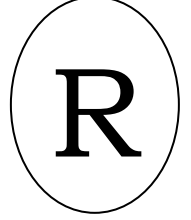


**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF NOVEMBER 2018**

**PRESENT**

**THE HON'BLE MR. JUSTICE H.G.RAMESH**



**AND**

**THE HON'BLE MR. JUSTICE ASHOK G.NIJAGANNAVAR**

**WRIT PETITION NO.45916/2018 (S-KSAT)**

**BETWEEN:**

SRI RAJASHEKAR.M.  
S/O.M.GIDDAPPA  
AGED ABOUT 59 YEARS  
WORKING AS EXTENSION OFFICER  
TALUKA BACKWARD CLASSES  
EARLIER HOSTEL SUPERINTENDENT  
POST METRIC BOYS HOSTEL  
DEPARTMENT OF BACKWARD CLASSES  
AND SOCIAL WELFARE  
HOSPET - 583 201  
BELLARY DISTRICT

...PETITIONER

(BY SRI B.S.MURALI, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
REP. BY ITS PRINCIPAL SECRETARY  
DEPARTMENT OF BACKWARD  
CLASSES WELFARE  
VIKAS SOUDHA  
BANGALORE - 560 001
2. THE COMMISSIONER  
DEPARTMENT OF BACKWARD  
CLASSES WELFARE

3<sup>RD</sup> FLOOR  
DR.DEVARAJ URS BHAVAN  
VASANTHAGAR  
BANGALORE- 560 052

3. THE DISTRICT OFFICER  
DEPARTMENT OF BACKWARD  
CLASSES WELFARE  
BELLARY  
BELLARY DISTRICT- 583 101
4. SRI YERRISWAMY  
AGED ABOUT 58 YEARS  
S/O. LATE REVANNA SIDDAPPA  
PRESENTLY WORKING AS  
EXTENSION OFFICER  
DEPARTMENT OF BACKWARD  
CLASSES WELFARE  
HOSPET TALUK  
BELLARY DISTRICT  
R/AT NO.28  
CHAPPARADAHALLI AREA  
WARD NO.20  
HOSPET- 583 201  
BELLARY DISTRICT

...RESPONDENTS

(BY SRI I.THARANATH POOJARY, AGA FOR R1 TO R3;  
SRI RAVI H.K. FOR M/S.KANTHARAJA & ASSOCIATES,  
ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 25.09.2018 (ANNEXURE-A) PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BANGALORE IN APPLICATION NO.7057/2018.

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, **H.G.RAMESH J.**, MADE THE FOLLOWING:

**ORDER****H.G.RAMESH, J. (Oral):**

**1.** *Whether the Chief Minister has absolute discretion under Government Order No.DPAR 22 STR 2013, Bangalore, dated 07.06.2013 to give prior approval for premature/delayed transfers referred to in para 9 thereof? This is the question that requires to be answered in this petition and it is answered in the negative. Under para 9(b) of the aforesaid Government Order, the Chief Minister, on perusal of the reasons recorded by the Competent Authority, may give his prior approval for premature/delayed transfer of a Government servant, only if he is satisfied that the case would fall under any of the circumstances stated in para 9(a)(i) to (viii) of the Government Order.*

**2.** This writ petition is directed against the order dated 25.09.2018 passed by the Karnataka State Administrative Tribunal, Bangalore whereby it has allowed the application filed by respondent No.4 challenging the order of transfer dated 11.09.2018 insofar as it related to transfer of himself and the petitioner herein. The Tribunal, by the aforesaid

order dated 25.09.2018, has set aside the order of transfer on the ground that it was premature.

**3.** The contention urged by the petitioner is that the Tribunal had erred in interfering with the order of transfer on the ground that it was premature and that there was no prior approval of the Chief Minister for the premature transfer. It is stated that the order of transfer had the prior approval of the Chief Minister, and therefore, the order of the Tribunal is liable to be set aside.

**4.** In the context of the contention urged, it is relevant to refer to Government Order No.DPAR 22 STR 2013, Bangalore, dated 07.06.2013 ('the Government Order' for short) which lays down guidelines for transfer of Government servants. Para 9 thereof states the circumstances where premature/delayed transfer of Government servants is permitted. It also mandates obtaining of prior approval of the Chief Minister before effecting such transfers. Para 9 reads as follows:

**"9. Premature / delayed transfer**

- a.** Generally there should be no premature transfers. The tenure of posting of a Government servant may be **extended or reduced by the Competent**

**Authority in the following cases after recording the reasons for the same in writing.**

The minimum period of stay at a place as prescribed in para 8 can be reduced and the concerned Government servant transferred prematurely **if the competent authority** feels that he or she is not suitable for discharging the duties at the present place and **the reasons are recorded to this effect in writing:-**

- (i) The employee due for transfer after completion of tenure at a place or posting or post has less than two years of service for retirement;
- (ii) The employee possesses special technical qualifications or experience for the particular job for which a suitable replacement is not immediately available;
- (iii) The employees working on a project or Flagship programmes of Government of India which are in the crucial stage of implementation and his withdrawal will seriously jeopardize timely completion of such projects;
- (iv) Where both the spouses are Government servants and if one of the spouses is transferred, then the other spouse may also be transferred to the same place or nearby place depending upon the availability of vacancy even if one of them has not completed the minimum period of stay;
- (v) Where a female Government servant is a widow / spinster / unmarried divorcee, she may be transferred and in case she is appointed for the first time, may be posted to a place of her choice subject to availability of vacancy;
- (vi) Where a Government servant is an office-bearer of the Karnataka State Government Employees Association only, such Government servant shall not be transferred until the completion of the term for which he has been elected. In case no elections are held within three months of the completion of the said term, he may be transferred. In case he is reelected, he may be continued in the same place until the completion of the second term only;
- (vii) Where a Government servant is physically handicapped / challenged or disabled subject to certification by the Medical Board;
- (viii) Where a Government servant or his / her spouse or children are suffering from serious or terminal ailments, depending upon the availability of the facility of medical treatment at

the requested place subject to certification by the Medical Board;

- 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."  
(Emphasis supplied)

**5.** Before proceeding to examine the question raised, it is necessary to state that the guidelines laid down for transfer of Government servants are held to be statutory and are enforceable. A Division Bench of this Court in *Alla Saheb vs. The State of Karnataka* [ILR 2017 KAR 86] by following two full bench decisions of this Court in *Chandru H.N. vs State of Karnataka* [ILR 2011 KAR 1585] and *Gangadharaiah S.N. vs. The State of Karnataka* [ILR 2015 KAR 1955] has held that the Government Order laying down the guidelines for transfer of Government servants is statutory in nature. The following observations made therein require to be noticed:

"15. The entire exercise undertaken by the two full benches of this Court would make it clear that the directives framed from time to time as guidelines regulating transfers by the State Government are not mere guidelines

leaving it to the discretion of the State Government either to follow them or not to follow them. It is not as if the said guidelines do not confer any right in favour of the concerned Government servants. The guidelines having been framed in exercise of the executive power of the State conferred under Article 162 of Constitution of India have been held to have statutory force. The two full benches did not stop there. They have further laid down that the said guidelines were enforceable. Enforceability of the guidelines would mean that whenever the guidelines were violated resulting in the rights of any of the Government servants getting affected then they can be enforced in accordance with law. Therefore, they vest the Government servants with necessary rights to make a grievance against violation of the said rules/guidelines framed. That they are, therefore, not directory so that the competent authority can ignore them and exercise its own discretion to either follow it or not. The full bench has kept in mind the purpose behind the constitution of the Administrative Reform Committee by which State Government intended to regulate the entire issue of transfer of Government servants and address the evil associated with frequent and in-discriminate transfer. Administrative Reform Committee had issued several recommendatory measures and in pursuance of such recommendatory measures, Government Order dated 07.06.2013 has been issued to regulate the transfers.

17. It has to be stated at this stage that the Government Order laying guidelines for transfer does not confer any absolute right in a Government servant to continue in a place for the prescribed period. It has provided several exceptions and has conferred discretion in the competent authorities to effect transfer even before the expiry of the specified period or to extend the period of stay even after the expiry of the specified period of stay in a particular place. The requirement of the rule in that regard is that reasons have to be recorded and prescribed procedure has to be followed including approval to be obtained from the Chief Minister. The purpose and intent of such provision in the rules is to ensure that arbitrary and whimsical exercise of power is not resorted to and the Government servants are not harassed by repeated transfers and displacements. The object was to regulate the discretion. Fact that convenience of continuing the Government servant in a particular place for a specified period will help in discharging his duties efficiently by having grip over the fact situation in the particular place have been also taken into consideration. A perusal of the Government guidelines contained in the Government order makes it clear that sufficient room has been provided in the

guidelines to displace persons whose records were not clean, against whom inquiry was initiated and such other similar grounds. Therefore, no straight jacket formula has been provided under the guidelines laying absolute bar for transfer and enabling the Government servants to hang on to the place where he is posted. It is in this background alone the full bench has pronounced that these guidelines which were issued in exercise of the power under Article 162 of Constitution conferred right to enforce them as they had statutory force.

24. As already observed above, the guidelines issued which are held to have statutory force do not lay down any straight jacket formula or do not place any embargo on the power of the competent authority to effect transfer for the reasons enumerated in the Government order and by following the procedure prescribed. The guidelines only regulate the transfer and do not prohibit the transfer. The guidelines regulate the exercise of discretion and prevent abuse of the discretion by resorting to arbitrary, unfair and indiscriminate exercise of the power of transfer. **It is in this context only the full bench has held that these guidelines have statutory force and are enforceable.** If it were to be observed in the teeth of the law laid down by the full bench that these guidelines are merely directory and did not clothe affected Government servant to enforce them by seeking legal redressal it would tantamount to upsetting the principle laid down in the decision of the full bench. ....”

(Emphasis supplied)

**6.** As could be seen from para 9 of the Government Order extracted above, premature/delayed transfer of Government servants is permitted in the circumstances stated in para 9(a)(i) to (viii) with the prior approval of the Chief Minister. It requires the competent authority to record reasons stating as to how the case would fall under any of the circumstances stated in para 9(a)(i) to (viii) of the Government Order to warrant premature/delayed transfer



of a Government servant and the said reasons have to be placed before the Chief Minister to obtain his prior approval as mandated in para 9(b) of the Government Order. After perusal of the reasons, if the Chief Minister is satisfied that the case would fall under any of the circumstances stated in para 9(a)(i) to (viii) of the Government Order, only then the Chief Minister may give his prior approval for premature/delayed transfer of the Government servant. If prior approval is given by the Chief Minister for transfers not falling under any of the circumstances stated in para 9(a)(i) to (viii) of the Government Order, it will be invalid in law and any premature/delayed transfer made pursuant thereto will be illegal and hence is liable to be set aside.

**7.** Learned Additional Government Advocate appearing for State of Karnataka fairly submitted that prior approval of the Chief Minister was not preceded by recording of any reasons by the Competent Authority to show that the premature transfer of the petitioner and respondent No.4 would fall under any of the circumstances stated in

para 9(a)(i) to (viii) of the Government Order. Hence, we find no error in the order of the Tribunal in setting aside the order of transfer as it was contrary to para 9 of the Government Order laying down guidelines for transfer of Government servants.

**8.** For the reasons stated above, we hold that the writ petition is devoid of merit and is accordingly dismissed. Consequently, IA.No.2/2018 does not survive for consideration; it stands disposed of accordingly.

Petition dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

KSR