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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
[Original Jurisdiction]

W.P. No. 11191 / 2021 [S-KAT]

BETWEEN

Smt. Jaikiran C. K.

Petitioner

AND

The State of Karnataka and Others

Respondents

SYNOPSIS

This petition is filed by the Petitioner who is a visually impaired Group 'A' officer appointed as Child Development Project Officer at Hassan and was transferred and asked to report to Bangalore vide order dated 12.1.2021 passed by the Respondent no.4 Chief Executive Officer Zilla Panchayat, Hassan. She challenged the said transfer order before the Karnataka Administrative Tribunal which refused to set aside the said transfer order and dismissed the petition vide the impugned order dated 05.05.2021. The Hon'ble Tribunal failed to consider that the Petitioner was arbitrarily transferred in complete violation of the Transfer Guidelines by an authority that was not competent to do so solely on the basis of an adverse report of the Deputy Director (in-charge) against whom she had filed a complaint of sexual harassment. The Petitioner was transferred

before her minimum period of stay was even completed. This transfer order was also in violation of the Government Order dated 6.2.2014 directing that persons with disabilities should be given relaxations in transfers. Without appreciating any of these issues, the Hon'ble Tribunal held that this was not a transfer but a repatriation of the Petitioner and dismissed the application. Hence this petition.

List of Dates

Date	Event
-	The Petitioner is a visually impaired person having over 90% blindness.
20.09.2019	The Petitioner successfully completed her training period and was appointed by the Under Secretary to the Women and Child Development Department and Disabilities and Senior Citizen Welfare Department, as the Child Development Project Officer, Hassan City Project, Hassan District.
21.09.2019	As per the above appointment order, the Petitioner dutifully reported to work the very next day and carried out her duties diligently and honestly.
10.08.2020	The Petitioner's was the target of sexual harassment at the hands of one Mr. Dileep who is also the in-charge Deputy Director, Women and Child Development Department, Hassan. The Petitioner was compelled to register FIR No. 85/2020 dated 10.08.2020 and also filed a complaint before the State Commissioner, Department of Rights of Persons with Disability.

19.08.2020	In retaliation, Mr. Dileep filed a counter case against the Petitioner being FIR No. 0122/2021 dated 19.08.2020. The same was later quashed by this Court in Crl. P. 4866 of 2020.
07.11.2020	A letter dated 07.11.2020 was issued by the State Commissioner for Disabilities to the Respondent No. 2 asking for the transfer of Mr. Dileep.
10.12.2020	Another letter was issued by the Commissioner for Disabilities to the Respondent No. 2 asking for the transfer of Mr. Dileep dated 10.12.2020.
05.01.2021	Mr. Dileep, the in-charge Deputy Director visited the Office of the Petitioner when she was attending a conference in relation to her work and submitted a false, fictitious and malicious report that shows the Petitioner in bad light to the Respondent No. 4.
06.01.2021	The in-charge Deputy Director made more false averments and allegations about the Petitioner's work not being up to the mark and submitted the same to the Respondent No. 4.
09.01.2021	Mr. Dileep further harassed the petitioner and registered and FIR bearing Crime No. 003/2021 dated 09.01.2021 at the Extension Police Station, Hassan. The Petitioner has sought for quashing of the same before this Hon'ble Court in Crl. P. 3585/2021.
11.01.2021	The State Commissioner for Disabilities wrote to the Respondent No. 2, yet again, asking for the Respondent No. 2 to transfer Mr. Dileep, vide letter dated 11.01.2021.
12.01.2021	Based on the in-charge Deputy Director, Mr. Dileep's false averments, and without any legal authority, the Respondent No. 4 issued an order dated 12.01.2021 whereby the Petitioner was relieved of her duties and asked to return to her parent department, i.e, to the Woman and Child Welfare

	Department.
2021	Aggrieved by this order, the Petitioner approached the Karnataka State Administrative Tribunal by way of Application No. 241 of 2021 seeking the setting aside of the Order dated 12.01.2021 on various grounds.
23.04.2021	The Petitioner herein wrote to the Respondent No.1 stating that she had not received her salary since November, 2020.
05.05.2021	The Hon'ble Tribunal passed the impugned order whereby it was pleased to set aside the Petitioner's application without having properly appreciated the facts of the case. Hence this petition.

Place: Bangalore

Date:

Counsel for the Petitioner

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**IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)**

W.P. No. _____ / 2021 (S – KAT)

**BEFORE THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, AT
BANGALORE**

APPLICATION No.241 OF 2021

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. _____/2021(S-KAT)

BETWEEN

RANK OF PARTIES

TRIBUNAL HIGH COURT

Smt. Jaikiran

D/o C H Keshavamurthy

Aged about 40 years

Working as Child Development Project Officer

Department of Women and Child and Senior Citizens

& Disabled development, Hassan District

Residing at Ranganatha Complex,

Hoysalanagara

Panchamukhi Circle,

Hassan Taluk,

Hassan – 573 201

APPLICANT

PETITIONER

AND

1. State of Karnataka,
Rep. by its Chief Secretary,
Vidhana Soudha,

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Bengaluru – 01

RESPONDENT No.1. RESPONDENT No.1

2. State of Karnataka,

Women and Child Welfare Department,

VikasaSoudha, Bengaluru – 560001

Rep. by its

Principal Secretary-01 **RESPONDENTNo.2 RESPONDENT No.2**

3. Commissioner,

Women and Child Welfare Department,

VikasaSoudha,

Bengaluru – 560 001. **RESPONDENTNo.3 RESPONDENT No.3**

4. Chief Executive Officer,

Hassan Zilla Panchayath,

Hassan,

Hassan District – 01. **RESPONDENTNo.4 RESPONDENT No.4**

5. Deputy Commissioner,

Hassan District,

Hassan – 01

RESPONDENT No.5 RESPONDENT No.5

6. Vijaya Kumar

Child Development Project Officer

Chhannarayapatna Taluk

Chhannarayapatna

Hassan District - 34

RESPONDENT No.6 RESPONDENT No.6

MEMORANDUM OF PETITION UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, 1950

The Petitioner submits as follows:

1. The present writ petition has been brought by the Petitioner, who is a Group 'A' officer in the cadre of Child Development Project Officer ('CDPO' hereinafter) who is aggrieved by the order dated 05.05.2021 ("**Impugned Order**") passed by the Karnataka State Administrative Tribunal by which the Petitioner's application filed under Section 19 of the Administrative Tribunals Act, 1985 with a prayer to set aside the order of the Chief Executive Officer Zilla Panchayat, Hassan dated 12.01.2021 by which the Petitioner who is a woman with disability being visually impaired, was prematurely transferred from Hassan to Bangalore, without any due process or hearing and in complete violation of the Transfer Guidelines and in violation of the provisions of the Rights of Persons with Disabilities Act 2016. The Petitioner is also not paid her salary since November 2020. Being aggrieved by the impugned order the Petitioner has filed the present Petition praying that this Hon'ble Court be pleased to

issue a writ of certiorari or in the nature of certiorari setting aside the order of transfer against her and seeking that she be directed to continue as the CDPO, Hassan Taluk.

(A Copy of the order dated 05.05.2021 is annexed herein and is marked as **ANNEXURE-A**)

Facts:

2. The Petitioner herein had filed an application before the Hon'ble Tribunal being aggrieved by the order of transfer from Hassan Taluk t Bangalore.

(A copy of the application no. 241/2021 along with annexures is annexed herein and is marked as **ANNEXURES-B** AND **with In KAT- ANNEXURES A1 to A9**)

3. The Petitioner is a visually disabled person having over 90% blindness.

(A copy of the petitioner's disability certificate is annexed herein and is marked as **ANNEXURE - C**)

4. It is submitted that the State Government of Karnataka has issued Guidelines regarding transfer of Government servants for governing all issues relating to transfer of government employees vide Guidelines dated 22.11.2001. Thereafter it

also issued a Government Order dated 06.02.2014 making relaxations in transfers for persons with disabilities.

(A copy of the Guidelines regarding transfer of employees dated 22.11.2001 is annexed herein and is marked as **ANNEXURE - D**)

(A copy of the Government Order dated 06.02.2014 is annexed herein and is marked as **ANNEXURE - E**)

5. It is submitted that the Petitioner was appointed in the State Civil Service by Notification dated 20.09.2019 as the Child Development Project Officer, Hassan City Project, Hassan District. This appointment was made by the Under Secretary to the Women and Child Development Department and Disabilities and Senior Citizen Welfare Department.

(A copy of the Petitioner's Appointment Notification dated 20.09.2019 is produced hereto and marked as **ANNEXURE - E**)

6. Accordingly, the Petitioner dutifully reported to work on 21.09.2019. It is pertinent to note that since then, the Petitioner has diligently carried out her duties, and gone over and above the call of duty to ensure that the department runs successfully. The Petitioner is an outstanding example of what

the invaluable contributions persons with disabilities can make to our society if given the right support.

7. The Petitioner has always been an extremely honest and hardworking officer that has, on several instances, pointed out the shortcomings in the Department such as miscalculation of rice, people unlawfully obtaining jobs, corruption and misappropriation of funds etc.
8. Due to the Petitioner's honesty and because she was having a disability, the Petitioner faced numerous instances of sexual harassment at the hands of one Dileep who was the in-charge Deputy Director in Hassan. Due to this she was compelled to register an FIR No. 85 /2020 dated 10.08.2020 under sections 354, 504, and 506 of the Indian Penal Code, 1860 (IPC) at the Hassan Women's Police Station against him. She also filed a complaint before the State Commissioner, Department of Rights of Persons with Disabilities.
9. In retaliation, Mr. Dileep also filed a counter case against the Petitioner herein. This was registered as FIR No. 122/2020 dated 19.08.2020 at Sakleshpura Rural PS under Sections 505 and 120B IPC for causing public mischief. The said FIR and

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complaint were quashed by this Hon'ble Court vide order dated 20.10.2021, in CrI. P. 4866 of 2020.

(A copy of the FIR No. 0122/2021 dated 19.08.2020 is produced hereto and marked as **ANNEXURE – G**)

(A copy of the order of this Hon'ble Court in CrI. P. 4866 of 2020 is produced hereto as **ANNEXURE – H**)

10. In retaliation, the said Mr. Dileep colluded with some persons and hatched a plan to further harass the Petitioner herein. In furtherance of this conspiracy, under suspicious circumstances, another FIR was registered as against the Petitioner herein, bearing FIR Crime No. 003/2021 dated 09.01.2021 at Extension Police Station, Hassan for offences of criminal intimidation and hurt. The Petitioner has sought for the quashing of the said FIR before this Hon'ble Court in CrI. P. 3585 / 2021.

(A copy of the FIR bearing Crime No. 003 / 2021 registered by the Extension Police Station, Hassan is produced herewith and marked as **ANNEXURE – J**)

11. Despite this hostile working environment, the Petitioner continued to carry out her duties diligently. However, she was constantly being harassed by the in-charge Deputy Director.

12. Based on the Petitioner's complaints, the State Commissioner for Disabilities issued three directions to the Respondent No.2 & 3 dated 07.11.2020, 10.11.2020 and 11.1.2021 bringing to its knowledge the harassment that he was causing to the Petitioner and requesting them to transfer the said Dileep out of Hassan and to provide protection to the Petitioner. However, no action was taken by the Respondent No. 2 on all these directions.
13. Due to all of this, the said in-charge Deputy Director was bent upon removing the Petitioner. He therefore submitted a false and baseless report to the Respondent No. 4 dated 05.01.2021 stating that the Petitioner has not been attending her office from 31.12.2020 to 5.1.2021 and has not taken any responsibility or interest in implementation of her project duties. The allegation that the Petitioner had taken unauthorized leave is false as can be seen from the attendance records of both the Staff Attendance Register and the 'Anemia and India' workshop attendance which the Petitioner was attending from 5.1.2021 to 6.1.2021.
- (A copy of the Staff Attendance Register Extract and the attendance sheet from the workshop are produced hereto and marked as **ANNEXURE – K to K1** collectively).

14. Thereafter the in-charge Deputy Director wrote to the Respondent No. 4 on 6.1.2021 again making false averments and allegations about the Petitioner's work being dissatisfactory which was merely a repetition of his previous report and also a re-iteration of his own complaints against her which was quashed. He also stated that because of her blindness she was not suitable for the ICDS work and should be transferred.

(A copy of the letter dated 06.01.2021 issued by the in-charge Deputy Director to the Respondent no.4 is annexed herein and is marked as **ANNEXURE - L**).

15. Thereafter, based on these repeated requests, and without any legal authority the Respondent No.4 CEO, Hassan Zilla Panchayat, issued an order dated 12.01.2021 stating that the Petitioner's work in Hassan was not satisfactory and hence she was transferred to the parent department, i.e, to the Women and Child Welfare Department.

16. Aggrieved by the above order that prematurely transferred the Petitioner, the Petitioner approached the Hon'ble Karnataka State Administrative Tribunal by way of Application No. 241 of 2021 seeking the setting aside of the Order dated

12.01.2021 on various grounds. The Respondents did not file any reply statement but merely filed a Memo with documents.

17. While the above proceedings were going on, the Respondents were not even paying the Petitioner her salary. The Petitioner has also not been paid her salary since November, 2020. The Petitioner has written about the same to the Respondent No.1 on several occasions but till date nothing has been done.

(A copy of the letter dated 23.04.2021 sent by the Petitioner to the Respondent No. 1 is produced herewith and marked as **ANNEXURE – M**).

18. Thereafter the Hon'ble Tribunal passed the impugned order dated 05.05.2021, dismissing the Petitioner's application without having properly appreciated the facts of the case holding that this was not a case of transfer but only where the petitioner was repatriated back to her parent department and upheld the order dated 12.1.2021.

19. Aggrieved by this, and having no other alternative and equally efficacious remedy, the Petitioner has filed the present writ Petition before this Hon'ble Court. The Petitioner has not filed any other petition either before this Hon'ble Court or any other forum in respect of this cause of action. The present

petitioner is filed on the following, among other grounds that have been taken without prejudice to one another:

GROUND

20. **THAT**,the impugned order is legally baseless and in violation of transfer regulations and guidelines and deserves to be set aside.

21. **THAT**,the Hon'ble Tribunal erred in holding that the Petitioner herein was repatriated vide order dated 12.1.2021 on the ground that she was deficient in the performance of her duties and that the ICDS work was not executed properly and hence she was repatriated and that the Respondent No.6 was asked to hold charge in her place only temporary. The Hon'ble Tribunal failed to appreciate that it was only on the basis of the repeated false and baseless letters of the in-charge Deputy Director that were written to the Respondent No. 4 CEO of the Zilla Panchayat that the Respondent no.4 passed the order holding that the Petitioner was not performing her duties properly, which was based on the statements of a person who had filed FIRs against her and was harassing her and without any inquiry or due process. Hence the same

ought not to be relied upon and the transfer order dated 12.1.2021 deserves to be set aside.

22. **THAT,** the Learned Tribunal erred in holding that the impugned order dated 12.1.2021 was not a transfer order issued under the transfer guidelines but was an order of repatriation where the repatriation was done at the instance of the borrowing authority. Such a finding is legally baseless as the Respondent No.4 was not a borrowing authority where the Petitioner was deputed. The Petitioner was not working for the Zilla Panchayat and was appointed as the CDPO at Hassan from the date of her appointment and hence there does not arise any situation of her repatriation. Further, the Guidelines do not recognize any repatriation as a legal status for a government employee. An employee is either on deputation or transferred. The Tribunal failed to appreciate that though the order dated 12.1.2021 was cleverly styled as a repatriation, it was in fact a transfer as the Petitioner was never deputed to the Respondent No. 4 Zilla Panchayat at any point of time and hence such a finding is illegal.

23. **THAT,** the Learned Tribunal failed to appreciate that the impugned order transferring the Petitioner was in complete violation of the Government Order No. DPAR 22 STR 2013

dated 07.06.2013 for transfer which mandates that no transfer would be made before the completion of 2 years and all Transfers / deputations shall be made only by the Competent Authority, in a transparent manner. The Petitioner herein belonged to the Group A service and having been appointed on 21.09.2019, she could not have been transferred until 21.09.2021, at the very least. Therefore, it is clear that the Petitioner has been prematurely transferred and that the Hon'ble Karnataka State Administrative Tribunal has failed to take the same into account, and hence the impugned transfer order deserves to be set aside.

24. **THAT,** the Petitioner herein was transferred by order dated 12.01.2021 which was signed off by the Respondent No.4. The guidelines for Transfer of Civil Servants makes it abundantly clear the only authority that can issue a transfer is the Competent Authority' which has further been defined in the explanations as 'Appointing Authority'. In the present case, the Appointing Authority for the Petitioner was the Respondent No. 2, and yet the Respondent No. 5 is the one that issued her transfer. The Hon'ble Karnataka Appellate Tribunal has failed to appreciate that the Respondent No. 4 has no authority or standing to "borrow" the authority of the

Respondent No. 2 to make a transfer that is clearly bad in law.

25. **THAT**, in the case of ***Dr. Ramesh Chandra Tyagi vs. Union of India 1994 SCC (2) 416***, the Hon'ble Supreme Court has made it abundantly clear that transfers made by incompetent authorities must be interfered with. This position was reiterated again by the Apex Court in ***State of U.P &Ors. Vs. GobardhanLal 2004 11 SCC 402*** wherein the Court was pleased to make the following observation which is squarely applicable to the case at hand:

"7. ... Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made...."

(Emphasis Supplied)

26. **THAT**, in the present case, not only has the Order dated 12.01.2021, been passed malafidely, it is violative of the statutory provisions that govern transfers and the rights of persons with disability, and further, it has not even been

passed by the competent authority, and therefore calls for the active intervention of this Hon'ble Court. As held by a Division Bench of this Hon'ble Court in **Shivaji A. Kawaje v. State of Karnataka and Others in W.P. No. 200881 / 2017**, where the petitioner had been transferred prematurely and there was no prior approval given for such premature transfer, the transfer order is liable to be quashed.

27. **THAT, in Sri Rajashekar M. vs. The State of Karnataka in WP. No. 45916 / 2018**, this Hon'ble Court has made it abundantly clear that:

"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 WP No.45916/2018 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."

28. **THAT,** in light of the above clear guidelines mentioned in the Government Order, it is abundantly clear that the Respondent No. 4's order of transfer is manifestly illegal as not only does the Respondent No. 5 not give a valid reason for the premature transfer of the Petitioner, but over and above that the Respondent No. 5 needed to obtain the signature of the Chief Minister on such a premature transfer.
29. **THAT,** the Hon'ble Tribunal failed to appreciate that the transfer order dated 12.01.2021 is manifestly arbitrary and unfair in nature.
30. **THAT,** the Order dated 12.01.2021, violated the right of the petitioner to a fair hearing or *audialterm partem*, as it did not

afford the Petitioner a chance to lay her case before the Order that gravely affects her rights was passed.

31. **THAT,** even apart from a clear violation of the Transfer guidelines, the Respondent State Government vide DPAR 05 STR 2020 dated 18.06.2020 has issued a circular stating that transfers should be limited, in light of the pandemic. Yet, amidst this global pandemic, the Respondent No. 5 thought it fit to prematurely transfer a Group A officer who is a woman with a benchmark disability and is a permanent resident of Hassan. The order dated 12.01.2020 reeks of arbitrariness and is manifestly unjust from even the barest of perusals.

32. **THAT,** the Hon'ble Tribunal has failed to appreciate that the action of the Respondent No. 4 in issuing the transfer order as in violation of Section 20 of the Rights of Persons with Disabilities Act, 2016, which mandates that there shall be no discrimination against government employees in employment and that the government shall frame transfer policies and policies of posting for persons with disabilities. The premature transfer of the Petitioner, falsely styled as a "repatriation" which is not a recognised term under the Transfer Guidelines, based on false allegations by the in-charge Deputy Director without any inquiry or hearing, and transfer orders issued by

the Respondent No. 4 who is not the competent authority under law, amounts to discrimination against the Petitioner on the ground of her disability and deserves to be set aside.

33. **THAT**, Rights of Persons with Disability Act, 2016 (RPWD Act) was enacted with a view to facilitate the full and effective participation of persons with disabilities in society and accordingly mandates that the Government must take the necessary steps required to ensure reasonable accommodation for persons with disabilities, which has been expressly recognized in Section 3 of the RPWD Act. The transfer of the Petitioner amounts to discrimination in public employment on the account of her disability as no reasonable accommodation is provided to her, and hence deserves to be set aside.
34. **THAT** the Learned Tribunal failed to appreciate that as per government order dated 6.2.2014, persons with disabilities should not be transferred against their wishes, keeping in mind their disability. No attention was paid to this provision, and in fact the Tribunal has stated that this relaxation in transfer was based on satisfactory performance of the Petitioner alleging that this was not found in the instant case. The relaxation in transfer is provided to enable persons with

disabilities and to provide reasonable accommodation to them, and here there has been a blatant violation of the same and hence the transfer of the Petitioner deserves to be set aside.

GROUND FOR INTERIM PRAYER

35. The transfer order dated 12.1.2021 transferring the Petitioner from Hassan to Bangalore amounts to a huge harassment and difficulty to the Petitioner as she is blind and her husband, mother and brother and family resides in Hassan and she needs their support for all her daily activities. She cannot function all alone in Bangalore due to her disability.
36. Further, the Petitioner has not been paid her salary since November, 2020. This incredible delay in attaining justice is likely to affect the Petitioner's morale, mental state and well-being. In fact, the Petitioner is only just recovering from Covid at the time of filing this Petition. In light of the incredible hardship the Petitioner has already had to undergo because of the arbitrary actions of the Respondents, it is just and necessary that the Petitioner be paid her arrears in salary.
37. No prejudice or hardship would be caused to the respondents if the Petitioner is given what is rightfully hers. Per contra,

great prejudice and hardship would be caused to the petitioner if the interim reliefs are not granted

PRAYER

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court may be pleased to:

- A. Issue a writ in the nature of certiorari or any other writ or order, calling for the records in Application No. 241 / 2021 from the Hon'ble Tribunal at Bangalore and thereafter quash and set aside the impugned order dated 05.05.2021 (produced as **ANNEXURE -A**) passed by the Hon'ble Karnataka Administrative Tribunal at Bangalore in Application No. 241 / 2021;
- B. Quashing the order of the Respondent No. 4 bearing No.SAMKE:ZIPUMHA:AACI(14)SHIAAYOHAA/82/2020-21dated 12.01.2021 (produced as **ANNEXURE -A1**), relieving the Petitioner from Hassan and transferring her to Bangalore; and
- C. Grant any other relief, which this Hon'ble Court may deem as fit and necessary in the circumstances of the case and in the interests of justice and equity.