
(2011) 12 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8192 of 2011 (S)

Awadesh Kumar Shrivastava

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Citation : (2012) ILR (MP) 420 : (2012) 2 MPHT 277

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Raj Shrivastava, for the Appellant; Bhagwan Raj Pandey, G.A. for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Since, both the matters are identical in nature, with the consent of parties, matters are heard together and decided by this common order. Facts are taken from W.P. No. 8192/2011. This is second visit of the petitioner to this Court. Against the transfer order dated 05/10/2011, petitioner filed W.P. No. 6815/2011, which was disposed of by this Court on 13/10/2011 with a direction to the respondents to consider the representation of the petitioner. In turn, respondents have rejected the representation by Annexure-P/1. Against which, present petition is directed.

2. The singular contention raised by Shri Raj Shrivastava, learned counsel for the petitioner is that petitioner's seniority is maintained circle wise and by impugned transfer order, he has been transferred beyond his seniority unit, which is impermissible. Learned counsel has also placed reliance on statutory recruitment rules to show that for the purpose of promotion the zone of consideration is the particular circle and employees of that particular circle are entitled to be considered according to their seniority. Learned counsel submits that if petitioner is transferred outside his seniority unit, he will lose his seniority number and may be placed in the different seniority list at a lower number.

To elaborate, Shri Shrivastava submits that for example, if petitioner's seniority number is 80 in the present circle, at transferred place he may be at No. 120, which will affect his chances of promotion. He submits that the effect of impugned transfer order is loss of seniority and reduction of chances of promotion. In support thereof, he relied two judgments 1994 (1) M.P.J.R. 198 [Suresh Kumar Sharma Vs. Municipal Council, Ambah & Others] and 2008 (2) M.P.H.T. 80 (CG) [Abhishek Kumar Dani Vs. State of Chhattisgarh and Others].

3. Per Contra, learned Government Advocate supported the order.

4. I have heard parties at length and perused the record.

5. In 1994 M.P.J.R. in Para 10 & 11, the Division Bench of this Court held as under: -

10. It is well-known that transfer is normally resorted in same cadre without adversely affecting the conditions of service so that any person entering the service may feel secure of equality in continuance, promotion etc. Any executive action violating it cannot be upheld. Seniority is an incidence of service which cannot be eroded or curtailed by a rule which operates discriminately. See, recent decision of the Supreme Court in K. Narayanan and others Vs. State of Karnataka and others,

11. In case of Arun Kumar Chatterjee Vs. South Eastern Railway and Others, the Supreme Court has observed that loss of seniority of a Government servant with consequent loss of promotional prospects of higher pay and emoluments is a matter of serious consequence to him.

6. The CG High Court in Dani's case (supra) held that transfer of the petitioner from one district to another district would affect his service career and prospects and he would get opportunity of consideration for promotion to higher post at a later point of time in the transferred district. For these reasons CG High Court allowed the petition and quashed the order.

7. In the opinion of this Court, the seniority has a definite connotation in service jurisprudence. The seniority is a civil right, which is determined from the date of initial appointment of an employee to a service on substantive basis. In other words, an employee enjoys seniority from a date, when he became member of the service as per rules. The Apex Court in catena of judgments including in Prafulla Kumar Das and Others Vs. State of Orissa and Others, in paragraph 44, held as under:-

44. Seniority is not a fundamental right but is merely a civil right. The right of seniority in this case was also not a vested or accrued right.

8. Thus, seniority is neither fundamental nor constitutional right, it is merely a civil right. The right which permits the employees to count his service from the date of appointment. None has a legal right to a particular number in the seniority list. Thus, I am unable to hold that if petitioner is transferred from one

seniority unit to another seniority unit, it amounts to loss of his seniority. In the considered opinion of this Court, there will be no loss of seniority because when an employee is transferred in administrative exigency, he carries his seniority with him and enjoys it at the transferred place from the same date, on which he was enjoying it before transfer. There may be change in the position in the gradation list depending upon the cadre, strength of that particular seniority unit and number of senior employees above him. Some times, it may be beneficial to the employee, when he is transferred to a unit where senior employees are less in number qua some other seniority unit. Meaning thereby, one has a right only to the extent of a particular date of seniority and not a particular number in a particular seniority list.

9. So far contention that the petitioner's transfer and downgrading in number in the seniority list will diminish/reduce his chances of the promotion is concerned, it is profitable to quote a part from the judgment of Supreme Court in the case of Union of India and others Vs. S.L. Dutta and another, as under:-

A right to be considered for promotion is a term of service, chances of promotion are not. Hence the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service.

10. In the light of this judgment, it is clear that right of consideration may be a fundamental right, chances of promotion are not. The Constitution Bench of Prafulla Kumar Das and S.L. Dutta are not considered by CG High Court and therefore, the said judgment is distinguishable. In the light of aforesaid judgments, it cannot be said that by transferring a person from one seniority unit to another seniority unit amounts altering his service conditions to his detriment. Such transfer and change of seniority unit neither infringes his fundamental right nor legal or civil right. He enjoys same seniority from the date of his initial appointment. On the cost of repetition, it is held that none has a right to a particular number in a particular seniority list. The petitioner has not shown any other rule, which prohibits the transfer beyond the seniority unit. The recruitment rules only show that promotion units are respective circles. For the reasons stated above, the judgment of Suresh Kumar Sharma (Supra) also has no application in this matter.

11. In this view of the matter, I am unable to hold that the transfer orders were not permissible.

This is settled in law that the transfer order can be interfered with when it violates a statutory provision, changes service conditions of an employee to his detriment, order is proved to be malafide or it is issued by an incompetent authority. None of these conditions are available here which warrants interference of this Court. On the basis of aforesaid analysis, no fault can be found in the impugned transfer order. Resultantly, petitions are dismissed being meritless. No costs.