

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF SEPTEMBER, 2010

PRESENT

THE HON'BLE MR.JUSTICE V.G.SABHAHIT

AND

THE HON'BLE MRS.JUSTICE B.V. NAGARATHNA

WRIT PETITION NO. 29086 OF 2010 (S-KAT)

BETWEEN

SRI A.V. DATTATRI,
S/O. A.V. VENKATESHMURTHY,
AGED ABOUT 52 YEARS,
ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER,
KARNATAKA STATE HIGHWAY IMPROVEMENT PROJECT
SUB-DIVISION, GOWRISHANKAR NILAYA,
I CROSS, LEELAVATHI EXTENSION,
MADDUR, MANDYA DISTRICT.

...PETITIONER

(BY SRI S.M. BABU & SRI. M. SRINIVAS KUMAR, ADVS.)

AND

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
PUBLIC WORKS, PORTS AND INLAND
WATER TRANSPORT DEPARTMENT,
VIKASA SOUDHA, BANGALORE – 560 001
2. THE PROJECT DIRECTOR,
KARNATAKA STATE HIGHWAY IMPROVEMENT PROJECT
K.R. CIRCLE, BANGALORE – 560 001
3. SRI R. VENKATESH,
S/O. LATE R. RAMAIAH,

AGED ABOUT 58 YEARS,
ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF THE PRINCIPAL SECRETARY,
PUBLIC WORKS, PORTS AND INLAND
WATER TRANSPORT DEPARTMENT,
VIKASA SOUDHA, BANGALORE - 560 001.

...RESPONDENTS

(BY SMT. SHEELA KRISHNA, ADV.,)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 06.09.2010 PASSED BY THE KARNATAKA ADMINISTRATIVE TRIBUNAL IN A.NO. 5752/2010(VIDE ANNEX.C)

THIS WP COMING ON FOR PRELIMINARY HEARING THIS DAY, **SABHAHIT J.**, MADE THE FOLLOWING:-

ORDER

This Writ Petition is filed by respondent No.3 in Application No.5752/2010 on the file of Karnataka Administrative Tribunal, Bangalore (hereinafter called as 'KAT' for brevity) being aggrieved by the order passed by the KAT dt. 6.9.2010, wherein after hearing the counsel appearing for the applicant the KAT has stayed the impugned order of transfer dt. 28.8.2010 passed by the first respondent in the Application for a period of three months and has further directed respondent Nos. 1 and 2 in the Application to continue the applicant at



Maddur and give alternative posting to the third respondent forthwith. Further ordered that the matter shall be listed after service of notice on respondent Nos. 1 and 2.

2. By order of transfer dt.15.7.2010 the third respondent herein was transferred from BBMP, Bangalore to Karnataka State Highways Improvement Project Sub-Division, Maddur, in place of the petitioner herein and the petitioner was not given any posting. Pursuant to the said order, the third respondent herein joined the post to which he was transferred at Maddur. However, the petitioner herein gave a representation for cancellation of transfer of the third respondent herein. By order dt. 28.8.2010 the said order of transfer was cancelled and reposting of the petitioner was done in place of the third respondent at Maddur by order dt. 1.9.2010. Being aggrieved by the said order, application was filed by the third respondent herein before the KAT contending that he had been posted to Maddur by order



of transfer dt. 15.7.2010 and he has been again now disturbed by the impugned order dt. 28.8.2010. The KAT after hearing the learned counsel appearing for the applicant - third respondent herein and after perusing the objection statement to interim prayer filed by the petitioner herein who entered caveat as third respondent in the Application, passed the impugned order granting the interim order of stay of operation of the order dt. 28.8.2010 for a period of three months and passed further orders as referred to above. Being aggrieved by the order of the KAT dt. 6.9.2010 this Writ Petition is filed by the third respondent in the Application.

3. The learned counsel appearing for the petitioner submitted that the petitioner herein had not been given any posting under order of transfer dt. 15.7.2010 though respondent No.3 was posted to the place wherein he was working at Maddur and on representation given by the petitioner, the said order of

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transfer dt. 15.7.2010 was cancelled by order dt. 28.8.2010 and he was given reposting at Maddur, wherein third respondent is working, by order dt. 1.9.2010. Accordingly, he has already taken charge of the said post on 2.9.2010. Wherefore, the KAT could not have granted the interim order when the petitioner has already assumed charge at Maddur to which he was posted under the impugned order of transfer dt. 28.8.2010 and the interim order would amount to allowing the Application and wherefore, the said order could not have been passed.

4. We have given careful consideration to the contention of the learned counsel appearing for the petitioner and scrutinised the material on record.

5. The material on record would clearly show that the third respondent herein was posted to Maddur, wherein the petitioner herein was working by order of transfer dt. 15.7.2010. It is not disputed that the third

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respondent took charge of the post at Maddur from the petitioner and had been working at Maddur. However, according petitioner herein on the representation given by him order of transfer dt. 15.7.2010 is cancelled by order dt. 28.8.2010 and he has been given reposting by order on 1.9.2010. Apart from producing extract of the attendance register, no other material like CTC is produced to show that he has assumed charge at Maddur pursuant to reposting order dt. 1.9.2010. The said contention was also raised before the KAT while application for stay was considered and the KAT has rightly rejected the said contention. The same is in violation of Rules 12 and 24 of the KCSRs. Under the circumstances, having regard to the fact that the Application itself would become infructuous if the interim order of transfer of the applicant is not stayed, the KAT has granted the stay for a period of three months and has also directed respondent Nos. 1 and 2 – State and the Department to continue the third respondent herein at Maddur and give alternative

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posting to the petitioner herein and has also ordered that the matter shall be posted immediately after service of notice on respondent Nos. 1 and 2. Having regard to the above said facts, we do not find any good ground to take a different view in the matter. Having regard to the fact that the KAT itself has granted the interim order for a period of three months and had directed that the matter shall be posted immediately after service of notice on respondent Nos. 1 and 2 and the submission of the learned Government Advocate that respondent Nos. 1 and 2 will enter the appearance in the Application, if they have not yet filed memo of appearance and the direction of the KAT to post the matter immediately after service of notice on respondent Nos. 1 and 2 would be satisfied in view of the submission made by the Government Advocate appearing for respondent Nos. 1 and 2.

6. It is clear that the KAT is intended to dispose of the application within a period of three months and

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apart from observing that the KAT shall disposed of the application as intended by it within three months from the date of order i.e., 6.9.2010, the petitioner is not entitled to any other relief in this Writ Petition. Accordingly Writ Petition is disposed of.

Sd/-
Judge

Sd/-
Judge

BNS