

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3rd DAY OF SEPTEMBER 2012

PRESENT

THE HON'BLE MR. JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE H.S. KEMPANNA

WP No.18658/2012 (S-KAT)

BETWEEN:

A.V.Theresa, 58 years
W/o.Mathew.J.,
Working as Senior Sub-Registrar
Office of the Sub-Registrar
B.C.Road, Bantwala
Bantwala Taluk-574 219
Dakshina Kannada District.

... PETITIONER

(By Sri.D. Pavanesh, Advocate)

AND

1.Inspector General and
Registration of Stamps
NO.720, "Shimsha Bhavan",
8th Block, 46th Cross
Jayanagar, Bangalore-82

2.Y.N.Ramachandraiah
First Division Assistant(In-charge
Sub-Registrar), Office of the Sub-Registrar
Byndoor, Udupi District-576 214 ... RESPONDENTS

(By Sri. S.G.Pandit, Advocate for R-2: Smt. Revathy Adinath Narde, HCGP for R-1)

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This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 6.6.2012 passed by the KAT in Application No.2738/12 insofar as rejection of interim order sought for by the petitioner to stay the order dated 31.5.2012 issued by the first respondent is concerned vide Annexure-A.

This writ petition coming on for orders this day **N.Kumar, J.**, passed the following:-

ORDER

The petitioner in this petition has challenged the order passed by the KAT refusing to grant an interim order of stay of the operation of the order of transfer of the second respondent in place of the petitioner.

2. The second respondent was working in the Office of the Sub-Registrar, Hiriyur, as FDA. By the impugned order, he was transferred to the Office of the Sub-Registrar, Byandoor as Sub-Registrar under Rule

32 of the KCSRs. Subsequently, he has been transferred from the said Office to the Office of the Sub-Registrar, Bantwal in place of the petitioner. The petitioner as on the date of the transfer was working as a Senior Sub-Registrar. Therefore, she challenged the order of transfer and sought for an interim order of stay. The Tribunal declined to grant any interim order on the ground that the facts have to be verified. Therefore, challenging the said order declining to grant an interim order, the petitioner has preferred this writ petition.

3. We have heard the learned counsel for the parties.

4. The facts are not in dispute. The petitioner was working at Bantwal as Senior Sub-Registrar. In his place the second respondent has been posted under Rule 32 of the KCSRS. Rule 32 of the KCSRS reads as under:-

“Instead of appointing a Government servant to officiate, it is also permissible to appoint him to be in

charge of the current duties of a vacant post. In such a case a “charge allowance” (additional pay) is payable as specified in Rule 68.”

Therefore the condition precedent for application of Rule 32 is there should be a vacant post. In the vacant post, instead of appointing the Government servant to officiate it is permissible to appoint to be incharge of current duties. Therefore, Rule 32 cannot be invoked to appoint a person to be incharge of current duties of a post which is occupied by a person who is duly appointed to discharge the functions of the said post. In that view of the matter, the order of transfer prima-facie is illegal. Therefore, the Tribunal was not justified in declining to grant stay of an order which is patently illegal and contrary to Rule 32.

6. Therefore, the writ petition is allowed. Impugned order is set aside. The interim order of stay granted by this Court at the time of entertaining this

petition is made absolute pending disposal of the application before the Tribunal.

Sd/-
JUDGE

Sd/-
JUDGE

*alb/-.