbance till 25.01.2019. On that day, a notification was issued by the Government transferring M.Rajanna from the post of Tahsildar, Devanahalli Taluk to Gas Authority of India Limited (GAIL). While effecting his transfer to GAIL, one Keshava Murthy, who was working in GAIL, was posted as Tahsildar of Devanahalli. This notification was subject matter of challenge in Application No.659/2019 which was filed on 28.01.2019, wherein though M.Rajanna contended before the Tribunal that the notification of transfer dated 25.01.2019 is required to be interfered, his interim prayer was not considered. In the meanwhile, Keshava Murthy had already taken over the charge of post of Tahsildar, Devanahalli Taluk.

4. It is seen that when Keshava Murthy was discharging his duty as Tahsildar, Devanahalli, another notification was issued by the Government at the instance of Election Commission. The said notification was issued by the Government on 20.02.2019 in view of the fact that parliament election was due within the jurisdiction of Bengaluru Rural within whose limits office of Tahsildar, Devanahalli also fell and as such, during the period of election, the office of Tahasildar was sought to be disturbed in Keshava Murthy being shifted to Wakf Board and in his place one

K.Manjunath was posted as Tahsildar. This arrangement continued for some time.

5. In the meanwhile, it is seen that the applicant-M.Rajanna in application no.659/2019 filed a memo before the Tribunal indicating that in view of the notification dated 20.02.2019 being issued in the light of election to the constituency of Bengaluru Rural, the application filed by him may be permitted to be withdrawn with liberty to approach the Tribunal at a later stage, if an occasion arises for him to approach the Tribunal. On the basis of the memo filed by M.Rajanna, he was permitted to withdraw the application in Application No.659/2019 which has come to an end.

6. Thereafter, it is seen that after the completion of parliamentary election, Keshava Murthy was repatriated to his original place as it was on 20.02.2019 by notification dated 27.05.2019. It is seen that thereafter he continued in that office till he attained superannuation on 31.07.2019. In the meanwhile, it is seen that another notification was issued by the Government on 12.07.2019 in posting one Manjunath as Tahsildar, Devanahalli with an indication that the said notification shall come into effect after retirement of Keshava Murthy. It is this notification which was challenged by M.Rajanna by filing an application in Application No.4675/2019. While filing the

application, he challenged the notification dated 12.07.2019 and also the notification dated 25.01.2019 under which he was sent to GAIL. In the said application, he also sought to consider his application to reinstate him to the post of Tahasildar, Devanahalli. It is stated that an interim order was granted in his favour on 31.07.2019.

7. It is seen that the interim order of stay granted on 31.07.2019 was of no consequence as on that date. In the meanwhile, it is seen that another notification was issued by the Government on 21.08.2019 in appointing one Ajith Kumar Rai as Tahsildar of Devanahalli Taluk by modifying the notification dated 12.07.2019. This notification was also challenged by M.Rajanna by filing another application in application no.5135/2019 on the premise that the said notification is erroneous and it is contrary to the interim order dated 31.07.2019 passed by the Tribunal in his earlier application no.4675/2019.

8. Thereafter, it is seen that one more application in application no.5566/2019 was filed by Manjunath, beneficiary of the order dated 12.07.2019. It is these three applications in application nos.4675/2019, 5135/2019 & 5566/2019 are taken up together and disposed of by order dated 22.10.2019 wherein application nos.4675/2019 and 5135/2019 which were filed by

M.Rajanna are allowed. While doing so, the application no.5566/2019 filed by Manjunath is rejected.

9. In this background, W.P.No.51199/2019 is filed by Manjunath challenging the order of rejection of his application and W.P.No.50415/2019 is filed by Ajith Kumar Rai whose order of posting dated 21.08.2019 is stayed at the instance of M.Rajanna in the applications filed by him in application nos.4675 & 5135/2019. In these two writ petitions, which are filed by Manjunath and Ajith Kumar Rai, common second respondent is M.Rajanna, who is the beneficiary of the order dated 22.10.2019.

10. Heard Sri A.S.Ponnanna, learned Senior Counsel appearing for the petitioner-Manjunath, Sri Shivaprasad Shantanagoudar, learned counsel appearing for the petitioner-Ajith Kumar Rai and Sri K.N.Phanindra, learned Senior Counsel for the second respondent-M.Rajanna.

11. The entire proceedings clearly disclose how murky and shameless is the posting of officers from one post to another post in the revenue department. It clearly discloses how the entire system is ruined by greedy officials in trying to sell the post to favour persons at the cost of ruining the department and also the interest of the common man who has to ultimately bear the brunt of

these litigation expenses and the expenses which are incurred by them in securing said post. Admittedly, all this money would not be spent by the litigants from their pockets which is definitely from out of the money forcibly and illegally extracted from the common man and in the background, they also waste valuable time of the Courts which will be saddled with the responsibility of deciding these frivolous litigations keeping aside more valuable and responsible litigations aside. Be that as it may.

12. Coming to the present case, it is seen that M.Rajanna was incumbent of the office of Tahasildar, Devanahalli as on 28.12.2017 where he was posted for the first time. It is also not in dispute that he continued in the office till 25.01.2019. On 25.01.2019, he was transferred to GAIL in place of Keshava Murthy in that office, in turn Keshava Murthy was posted as Tahsildar, Devanahalli under very same notification. It is seen that the said notification was given effect to though it was subject matter of challenge in application No.659/2019 filed by M.Rajanna on 28.01.2019. It is seen that when the said application was filed by him, though he sought for stay of the notification transferring him to GAIL, the said application was not considered. When the main application was still pending consideration, he was transferred to GAIL and Keshava Murthy

took charge as Tahsildar, Devanahalli.

13. Thereafter, another notification came to be issued on 20.02.2019 in shifting Keshava Murthy to Wakf Board temporarily due to election to the parliamentary seat of Bengaluru Rural District. In this background, the said Keshava Murthy was shifted by notification dated 20.02.2019. It is seen that making use of the said notification, M.Rajanna withdrew the application filed by him seeking liberty to approach the Court, if such an occasion arises.

14. In fact, the Tribunal ought not to have permitted him to withdraw the said application for the reason that the notification dated 20.02.2019 has not affected his right to pursue his application No.659/2019 which is the first blunder committed by the Tribunal in allowing him to withdraw application no.659/2019 and reserving liberty to him to litigate at his whims and fancies. It is thereafter seen that Keshava Murthy who was temporarily shifted out of the office of Tahasildar, Devanahalli was restored to his place by notification dated 27.05.2019 and he continued to work in that office as Tahasildar up to 31.07.2019 the date on which he attained superannuation.

15. In the meanwhile, a notification dated 12.07.2019

was issued posting Manjunath (petitioner in W.P.No.51199/2019) as Tahasildar of Devanahalli Taluk which was subject matter of challenge by M.Rajanna in application no.4675/2019. Admittedly, M.Rajanna was not holding the office of Tahasildar, Devanahalli as on that date. Therefore, there was no reason for the Tribunal to consider his application for grant of interim order in his favour staying the notification of Government dated 12.07.2019, which is another blunder committed by the Tribunal. It is seen, by virtue of the aforesaid interim order, further confusion is added.

16. When this interim order was in force, it is seen that the Government has issued another notification on 21.08.2019 in posting one Ajith Kumar Rai as Tahsildar of Devanahalli Taluk by modifying the earlier notification dated 12.07.2019 under which they had posted Manjunath to the same post and this notification was issued under the guise that there were guidelines issued by the Principal Secretary on 26.07.2019 where the transfer orders passed subsequent to 1st July 2019 should not be given effect to and therefore, the said notification dated 21.08.2019 was issued. In any event, admittedly the said notification was issued when the interim order dated 31.07.2019 passed in application No.4675/2019 was in force. Though this Court

feel that the interim order passed in application no.4675/2019 was erroneous, since it was in force, the Government ought not to have ventured in issuing the notification dated 21.08.2019 again, which has given room for further litigation in as much as the applicant in application no.4675/2019 Sri M.Rajanna filing another application No.5135/2019 challenging the notification dated 21.08.2019.

17. Manjunath who is the beneficiary of the notification dated 12.07.2019 has also filed another application in application no.5566/2019 for the simple reason that the notification dated 21.08.2019 is issued in modification of the earlier notification dated 12.07.2019 which was beneficial to him. It is these three applications which are taken up for consideration by the Tribunal for final disposal, where the Tribunal has proceeded to allow the applications which are filed by M.Rajanna in application Nos.4675 and 5135/2019.

18. Now coming to this part of the order passed by the Tribunal, this court is of considered opinion that the order passed by the Tribunal is erroneous inasmuch as the notification which was under challenge in those two applications is the notification dated 25.01.2019 which is

the first notification of transfer of M.Rajanna from the post of Tahsildar, Devanahalli, which was given effect to in allowing Keshava Murthy to occupy the said post and continue until 31.7.2019. Though M.Rajanna played a mischief in withdrawing the application which was filed by him in the month of January in application No.659/2019, the Tribunal has fallen pray for his prank in permitting him to withdraw the application which was filed by him. While doing so, further blunder committed by the Tribunal is reserving liberty to him to approach the Court, if there is cause of action.

19. Here the catch situation is how the Tribunal felt that there would be cause of action to Rajanna is something which this court is unable to understand. This clearly indicates lack of application of mind on the part of the Tribunal in reserving such liberty to this greedy officer to further harass the Tribunal as well as this court. Hence, that portion of the order is erroneous which has cascaded down in passing further erroneous order in application Nos.4675 and 5135/2019.

20. Admittedly, when a notification was issued on 12.07.2019 for transfer of Manjunath to the post of Tahsildar, Devanahalli, there was no semblance of right to M.Rajanna to challenge the same. In fact, M.Rajanna was not even holding the office of Tahsildar, Devanahalli.

Therefore, there was no reason for the Tribunal to pass an interim order to create further chaos in transferring officer to the post of office of Tahsildar, Devanahalli. It is seen that adding fuel to fire the Government has also issued another notification dated 21.08.2019, which is in modification of the notification dated 12.7.2019 under which Manjunath was posted as Tahsildar of Devanahalli.

21. In fact, as records would indicate that the Officer who has issued the notification dated 21.08.2019 should have taken all precautions to ensure what was the stage of the litigations which were pending before the Tribunal and this Court with reference to the notification dated 12.07.2019 which was modified by notification dated 21.08.2019. Admittedly, the notification dated 21.08.2019 was issued when the interim order dated 31.7.2019 was in force, hence, the Officer who issued order dated 21.8.2019 ought not to have ventured into issuing said notification.

22. It is brought to the notice of this Court that contempt proceeding is initiated against the author of the notification dated 21.8.2019. This Court would cautiously and clearly place on record that initiation of contempt proceedings against the said officer is fully justified and observe that the Contempt Court would take it to logical

end and ensure that the Officer who issued the said notification is made accountable for his irresponsible act.

23. Now coming to the applications in Nos.4675 and 5135/2019 filed by M.Rajanna is concerned, as discussed supra, M.Rajanna had no lien or claim over the post of Tahsildar, Devanahalli once he was shifted out of that post on 25.01.2019. Admittedly, the said office was thereafter held by Keshava Murthy until 31.07.2019 except for the interregnum period during election when he was temporarily shifted. Therefore, if at all M.Rajanna had any right to that post as on 25.01.2019, it has come to an end. Therefore, he had no semblance of right to challenge the posting of any Officer to that place. In spite of that, how the Tribunal considered granting interim prayer in his favour in an application filed challenging order dated 12.7.2019 is an enigma. Be that as it may. What is required to be considered is, the order of the Tribunal so far as in recognizing the alleged right of M.Rajanna to be posted as Tahsildar of Devanahalli, which is required to be quashed in the light of aforesaid discussion. Accordingly, the order of the Tribunal in allowing the application filed by M.Rajanna in Application Nos.4675/2019 and 5135/2019 on the file of the Tribunal by order dated 22.10.2019 is hereby quashed.

24. Now what remains is the posting of Ajith Kumar Rai

to the Office of Tahsildar, Devanahalli, pursuant to the notification dated 21.8.2019 and posting of Manjunath to very same office pursuant to the notification dated 12.07.2019. So far as the notification dated 12.07.2019 is concerned, it is opposed by Ajith Kumar Rai on the premise that as on 12.07.2019 Manjunath could not have been considered for the post of Tahsildar since he is not a person belonging to Revenue Department and he is a person deputed to Revenue Department from his parent department, namely Industries and Commerce. According to him, Manjunath was deputed from his parent department to Revenue Department by order dated 13.2.2013 as per 6(b) of Guidelines regarding transfer of government servants. 6(b)(i) of Transfer Guidelines (document no.2) reads as under:

"6. Responsibility of Competent Authority :-

The Competent Authority, while effecting transfers / deputations or giving postings may further ensure that,-

(a)

(b) The maximum period of deputation to a particular post shall be five years at a time.

i. A Government servant shall not be considered for deputation if he has not completed the cooling off period of two years in his parent department after completion of the last deputation, even if he has not completed five years in the earlier deputation. Further, deputation of a Government servant repeatedly to the same post is prohibited."

According to him, the said person is required to be repatriated to his parent department.

25. When such argument was canvassed before this Court on 22.11.2019, this Court indicated to the respondent-State that in the event if Manjunath has completed five years in the present post of deputation, necessary steps should be taken to repatriate him to his parent department. The said order reads as under:

"List this matter on 26.11.2019 along with F.R. [WP] No.52093/2019.

In the meanwhile, it is brought to the notice of this Court that there is error at paragraph-5 in the order of this Court dated 8.11.2019, in directing posting of Mr. Manjunath as Tahsildar, Grade-I, Devanahalli, beyond the period of five years of deputation which is said to have been completed in his case.

The order of this Court dated 8.11.2019 would not come in the way of the Government taking appropriate decision to repatriate Mr. Manjunath to his parent department (Health Department) if he has already completed five years on deputation in Revenue Department. In any event, the other rights of the said person would be considered in the writ petition filed by him, which is already ordered to be connected to this writ petition, this day."

26. It is seen that by virtue of the aforesaid order, the Government has passed an order on 25.11.2019 in repatriating Manjunath to DPAR. In this background, it is seen that the writ petition in WP.No.51199/2019 which was filed by Manjunath was amended by adding further prayer in challenging the order of repatriating him to DPAR vide order dated 25.11.2019. Even that question is also required to be answered in view of writ petition being amended and additional prayer being sought. When the said writ petition is taken up for

consideration, learned Senior Counsel Sri A.S.Ponnanna brought to the notice of this Court that rule 6(b)(i) of transfer guidelines is subject to Rule 16(a)(iv) of the Karnataka Civil Services (General Recruitment) Rules, 1977, which reads as under:

"16. Relaxation of rules relating to appointment and qualifications.- Notwithstanding anything contained in these rules or the rules of recruitment specially made in respect of any service or post, the Government may, for reasons to be recorded in writing.-

(a) appoint to a post.-

(i)

(ii)

(iii)

(iv) in the State Civil Services Class 1, on deputation, a person with specialised qualifications in the service of a University established by law in India and holding an equivalent post for such period not exceeding five years and on such terms as the Government may in each case determine;

Provided that, whereas the Government is of the opinion that in view of the special circumstances of a case the period of deputation has to be extended beyond five years as stipulated under this clause, it may, for reasons to be recorded in writing, extend the same for a further period of one year at a time subject to a maximum of three years, so however, that the total period of deputation including the extended period shall not exceed eight years."

27. By relying upon the aforesaid proviso, the learned Senior Counsel would try to impress upon this Court that in the first place Manjunath had not completed five years in revenue department as on 12.07.2019. According to him, initially Manjunath was deputed from Industries and Commerce Department to Revenue Department by order dated 13.02.2013 and subsequently on 13.02.2015, he as

repatriated to his parent department where he was considered to the post of Under Secretary and in the said order, it was observed that he should continue in that post for one day and thereafter, again he would be repatriated to Revenue Department. Though the said order dated 13.02.2015 would state that he shall be in his parent department for one day, it is the case of Manjunath that he was continued in his parent department up to 03.03.2015 and on 03.03.2015 he was again deputed to Revenue Department to hold the office of Tahsildar at Tiptur. According to him, technically he is on deputation from 3.3.2015 and therefore, his period of five years in one place on deputation is not complete as on 12.07.2019, therefore, the order dated 25.11.2019 passed by the Government pursuant to the order dated 22.11.2019 of this Court is in wrongly interpreting the direction issued by this Court. The learned Senior Counsel asserted that in the order dated 22.11.2019, this Court observed that if Manjunath has completed five years he should be considered for repatriation. However, by making use of the said order, even before he has completed five years he is tried to be repatriated to his parent department. Therefore, the said order dated 25.11.2019 is required to be quashed.

28. At this juncture, learned Additional Government Advocate would try to assert that the submission of learned Senior Counsel for the petitioner is factually incorrect

for the reason that Manjunath had already worked for six years as Tahsildar on deputation and that in the light of 6(b)(i) of transfer guidelines, 2 years minimum cooling period between one posting and another posting is mandatory, which is not considered, therefore, that aspect of the matter is required to be taken into consideration. He would also state that in this background the order dated 25.11.2019 is justifiable and the same cannot be quashed.

29. After giving careful consideration to the arguments of learned Counsel Sri A.S.Ponnanna appearing for the petitioner, learned Counsel Sri Shivaprasad Shantagoudar appearing for Ajit Kumar Rai and learned Additional Government Advocate for State, this Court is of the considered opinion that in the instant case, the Government has ignored the transfer guidelines in not giving effect to cooling off period of 2 years to Manjunath as is mandatory in 6(b)(i) of transfer guidelines, referred to supra. This is required whenever an officer completes such deputation, even if he has not completed 5 years in the earlier deputation, which is the clinching issue herein. As already seen, from 2015 Manjunath has not completed five years holding the office of Tahsildar whether in Tiptur or Devanahalli, but he has been sent to his parent department for a period of 13 days when he was given promotion, thereby dividing the earlier period of holding the said Office as one assignment and the

subsequent posting as second assignment. In between as per 6(b)(i) of transfer guidelines, there must be compulsorily 2 years cooling off period which is not considered. Therefore, the posting of Manjunath is required to be considered as contrary to the aforesaid transfer guidelines.

30. However, at this juncture, learned Senior Counsel would draw our attention to the proviso to Rule 16(a)(iv) wherein it would clearly show that in the event if the Government is of the opinion that under special circumstances, the period of deputation has to be extended beyond five years as stipulated under this clause, it may be considered for reasons to be recorded in writing, extend the same for a further period of one year at a time subject to a maximum of three years.

31. However, in the instant case, while there is no order of extending Manjunath's deputation, further no reason is assigned in not giving effect to cooling off period of two years between two assignments outside parent department. Therefore, this Court holds that there is serious lapse committed by the State while renewing his deputation from 13.02.2015 which is done without considering the cooling off period of 2 years, and therefore, the second deputation is not in consonance with the transfer guidelines. As such, this Court would hold that

the order dated 25.11.2019 in repatriating Manjunath to his parent department appears to be just and proper. Accordingly, in the light of aforesaid observations, the notification which is issued on 12.07.2019 in posting Manjunath as Tahsildar at Devanahalli cannot be approved. Now what remains is the notification dated 21.08.2019 in posting Sri.Ajith Kumar Rai as Tahsildar of Devanahalli. Admittedly, this notification is issued by the State during the period when the order of stay was in force in staying the transfer of Manjunath to the post of Tahsildar, Devanahalli. When that being the case, the State ought to have either sought for modification of the interim order dated 31.7.2019 passed in application No.4675/2019 or should have filed an application seeking vacating of aforesaid interim order and thereafter, should have considered issuing the notification dated 21.08.2019 in posting Ajit Kumar Rai to the post of Tahsildar, Devanahalli. Therefore, this notification which is issued during the interregnum period when interim stay was in force is also unenforceable. Accordingly, that notification is also required to be quashed. Accordingly, it is ordered.

32. Now what remains is, at present the office of Tahsildar, Devanahalli, has become vacant, thereby giving clear indication that the field is open for auctioning that

coveted post once again in favour of a Government Officer capable of manipulating it. At this juncture, this Court would observe that sufficient damage and injustice is caused in this matter at the instance of M.Rajanna. As already observed, he had no right to seek posting to the said post, therefore, this Court would observe that he shall not be posted to said post. At this juncture, if the State is of the opinion that a fresh order is required to be issued for posting of Tahsildar to the office of Devanahalli, it is the name of Ajit Kumar Rai which may be considered in the fact situation. However, it is open for the respondent – State either to consider him or any other person to the said post. In any event, no direction will be issued by this Court in that behalf.

With such observations, these two writ petitions are disposed of.