

(2000) 10 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5734 of 2000

Ashok Kumar Tiwari

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Citation : (2001) 1 MPLJ 583

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Sanjay Dwivedi, for the Appellant; R.S. Jha, for the Respondent

Judgement

R.S. Garg, J.

Shri Sanjay Dwivedi, Learned Counsel appears for the Petitioner.

Shri Jha, Learned Counsel appears for the Respondent/State.

Principal Secretary, Local Self-Government is also present in the Court.

Shri Manish Chawra, Learned Counsel appears for the Chief Municipal Officer, Itarsi and the President, Municipal Council, Itarsi.

This order shall govern disposal of W. P. No. 5735/2000 and W. P. No. 5734/2000.

The cases are the burning examples of absolute carelessness and mismanagement in the secretariate of the Local Self-Government. It appears that in the said department nobody understands and nobody is ready to understand.

Petitioner Om Prakash Upadhyaya working with Municipal Council, Itarsi was transferred in the same capacity to Nagar Panchayat, Patan. Another Petitioner Ashok Kumar Tiwari was transferred in the same capacity from Municipal Council, Itarsi to Nagar Panchayat, Shahpura though in his order of transfer it is shown that he is transferred to Municipal Council, Shahpura. The fact remains that Shahpura is a Nagar Panchayat.

Petitioner Om Prakash Upadhyaya gave his joining report within five days of his relieving at Nagar Panchayat, Patan but the President, Nagar Panchayat, Patan instead of taking the man with them immediately informed the Under-Secretary, Urban Administration and Development that they have only four sanctioned posts of U.D.C. and as there is no vacancy, the said Petitioner cannot be allowed to join. He plainly informed that the Petitioner Om Prakash Upadhyay be transferred to some other place. I hope that this letter must have been received in the secretariate. It appears that nobody was ready and willing to look into the grievance of the Petitioner; he had to approach this Court.

Petitioner Ashok Kumar Tiwari was transferred as Sub-Engineer from Municipal Council, Itarsi to Nagar Panchayat, Shahpura. It appears that the officer in the secretariate who issued the order of transfer did not even know that Shahpura was a Municipal Council or a Nagar Panchayat. From Annexure P-2 it would clearly appear that Shahpura is a Nagar Panchayat. It is not expected of the officers sitting in the secretariate that they would act indifferently with close eyes and put their hands on their knees and would try to forget that what is going around them. When a person has been transferred from one place to another, the officer empowered to issue order of transfer must know whether a man from Municipal Council could be transferred to Nagar Panchayat or not. Whether the office to which the man is being transferred has available any vacancy or not. Whether the place of transfer is Nagar Palika or Nagar Panchayat. When all these things are not looked into it can always be presumed that the orders have been passed in hot haste and not in administrative exigencies but at the behest of someone else. Such orders can never be approved because they show absolute non-application of mind. In the present case each of the Petitioners respecting the orders issued by the Secretariate went to join at the place of transfer but the said orders of transfer were not respected either by the C.M.O. Patan or President of Nagar Panchayat, Shahpura. Undisputedly, if the Petitioners have not respected the said orders, they could have been taken to task but we do not know whether the State Government would be ready and willing to take some action against the officers who issued these illegal and void orders and authorities who did not accept the orders issued by the State Government.

There is no dispute that the State Government has issued a circular-cum-order which clearly shows that whenever a transferred person comes to join at a particular place, irrespective of the vacancies the joining report has to be accepted and the authority is required to inform the State Government that they are unable to proceed further in the matter therefore an amending or modifying order is required to be issued. Does the present situation means to say that a man in authority can pass an illegal order and the other authority which is otherwise bound can refuse to obey the order? To my mind No. If the order issued by the State Government binds said employees then the said order binds other authorities and the officers who are required to take the joining report of the transferred person. Right from 21-9-2000 till the date of the rejoining each of the Petitioners was running from pillar to post. They were asking all concerned

for some help but nobody was ready and willing to extend any help to them. Their legal rights were violated. Service jurisprudence was breached. Despite this none was ready to open his eyes.

Shri Jha, Learned Counsel for the State submits that realising the mistake the State Government is withdrawing the orders of transfer. I am shocked to hear. Once it was made known to the State Government that the order was absolutely illegal then instead of waiting for final verdict from this Court the State authorities committing the illegality could have withdrawn it earlier. Be as it may the fact remains that each of the Petitioners is unnecessarily suffering under the hands of the State Government. It cannot be held that the officers of the Municipal Council, Itarsi were unjustified in relieving the Petitioners. They were bound by the orders issued by the State Government and they acted in accordance with law. Nagar Panchayat Shahpura and Municipal Council, Patan are not party-Respondent in these petitions, therefore, I will not say anything against them but I leave the matter in the hands of the State Government.

Each of the order of transfer being absolutely illegal and being in oblivion of the fact that there was no vacancy deserves to and is accordingly quashed. Each of the Petitioners shall be entitled exemplary cost of Rs. 10,000/- each. Cost shall be paid by the State Government within six weeks from today. The State shall deposit the said amount of costs in the account section of this Court which may be paid to the Petitioners in person after verification. It would be choice of the State Government to recover the said amount from the erring officer if they so desire, obviously after giving opportunity of hearing to the said erring officer.