



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2024

R

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 1534 OF 2016 (S-DIS)

BETWEEN:

1. KARNATAKA FOOD AND CIVIL SUPPLIES CORPORATION LIMITED,
NO.147, KAMBLI BHAVAN,
INFANTRY ROAD,
BENGALURU-560 001.
REPRESENTED BY ITS MANAGING DIRECTOR.
2. THE MANAGING DIRECTOR,
KARNATAKA FOOD AND CIVIL SUPPLIES CORPORATION LTD.,
NO.147, KAMBLI BHAVAN, INFANTRY ROAD,
BENGALURU-560 001.
3. THE BOARD OF DIRECTORS,
KARNATAKA FOOD AND CIVIL SUPPLIES CORPORATION LTD.,
NO.147, KAMBLI BHAVAN,
INFANTRY ROAD, BENGALURU-560 001.

APPELLANTS NO.1 TO 3 ARE
REP. BY ITS GENERAL MANAGER.
THE PRESENT ADDRESS OF THE
APPELLANTS NO.1 TO 3 IS
NO.16/I, MILLERS TANK BED AREA,
BENGALURU-560 052.

...APPELLANTS

(BY SRI. H.M. MURALIDHAR., ADVOCATE)





AND:

SMT. VEENA M,
W/O GANESH.M,
AGED ABOUT 45 YEARS,
R/AT SAMUDRA DRISTI,
KONCHADY POST, MANGALORE-575 008.
D.K.DISTRICT.

...RESPONDENT

(BY SMT. SUMA KEDILAYA., ADVOCATE)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED
IN THE WRIT PETITION 35246/2009 DATED 20/03/2013.

THIS WRIT APPEAL, COMING ON FOR ORDERS THIS DAY,
KRISHNA S DIXIT.J., DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court appeal seeks to call in question a learned Single Judge's order dated 20.03.2013 whereby, the Respondent-employee's Writ Petition No.35246/2009 (S-DIS) having been favoured, the punishment of compulsory retirement as affirmed in Departmental Appeal came to be set at naught coupled with a direction to reinstate her in service without back wages & consequential benefits, although continuity of service was granted for the limited purpose of retirement accruals.



2. Learned counsel for the appellant-Corporation submits that the impugned order is liable to be voided since where, which employee should work, belongs to the domain of employer; merely because there was some health problem, an employee cannot refuse to work in the place of posting; thirdly, the very conduct of the employee in bringing political influence through a particular Member of Parliament itself, disentitled her to the discretionary remedy; despite direction to report for duty, she remained absent and that amounts to a misconduct; the medical report was not favourable to her. So arguing he seeks allowing of the appeal.

3. After service of notice, the respondent-employee having entered appearance through her counsel, opposes the appeal making submission in justification of the impugned order and the reasons on which it has been constructed. She explains the difficulty that her client was put to because of wrong attitude of the employer; she had allergy problem that came in the way of working at the particular place and therefore she had sought for



posting elsewhere; the distance she was required to travel on daily basis was about 3 kms.; added, there was no facility even for answering nature's call. Learned Single Judge having considered all aspects of the matter has made a just order that does not warrant invalidation. So contending she seeks dismissal of the appeal.

4. Having heard the learned counsel for the parties and having perused the Appeal Papers, we are inclined to grant indulgence in the matter broadly agreeing with the submission of learned Panel Counsel appearing for the appellant-Corporation. Ordinarily, every employee is liable to be transferred and that the transferred employee is liable to report for duty to the other place. Justice Rama Jois in his 'Services under the State' 1st Edition at page 565 writes as under:

"A government servant is liable for transfer from one place to another and also from one post to another. It is competent for the government to transfer a civil servant from one post to another equivalent post.... A civil servant has no right to insist that he should not be transferred.... Any order of transfer made in public interest cannot be challenged before the



court as it does not violate any of the conditions of service”.

It hardly needs to be stated that the employer alone is best suited to judge as to the existence of exigencies of service requiring transfer & posting; courts cannot run a race of opinions. Again it is the employer who decides which employee should work where, subject to statutory exceptions. True it is, that transfer creates some hardship to any employee; however, that is inevitable. Grievance can be worked out for such hardship at the hands of the employer only. Added, such a grievance can be raised only after the employee reports at the place of transfer. This aspect has been completely lost sight of by the learned Single Judge.

5. The Respondent-employee in justification of her prolonged absence from the transferred post had pleaded allergy as a health ground. However the medical report did not support her case. The doctors specifically stated that she had no justification for availing leave on health grounds, although she was suffering from little allergy.



This aspect having been examined by the competent authority, the employee was put to compulsory retirement. After all, continued absence from duty despite rejection of leave application is treated as a misconduct in all civilized Service Jurisprudence. The Apex Court in ***STATE OF PUNJAB vs. DR.P.L.SINGLA, (2008) 8 SCC 469***, observed that *where an employee who is unauthorisedly absent does not report back to duty and offers any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments.* It hardly needs to be stated that unauthorized absence apart from putting the employer to hardship would breed indiscipline in the work force and therefore it is shunned. Even this aspect of the matter has not been duly adverted to by the learned Single Judge.



6. As already observed above, the employee may have some difficulty in attending to the work at the place of posting. There may be commutation problems or the like. These are all incidents of service and grievance has to be worked out with the employer. An employee cannot insist to remain absent till after redressal is granted to her grievance as observed by the Apex Court in **S.C.SAXENA vs. UNION OF INDIA, (2006) 9 SCC 583**. It is observed at paragraph 6 as under:

"...In the first place, government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed..."

We hasten to add that if transfer is governed by the statutory rules, then other considerations would arise. However that is not the argued case of the parties here.

7. Now a days, this court with lot of penury at heart has been observing the employees invoking political influence *inter alia* in matters of transfer & posting, which



essentially belong to the exclusive domain of the employer/competent authority, who has to take a call after adverting to a host of factors. Political interference in service matters is undesirable, to say the least inasmuch as irrelevant factors would figure and that would affect public administration and the interest of the employer. There may be some exceptional cases where a citizen complains to the elected representatives seeking MINUTES for favour, are a case apart. However, the act of public servants causing political influence is a matter of deprecation and that may constitute a sole ground for declining relief in constitutional jurisdiction. A person knocking at the doors of writ court should not have blemish-worthy conduct, hardly needs to be reiterated. Even this aspect of the matter has not been adverted to by the learned Single Judge despite a specific plea taken up by the appellants in their Statement of Objections.

8. The findings of guilt arrived at in a disciplinary proceeding have presumptive sanctity and therefore they cannot be readily interfered with, more particularly when



delinquent employee's Departmental Appeal too has failed on merits, as has happened in the case at hands. Same is the position in regard to quantum of punishment, which essentially belongs to the domain of disciplinary authority/employer, subject to all just exceptions, argued case of the respondent not fitting into therein.

In the above circumstances, this appeal succeeds; the impugned order of the learned Single Judge is set at naught; as a consequence the punishment of compulsory retirement would take effect. Whatever benefits accruing on account of compulsory retirement should be handed to the employee within an outer limit of eight weeks reckoned from this day, she complying with the prerequisites therefor. Delay would entitle her interest at the rate of 2% per mensum till monetary benefits, if any, are remitted to her account.

Costs made easy.



This Court places on record its deep appreciation for the able research & assistance rendered by its Chamber Intern Mr.Arjun Vivekananda Harihar.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

cbc
List No.: 1 SI No.: 2