



NC: 2024:KHC-D:17962
WP No. 107291 of 2024
C/W WP No. 107287 of 2024



IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 6TH DAY OF DECEMBER, 2024

BEFORE
THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO.107291 OF 2024 (CS-RES)
C/W
WRIT PETITION NO.107287 OF 2024

IN W.P.NO.107291/2024:

BETWEEN:

PRAKASH RAMACHANDRA HEGDE,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: KUDEGOD, DODMANE,
TQ: SIDDAPURA,
DIST: UTTARA KANNADA – 581 329.

...PETITIONER

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR
SRI MALLIKARJUNSWAMY B. HIEMATH AND
SMT. KAVERI HIEMATH, ADVOCATES)

AND:

1. THE REGISTRAR OF
CO-OPERATIVE SOCIETIES,
OFFICE OF REGISTRAR OF CO OPERATIVES
SOCIETIES, NO.1, ASKAR ALI ROAD,
BENGALURU - 560 001.
2. DEPUTY REGISTRAR OF
CO OPERATIVE SOCIETIES, KARWAR,
DISTRICT UTTARA KANANDA – 581 329.





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3. ASSISTANT REGISTRAR OF CO OPERATIVE
SOCIETIES OFFICE OF ARCS,
SIRSI UTTARA KANNADA – 581 329.
4. CHIEF EXECUTIVE DODMANE,
GROUP VILLAGE SEVA CO OPERATIVE
SOCIETIES DODMANE, SIDDAPUR TALUK,
U.K. DISTRICT – 581 329.
5. VIVEK SUBRAYA BHAT,
AGE: MAJOR, OCC: AGRICULTURE,
DIRECTOR DODMANE GROUP VILLAGE SEVA
CO OPERATIVE SOCIETY, SIDDAPUR TALUK,
U.K. DISTRICT – 581 329.

...RESPONDENTS

(BY SRI GANGADHAR J.M., ADDITIONAL ADVOCATE GENERAL
FOR SMT. MALA D. BHUTE, AGA FOR R1 TO R3;
SRI A.P.HEGDE, ADVOCATE FOR /R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES OF 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE WRIT OF
CERTIORARI QUASHING THE ORDER DATED 27.11.2024 PASSED BY
RESPONDENTS NO. 2 IN NO. DRN/F/DDS/APPEAL/13/2024-25 IS
PRODUCED HERewith ANNEXURE-E AND ETC.,

IN W.P.NO.107287/2024:

BETWEEN:

PRAKASH RAMACHANDRA HEGDE,
AGE: 46 YEARS, OCC: AGRICULTURE,
R/O: KUDEGOD, DODMANE,
TQ: SIDDAPURA,
DIST: UTTARA KANNADA – 581 329.

...PETITIONER

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SRI MALLIKARJUNSWAMY B. HIEMATH AND
SMT. KAVERI HIEMATH, ADVOCATES)

AND:

1. THE REGISTRAR OF
CO-OPERATIVE SOCIETIES,
OFFICE OF REGISTRAR OF CO OPERATIVES
SOCIETIES, NO.1, ASKAR ALI ROAD,
BENGALURU - 560 001.
2. DEPUTY REGISTRAR OF
CO OPERATIVE SOCIETIES, KARWAR,
DISTRICT UTTARA KANANDA – 581 329.
3. ASSISTANT REGISTRAR OF CO OPERATIVE
SOCIETIES OFFICE OF ARCS,
SIRSI UTTARA KANNADA – 581 329.
4. CHIEF EXECUTIVE DODMANE,
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SOCIETY DODMANE,
SIDDAPUR TALUK,
U.K. DISTRICT – 581 329.
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CO OPERATIVE SOCIETY, SIDDAPUR TALUK,
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RESPONDENTS NO. 2 IN NO. DRN/F/DDS/APPEAL/14/2024-25 IS
PRODUCED HEREWITH ANNEXURE-E AND ETC.,

THESE WRIT PETITIONS, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

Writ petition No.107287/2024 is filed seeking for the
following relief:

*"Issue writ of certiorari quashing the order dated
27.11.2024 passed by respondents No.2 in
No.DRN/F/DDS/APPEAL/14/2024-25 is produced
herewith Annexure-E"*

2. Writ petition No.107291/2024 is filed seeking for
the following relief:

*"Issue writ of certiorari quashing the order dated
27.11.2024 passed by respondents No.2 in
No.DRN/F/DDS/APPEAL/13/2024-25 is produced
herewith Annexure-E"*



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3. Since the petitioners in both the writ petitions are the same and the issue under consideration is with regard to the disqualification of respondent No.5 in both the writ petitions is in respect of respondent No.4 – Society, both the writ petitions are taken up together for consideration.

4. The factual matrix in a nutshell leading to the present writ petitions are that pursuant to a communication addressed by the petitioner to respondent No.3/Assistant Commissioner, order dated 25.11.2024 was passed under Section 29(c) of the Karnataka Co-Operative Societies Act, 1959¹ by respondent No.2/Assistant Registrar of Co-Operative Societies, Sirsi, Uttara Kannada disqualifying respondent No.5 in both the writ petitions.

5. Respondent No.5 in both the petitions filed appeals under Section 106(3) of the Act. The said appeals were required to be heard by the Deputy Registrar of Co-Operative Societies, Uttara Kannada². Since the said post of DRCS, U.K was vacant, the Assistant Registrar Co-Operative Societies,

¹ Hereinafter referred to as 'the Act'

² Hereinafter referred to as 'DRCS, U.K.'



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Kumta³ being the officiating/in-charge officer, vide order dated 27.11.2024 (Annexure-E in both the writ petitions) granted stay of the order of disqualification dated 25.11.2024. Being aggrieved, the present writ petitions are filed.

6. Heard the submissions of learned Senior Counsel Sri Jaykumar S. Patil appearing along with the learned counsel Sri.Mallikarjunaswamy Hiremath for the petitioners, learned Additional Advocate General Sri G.M. Gangadhar for respondent Nos.1 to 4/official respondents and learned counsel Sri A.P. Hegde Janmane for the respondent No.5/private respondents in both the writ petitions.

7. The primary contention put forth by the petitioner is that the ARCS, Kumta not being the rank of a Deputy Registrar who is the appellate authority under Section 106(3) of the Act, was not empowered to pass the order dated 27.11.2024 staying the disqualification order dated 25.11.2024. Hence, the petitioners seek for allowing of the writ petitions and granting of the relief.

³ Hereinafter referred to as 'ARCS, Kumta'



8. The official respondents and the private respondents contend that by virtue of Rule 68 of the Karnataka Civil Service Rules⁴ the ARCS Kumta, who is appointed as in charge of the DRCS, U.K. is entitled to take all necessary steps and that the action taken by the ARCS, Kumta is required to be deemed/construed as steps taken by the DRCS, U.K. Hence, they seek for dismissal of the writ petitions.

9. It is further contended that in an appeal from an order of disqualification, the order of disqualification should ordinarily be stayed and hence, the order passed by the ARCS, Kumta is just and proper.

10. The learned counsel for the private respondents further contends that in the event the relief sought for in the present writ petitions are granted, great hardship would be caused to the private respondents since the post of the DRCS, U.K., has been vacant for more than six months and if the statutory powers exercisable by the DRCS, U.K., is not exercised by the ARCS, Kumta, the same would cause irreparable injury to the private respondents who would be

⁴ Hereinafter referred to as 'KCSR'



prevented from contesting in the elections to respondent No.4/Society.

11. The submissions of the learned counsels have been considered and the materials on record have been perused.

12. Section 106(1)(d-2) of the Act stipulates that an appeal shall lie against an order passed under Section 29(c) of the Act. Further Section 106(2)(a) of the Act stipulates that an appeal from an order made by the Assistant Registrar shall lie to the jurisdictional Deputy Registrar.

13. Rule 32 and 68 of the KCSR states as follows:

32. Instead of appointing a Government servant to officiate, it is also permissible to appoint him to be in charge of current duties of a vacant post. In such a case a "charge allowance" (additional pay) is payable as specified in Rule 68.

68. *When a Government servant is appointed to be in-charge of the current duties or independent charge of an office, in addition to his own duties and the charge entails a substantial increase of responsibility and some additional work, he shall be entitled to 7.5% of the minimum of the scale of pay applicable to the post in which he is placed in-charge or independent charge, as additional pay (charge allowance) to be fixed by the authority competent to appoint him as such.*

Note 1.- *A Government servant holding an equivalent or higher post or if no such Government servant is immediately*



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available, a Government servant of the same office who is immediately junior to the Government servant handing over charge and who has completed the period of his probation or officiation, as the case may be, may be appointed under this rule to be in charge of the current duties of an office or post in addition to his own duties.

(emphasis supplied)

14. In this context, it is relevant to note that vide order bearing No.RCS/Sibbandi-1/CR-11/2024-25 dated 30.05.2024 (Annexure-C to the writ petitions), the ARCS, Kumta has been stipulated to officiate the post of the DRCS, U.K., The said order dated 30.05.2024 reads as follows:

“ಆದೇಶ

ಸರ್ಕಾರದ ಉಲ್ಲೇಖಿತ ಆದೇಶದ ರೀತ್ಯಾ ಶ್ರೀ ಮಂಜುನಾಥಸಿಂಗ್. ಎಸ್. ಈ. ಸಹಕಾರ ಸಂಘಗಳ ಉಪನಿಬಂಧಕರು, ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲೆ, ಕಾರವಾರ ಇವರ ವಿರುದ್ಧ ವಿಚಾರಣೆ ಕಾಯ್ದಿರಿಸಿ, ಮುಂದಿನ ಆದೇಶದವರೆಗೆ ಅಮಾನತ್ತುಗೊಳಿಸಿ, ಆದೇಶಿಲಾಗಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಆಡಳಿತಾತ್ಮಕ ಕಾರ್ಯನಿರ್ವಹಣೆ ಹಿತದೃಷ್ಟಿಯಿಂದ ಸಹಕಾರ ಸಂಘಗಳ ಉಪ ನಿಬಂಧಕರು, ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲೆ, ಕಾರವಾರ ಹುದ್ದೆಗೆ ಈ ಕೂಡಲೇ ಜಾರಿಗೆ ಬರುವಂತೆ ಸಹಕಾರ ಸಂಘಗಳ ಸಹಾಯಕ ನಿಬಂಧಕರು, ಕುಮಟಾ ಉಪ ವಿಭಾಗ, ಕುಮಟಾ ಇವರನ್ನು ಅಧಿಕ ಪ್ರಭಾರದಲ್ಲಿರಿಸಿ, ಆದೇಶಿಸಿದೆ.

ಅಧಿಕ ಪ್ರಭಾರದಲ್ಲಿರಿಸಿರುವ ಅಧಿಕಾರಿಗಳು ಕೂಡಲೇ ಪ್ರಭಾರ ವಹಿಸಿಕೊಂಡು ಈ ಕಛೇರಿಗೆ ಪ್ರಭಾರ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಕಡ್ಡಾಯವಾಗಿ ಸಲ್ಲಿಸುವುದು.”

15. The learned senior counsel for the petitioner in support of his contentions places reliance on the judgment of a Division Bench of this Court in the case of **E.E. Gupta and**



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others vs. State of Mysore and Others⁵ and on a Co-Ordinate Bench judgment in the case of ***B.N. Dhotrad vs. The Board of Directors/cum-Appellate Authority and Others***⁶.

16. A Division Bench of this Court in the case of ***Maridev (M.) vs. State of Mysore and others***⁷ was considering a fact situation wherein an Excise Inspector had filed a writ petition challenging the order of the State Government appointing five other Excise Inspectors in independent charge of posts of Assistant District Excise Officers at different places. The challenge was made on two grounds i.e., that the appointments were opposed to the Cadre and Recruitment Rules and that the petitioner being senior to the other appointees, he should have been appointed. The Division Bench considering the said fact situation and noticing Rules 36 and 68 of the Mysore Civil Services Rules held as follows:

⁵ 1962 Mysore L.J. 555

⁶ ILR 2006 KAR 3163

⁷ ILR 1968 KAR 270



"10. The note to rule 32 does not expressly state that the appointment contemplated is to be in charge of the current duties of an office independently; but the meaning of the note is quite clear. It means that instead of appointing a Government servant to officiate, it is also permissible to appoint him to be in independent charge of the current duties of a vacant post in a higher appointment as a temporary measure. When the impugned order expressly states that the in-charge appointment is made under rule 32 on a temporary basis, it has to be construed as meaning that respondents 3 to 8 are placed in independent charge of the current duties of the vacant posts of Assistant District Excise Officers and nothing more. Placing a subordinate officer, in independent charge of the current duties of a vacant post in a higher appointment does not amount to his promotion to the higher post. A subordinate officer charged with the performance of the duty of a superior for a limited time and under special and temporary conditions, is not thereby transformed into the superior and permanent official. Officiating appointments, and in charge arrangements are well-understood terms in civil service. When an officer is appointed to officiate in a higher appointment, he is invested with the powers of the higher post, but when he is placed in charge of the current duties of a vacant post in a higher appointment, whether in addition to his own duties or independently, he cannot exercise any of the statutory powers of the office; he can merely perform the day-to-day office duties only."



(emphasis supplied)

16.1 The Division Bench, further, noticing another Division Bench judgment of this Court in the case of ***E.E.Gupta***⁵ held as follows:

"14. When rule 32 states that 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 whether in addition to his own duties or to be in independent charge, we are unable to appreciate the argument that the respondents have been appointed to officiate in the higher posts and that it is a colourable or fraudulent exercise of power. The order of the Government can be challenged on the ground that it is a fraud on power where it has no power to place an official to be in independent charge of the current duties of the vacant post in a higher appointment as a temporary measure. When there is such a power and that is a well-recognized power in service regulations, we are unable to accept the argument that the impugned order is a fraudulent exercise of power.

15. In the course of the hearing, the petitioner filed an additional affidavit alleging that respondents 3 to 8 are in fact performing the statutory duties of Assistant District Excise Officers and not merely the current duties of the said posts. On a construction



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of the impugned order, we have come to the conclusion that the respondents were merely placed in charge of the current duties of the office of the Assistant District Excise officers as a temporary measure and they cannot perform any of the statutory duties of that office. There, if they have exercised any statutory powers which they are not empowered, those actions alone can be challenged.”

(emphasis supplied)

16.2 Further, the Division Bench after noticing various contentions dismissed the writ petition and rejected the challenge made for appointing Excise Inspectors to the post of Assistant District Excise Officers.

17. A Co-ordinate Bench of this Court in the case of **B.N. Dhotrad⁶** was considering a fact situation wherein the petitioner therein was working in the office of the Assistant Director of the Karnataka Land Army Corporation Limited⁸ and the Managing Director issued a show cause notice to the petitioner on various charges. The order of the Managing Director who was the disciplinary authority

⁸ Hereinafter referred to as ‘Corporation’



was called in question before this Court in a writ petition. One of the grounds urged in the writ petition was that the disciplinary authority/Managing Director did not possess the required qualification and eligibility to hold the post of Managing Director and he was only a Technical Director appointed on a contract basis and he was placed in-charge of the post of the Managing Director.

17.1 In the said case, a Co-ordinate Bench noticed that the Karnataka Land Army Corporation Cadre and Recruitment Rules 1996⁹ provided for the conditions of service, method of recruitment, procedure for appointment, misconduct, pay and allowance, etc. It further, noticed that Rule 94 of the 1996 Rules provided that the Managing Director alone was competent to issue penalties. It further noticed that the Corporation had adopted the KCSR to supplement the 1996 Rules.

17.2 Further the Co-ordinate Bench held as follows:

⁹ Hereinafter referred to as '1996 Rules'



"11. It is settled that a person who is appointed to a post in accordance with law by a competent authority has a lien to the post. He is so appointed because, he possesses the qualification prescribed for the post. The qualification prescribed for a post has immense relevance to the quality and content of the jobs and functions of a post and their discharge in public employment. It is more so in the case of pivotal posts/offices such as of Managing Director of a Public Sector Undertaking.

12. In-charge arrangements and promotion are well understood in Civil Service. Posting an Officer in the lower post to discharge the duties of the higher post without promotion is only an in-charge arrangement. It is the exigencies of public service that will be the relevant consideration and not the consideration of seniority while making such arrangement. A person was posted on independent charge basis does not hold the post on promotion. Under Rule 32 of KCSR, any employee in the next below post/cadre can be placed in charge or independent charge of a higher post. Similarly, in accordance with Rule 68 of the K.C.S.R., a Government servant can be appointed to be in-charge of the current duties of an office in addition to his own duties. He need not be the senior most. Generally, such arrangements are made for a short period. Therefore, no presumption can be raised that the substantive power attached to the Office of Managing Director is not likely to be abused. In exercise of these powers he may mar the service career of all other employees who are likely to compete with him for promotion. Therefore, he



is not supposed to discharge the substantive functions of the post/office which he holds on in-charge basis."

(emphasis supplied)

17.3 Subsequently, the Co-ordinate Bench noticing various judgments, including the case of **Maridev**⁷ and another Full Bench judgment of Madhya Pradesh High Court in the case of **Girija Shankar Shukla v. Sub Divisional Officer Harda**¹⁰ held as follows:

"17. From the discussions made above, it is dear that a Government servant appointed to be in-charge of current duties of an office cannot exercise any substantive powers of the office. He cannot discharge the statutory functions assigned to the post. He can merely perform the day today office duties because the powers other than substantive powers do not adversely affect the interest or rights of others. In the instant case, though the charge sheet was issued by the regular Managing Director, Mr, V.R. Gudi, the in-charge Managing Director has constituted the departmental enquiry committee and has acted as Disciplinary Authority. Therefore, the enquiry proceedings from the stage of constitution of departmental enquiry committee is illegal and is requires to be quashed. Similarly, the

¹⁰ AIR 1973 Madhya Pradesh 104



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appellate order is equally bad and it also requires to be set aside."

(emphasis supplied)

18. In the case of **Girija Shankar Shukla¹⁰** a Full Bench of Madhya Pradesh High Court was considering a reference arising out of a conflict between two Division Bench judgments of the said Court with regard to the correctness of the construction of the expression "current charge of the duties". The said case arose in a fact situation wherein the notice to convene a meeting of the Municipal Corporation was issued by the Collector of the District. However, on the date of the meeting, the Collector having proceeded on leave, the meeting was presided over by the Sub-divisional Officer who was also placed in current charge of the duties of the Collector. The Full Bench after noticing various judgments of the Hon'ble Supreme Court held as follows:

"17. From the decision of the Supreme Court it follows that a person appointed permanently or to officiate on a post holds that rank, whereas a person who is placed only in current charge of duties of a post



does not hold that rank. Accordingly, those functions or powers of the post which depend on the rank cannot be discharged by a person who is placed only in current charge of the duties of that post.”

(emphasis supplied)

18.1 Further, it is further relevant to note that in the said case, the Full Bench of the Madhya Pradesh High Court held that the Sub-Divisional Officer who presided over the meeting was a Collector within the meaning of the relevant provisions of the Madhya Pradesh Municipalities Act, 1961.

19. The learned Additional Advocate General for the official respondents and learned counsel for the private respondents places reliance on the judgment of the Hon’ble Supreme Court in the case of **Gopalji Khanna vs. Allahabad Bank and Others**¹¹, wherein the Hon’ble Supreme Court was considering a fact situation where the question as to whether the power of review was available to the Chairman and Managing Director of the Allahabad Bank under the regulations pertaining to said Bank and as to whether the said power could

¹¹ (1996) 3 SCC 538



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have been exercised by the Executive Director who, in the absence of the Chairman and Managing Director was entrusted with the current charge of the duties of the office of the Chairman and Managing Director fell for consideration. The Hon'ble Supreme Court considering the said contention held as follows:

"7. With respect to the second contention, it was submitted by the learned counsel that the power of review is conferred by Regulation 18. Only the Chairman and Managing Director are specified as reviewing authorities. This statutory power, therefore, can be exercised by Chairman and Managing Director only as they are the named authorities under the statutory provision and cannot be validly delegated to any subordinate authority. Shri Wadhwa, therefore, could not have validly exercised that power. There is no substance in this submission. It is really misconceived. Though the Regulations have been framed in exercise of the powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, by the Board of Directors, they cannot be equated with a statute. What the Board of Directors have done by making those Regulations is to regulate the power of taking disciplinary action against the employees of the bank. Moreover, this is not a case where the power of Chairman or the Managing Director came to be exercised by a subordinate official as a



result of delegation of that power. Shri Wadhwa while exercising the power of review was really discharging the functions of Chairman and Managing Director as he was then placed incharge of those offices and was therefore entitled to perform all the duties and functions of those offices.

(emphasis supplied)

19.1 The Hon'ble Supreme Court considering the contention that "when a person entrusted with charge of current duties of higher post, he can exercise only those powers and perform those functions which are available to a person holding the higher post under executive orders and not those which are conferred by statutory provisions" rejected the said contention after referring to various judgments rendered by it, the Hon'ble Supreme Court held as follows:

"12. After considering the above decisions and Regulations 2(n) and 18, we are of the opinion that as the Executive Director Shri Wadhwa was entrusted with the charge of the offices of Chairman and Managing Director he became entitled to exercise all the executive powers, perform duties and discharge functions attached to those offices and, therefore, the order of penalty passed by him was legal and valid.

(emphasis supplied)



20. A Full Bench of the High Court of Madras in the case of **A. Savariar v. The Secretary, Tamil Nadu Public Service Commission¹²**. was considering a reference wherein the following question was referred for consideration:

"1. As per the order of reference, the issue to be decided is whether the officer-in-charge of a post is vested with powers to perform the statutory powers and duties of such post.

20.1 The Full Bench of the Madras High Court after referring to the judgment of the Hon'ble Supreme Court in the case of **Gopalji Khanna¹¹** held as follows:

"3.... The Honourable Apex Court has held, the Executive Director while exercising the power of review the Executive Director was really discharging the functions of the Chairman and Managing Director as he was then placed in-charge of those offices and therefore, entitled to perform all the duties and functions of those offices. As per the above said judgment, when an Officer is posted as in-charge of a post, he discharges the functions of the said post in the capacity of the officer of the said post. As such, as per the above said judgment, he is entitled to discharge and perform all duties and functions of

¹² 2009 (73) AIC 681



those offices.4. Though not the term in-charge is defined in any of the Rules applicable in relation to the Government Offices, as per the above said judgment, when an officer is posted as in-charge of a post, he discharge the functions of the said post as an Officer of that post. Consequently, he can exercise the statutory powers of the said post. That apart, when a vacancy is filled by way of an in-charge, unless the statutory functions of the said post is exercised by an officer who is posted as in-charge, the functions of the said post will become a stand still which will have a consequence in administration.

(emphasis supplied)

21. A Co-ordinate Bench of Madras High Court in the case of **Sugunapri v. District Collector (Inspector of Panchayaths), Cuddalore District and another**¹³ relied upon by the learned counsel for the respondent, after relying upon the Full Bench Judgment in the case of **A. Savariar**⁷ has held as follows:

"9. Thus, an officer, who is holding the post incharge has got full powers and could exercise all statutory function attached to the said post, unless, he has been specifically prohibited under the relevant Government order or if there is a statutory

¹³ 2010 (4) CTC 701



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prohibition. As already seen that the officer concerned has been given full additional charge of the post of Collector of Cuddalore District, therefore, it cannot be stated that the impugned notice is without jurisdiction."

(emphasis supplied)

22. It is vehement contention put forth by the petitioners that the order dated 30.05.2024 itself demonstrates that the ARCS Kumta is permitted to discharge only day-to-day functions of DRCS, U.K., and was not entitled to discharge statutory functions that have been vested with DRCS, U.K. by virtue of Section 106 of the Act.

23. Responding to the same, the learned counsel for respondents submits that the post of the DRCS, U.K. has been vacant for more than six months and ARCS, Kumta has been officiating in the said post and if the power that is vested with the DRCS, U.K., is not permitted to be exercised by the ARCS, Kumta, the same would result in a difficult situation where various matters would come to standstill.

24. Learned Additional Advocate General further submits that large numbers of posts in the Revenue



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Department are vacant and various officers are discharging their duties by virtue of being appointed as in-charge-officers to the said post.

25. Notwithstanding the factual matrix of the submissions that have been made, as noticed above, with regard to legal question as to whether an officer-in-charge, who has been ordered to officiate in another post (*albeit* that of a superior officer), where he is required to discharge functions/duties of the post to which he has been placed in-charge of, it is clear that the Hon'ble Supreme Court in the case of **Gopalji Khanna¹¹** has considered the said aspect of the matter and held that the officer is entitled to perform all functions.

26. As noticed above, the judgment of the Hon'ble Supreme Court in the case of **Gopalji Khanna¹¹** has been followed by the Full Bench of the Madras High Court in the case of **A.Savariar¹²** and a co-ordinate Bench of the Madras High Court in the case of **Sugunapri¹³** wherein it has been held that when an officer posted as in-charge of a post, he discharges



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the functions/duties of the said post, including statutory functions.

27. A Co-ordinate bench of this court in the in the case of **B.N.Dhotrad⁶**, as noticed above, while holding that an officer who is placed in charge of a vacant post in a higher appointment cannot exercise any of the statutory powers of the office and can only perform the day-to-day office duties, has placed reliance on Division Bench judgments of this court in the case of **Maridev⁷** as well as in the case of **E.E. Gupta⁵** as also a full bench of the Madhya Pradesh High Court in the case of **Girija Shankar Shukla¹⁰**.

28. However having regard to the specific question considered and the legal position enunciated by the Hon'ble Supreme Court in the case of **Gapalji Khanna¹¹** which has been followed by the Full Bench of the Madras High Court in the case of **Savarier¹²** and a Co-ordinate Bench of the Madras High Court in the case of **Sugunapri¹³**, the said dicta is required to be followed.

29. It is further relevant to note here that, in the present case, it is not the contention of the petitioner that to



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hold the post of DRCS, UK, any specific technical expertise is required and the said post can be held only by a person possessing any specific educational/qualifying criteria, which the ARCS, Kumta does not possess.

30. In view of the factual and legal position as noticed above, the contention put forth by the petitioner in the above present writ petitions does not merit consideration. Hence the writ petitions are dismissed as being devoid of merit.

Sd/-
(C.M. POONACHA)
JUDGE

SH: Para 1 to 3,
SSP: Para 4 to 16
YAN: Para 17 to end,
CT-ASC
List No.: 3 SI No.: 1