

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 24TH DAY OF JANUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE S.G. PANDIT

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.100184 OF 2022 (S-KAT)

BETWEEN:

SRI. SHANKARANAND BANASHANKARI
S/O MARUTI, AGED ABOUT 37 YEARS,
OCC:CAO, HDMC, DIST:DHARWAD.

...PETITIONER

(BY SMT. BHARATI G BHAT, ADVOCATE)

AND:

1. SRI. VARADARAJ N.S.,
S/O SRI. SIDDABSAVAYYA
AGED ABOUT 40 YEARS, OCC:CAO,
KARNATAKA NEERAVARI NIGAMA LIMITED,
VIJAYA COMPLEX, SRINAGARA CROSS,
HALIYALA ROAD, DHARWAD-580003
R/O FLAT NO.105, SUBHAM RESIDENCY,
1ST MAIN, SANMATHI NAGAR, DHARWAD-580003.
2. THE STATE OF KARNATAKA
BY ITS ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU-560001.
3. THE STATE OF KARNATAKA
BY ITS ADDL. CHIEF SECRETARY,

IRRIGATION DEPARTMENT,
VIKASA SOUDHA, BENGALURU-01.

...RESPONDENTS

(BY SRI. G.K. HIREGOUDAR, GOVT. ADV. A/W SRI.
PRASHANT V MOGALI, HCGP FOR R2 AND R3)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE ORDER DATED 15.12.2021 PASSED ON THE APPLICATION OF 1ST RESPONDENT IN APPLICATION NO.11138/2021 BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BELAGAVI PRODUCED AT ANNEXURE-F AND ETC.

THIS PETITION COMING ON FOR *ORDERS*, THIS DAY,
S.G. PANDIT J., PASSED THE FOLLOWING:

ORDER

The petitioner who was respondent No.1 before the Karnataka State Administrative Tribunal, Belagavi (for short, 'Tribunal') is before this Court under Article 226 of the Constitution of India assailing the order dated 15.12.2021 passed in Application No.11138 of 2021 by the Tribunal, allowing the Application filed by respondent No.1 herein, wherein he had questioned his premature transfer.

2. Even though the matter is listed for orders, the same is taken up for final disposal with the consent of both parties.

3. Heard Smt. Bharati G Bhat, learned counsel for the petitioner and learned Government Advocate for respondents 2 and 3.

4. Both petitioner as well as respondent No.1 are in the cadre of Chief Accounts Officers of the State Accounts Department. Respondent No.1 was posted to the office of Chief Accounts Officer, Karnataka Neeravari Nigam Limited (KNNL), Dharwad under notification dated 17.6.2020 issued by Finance Department. Based on the said notification, Notification dated 18.6.2020 came to be issued by Irrigation Department re-posting respondent No.1 to KNNL, Dharwad. In pursuance of the said notification dated 18.6.2020, respondent No.1 took charge on 19.6.2020. Thereafter, under Notification dated 13.10.2021, respondent No.1 was transferred from KNNL, by posting petitioner in his place, without showing any posting to respondent No.1. Questioning the said

notification dated 13.10.2021, respondent No.1 herein was before the Tribunal. The Tribunal after hearing both the parties under the impugned order allowed the said Application and quashed the transfer order of the petitioner herein in place of respondent No.1. Aggrieved by the said order, the petitioner is before this Court.

5. Smt. Bharati G Bhat, learned counsel for the petitioner appearing through Video Conferencing would contend that respondent No.1 herein, who was working as Chief Accounts Officer, KNNL, was earlier working in the same office for many years. As such, he had completed his minimum tenure of service. Further, learned counsel would submit that respondent No.1 was subsequently suspended in the month of November, 2021. Therefore, he cannot continue in the said post. As the respondent No.1 was suspended, petitioner seeks permission to take charge of the said post.

6. On the other hand, Sri. G.K. Hiregoudar, learned Government Advocate would fairly submit that the order of the Tribunal is in accordance with the guidelines

issued by the State Government, dated 7.6.2013. Thus, he prays for passing appropriate orders.

7. It is not in dispute that both the petitioner as well as respondent No.1 are in the cadre of Chief Accounts Officer in the Department of State Accounts. Respondent No.1 was admittedly posted to KNNL under Notification dated 17.6.2020 (Annexure-A3) issued by Finance Department. Accordingly, based on the said notification, Irrigation Department issued Notification dated 18.6.2020 (Annexure-A4) re-posting order of respondent No.1 to KNNL. Respondent No.1 in pursuance of the said notification dated 18.6.2020, took charge of the Chief Accounts Officer, KNNL, Dharwad on 19.6.2020 as evidenced by Annexure-A5. Within 1 ½ year thereafter, under Annexure-A6, the petitioner is transferred in place of respondent No.1 herein without showing any posting to respondent No.1 herein. The petitioner and respondent No.1 belong to Group 'A' cadre, who are provided with two years tenure at a posting under Government Order dated 7.6.2013. The Tribunal has rightly concluded that the

transfer of respondent No.1 herein is premature and also government could not have transferred the respondent No.1 by posting the petitioner without giving him any posting. The finding recorded by the Tribunal is inconsonance with the decision of the Full Bench of this Court in ***S.N. Gangadharaiah, K.A.S., Vs. The State of Karnataka & Another, ILR 2015 KAR 1955*** and also decision of Division Bench of this Court in ***Miss. Seema H.K. Mariswamy Vs. State of Karnataka and Others. 2017 (2) AKR 59.***

8. The Tribunal also recorded a finding that the government has not followed the guidelines issued vide Government Order dated 7.6.2013 before effecting premature transfer of respondent No.1 herein. The Tribunal also observed that the reasons are not recorded for premature transfer, which is a requirement before effecting premature transfer. Subsequent suspension of respondent No.1 during the month of November, 2021 would not give any right to the petitioner herein to take charge of the post, when the Tribunal has already quashed

the transfer and posting of the petitioner in place of respondent No.1 as premature and not in accordance with the guidelines of the Government dated 7.6.2013. If respondent No.1 is suspended, it is for the State Government to take appropriate action to fill-up the said post. No ground is made out to interfere with the impugned order passed by the Tribunal.

9. With the above observations, writ petition stands dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JTR