

(2007) 04 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition No. 445 of 2001 and W.P. No. 4475 of 2006

B.R. Godbole

APPELLANT

Vs

Municipal Corporation, Durg and Others
 Hari Ram
Yadav Vs State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Madhya Pradesh Re-organisation Act, 2000 — Section 2(e), 68, 69, 70, 71

Citation : (2008) 1 MPJR 102

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : P. Diwakar, with Mr. P.R. Patankar, Mr. P. Sam Koshy, Mr. Ashish Shrivastava, Mr. M.K. Sinha, Mr. Kishore Bhaduri, Mr. R.K. Jain, Mr. Manoj Mishra, Mr. Sunil Sahu, Mr. Deepak Jain, Mr. Suresh Pandey, Mr. S.S. Rajput, Mr. B.P. Sharma, Mr. Jitendra Pali, Mr. M.K. Bhaduri, Smt. Renu Kochar, Mr. B.D. Guru, Mr. Parag Kotecha, Mr. Ramakant Mishra, Mr. V. Pandey, Mr. Sanjay Agrawal, Mr. Vivek Sharma, Mr. Y.C. Sharma, Mr. Ashok Kumar Shukla, Mr. Vishnu Koshta, Mr. Malay Bhaduri, Smt. Fouzia Mirza, Mr. Rakesh Jha, Mr. Pradeep Saksena, Mr. Rajesh Pandey, Mr. Shailendra Soni, Mr. Sameer Sahu, Mr. Ali Asgar, Mr. I.S. Sahu and Mr. Anupam Dubey, for the Appellant; N.K. Shukla with Mr. A.K. Yadav, R.S. Marhas, Rajeev Shrivastava, Sameer Sahu, R.S. Baghel, B.D. Guru, R.K. Kesharwani, Public Prosecutor Sahu, P.S. Koshi, S.S. Rajput, Sanjay K. Agrawal, Advocates and Mr. V.V.S. Moorthy, D.A.G. with Mr. Sushil Dubey, Government Advocate for State and Mr. Awadh Bihari, Secretary (Agriculture) Link Officer, Secretary, General Administration Department, Mr. Xavier Tigga, Deputy Secretary, General Administration Department, State of Chhattisgarh and Mr. Rajeev Shrivastava and Mr. Sachin Singh Rajput, Advocates for State of Madhya Pradesh Mr. S.K. Beriwal, Advocate with Mr. Manish Mohan, Deputy Secretary, Ministry of Public Grievances, Ku. Sharmila Singhai, Rajnish Singh Baghel and Mr. Rajnish Kumar Shrivastava, on behalf of Mr. Shailendra Dubey, Advocate for Union of India, for the Respondent

Judgement

Satish K. Agnihotri, J.

In these batch of matters, the Petitioners are aggrieved by allocation/non-

allocation of their services between the State of Chhattisgarh (for short "C.G.") and the State of Madhya Pradesh (for short "M.P."), pursuant to the creation of State of Chhattisgarh with effect from 01.11.2000 under the provisions of Madhya Pradesh Re-Organisation Act, 2000 (hereinafter referred to as "MPRA"). The Petitioners are Government employees, Municipal employees, and employees of Local Authorities and other Corporations of the then existing State of M.P. as defined u/s 2(e) of MPRA.

The Petitioners have filed these petitions claiming allocation to either M.P. or C.G. on several grounds; mainly on the ground of residence, length of service in one state, residence of relations, posting of spouses etc.

Part VIII of MPRA makes provisions as to services. Section 68 makes provisions relating to services in MP and CG. Section 69 makes provisions for other services. Section 70 makes provisions for continuance of officers in same post. Section 71 contemplates creation of Advisory Committees and Section 72 provides for grant of direction by the Central Government to the State of MP and State of CG as necessary for the purpose of giving effect to the above stated provisions and the State Governments are under obligation to comply with such directions. It is beneficial to quote the provisions of 68, 69, 70, 71 and 72 of MPRA.

Provision relating to service in Madhya Pradesh and Chhattisgarh. - (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day. (2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

Provisions relating to other services. - (1) Nothing in this section or Section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter 1 of part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State.

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Madhya Pradesh or to the State of Chhattisgarh u/s 68 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person-

(a) if he is deemed to have been allocated to any State u/s 68, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Chhattisgarh shall be deemed to have been rendered in connection with the affairs of the Union, for the purpose of the rules regulating his conditions of service.

(3) The provisions of Section 68, shall not apply in relation to members of any All-India Service.

Provisions as to continuance of officers in same post. - (1) Every person who, immediately before the appointed day is holding or discharging duties of any post or office in connection with the affairs of the existing State of Madhya Pradesh in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor State.

Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

Advisory Committee - The Central Government may, by order establish one or more Advisory Committees for the purpose of assisting it in regard to-

(a) the discharge of any of its functions under this Part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons. 72. Power of Central Government to give directions - The Central Government may, give such directions to the State Government of Madhya Pradesh and the State Government of Chhattisgarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Governments shall comply with such directions.

On perusal of the provisions (supra), it is held that the Central Government is final arbiter to decide the dispute with regard to allocations of the employees of the then existing State of MP to present State of MP and State of CG on the basis of guidelines framed by the Central Government.

The Central Government issued several guidelines from time to time. The

identical dispute came up for consideration before this Hon'ble High Court in Writ Petition No. 2350/2002 (Dr. Smt. Pushpa Guru v. Union of India and others). This Court vide order dated 28.04.2003 held as under:

21. Having thus considered the facts and circumstances of the case and in view of the Statements made by the counsel on behalf of the parties, in the opinion of this Court, ends of justice will be served if an opportunity is given to the Petitioners, those who desire, to make a detailed representation raising their grievances along with documents on or before 10th May 2003 to the Central Government addressed to the Government of India, Department of Personal and Training, Ministry of Personal, Public Grievances and Pensions, Loknayak Bhawan, Khan Market, New Delhi (State Reorganisation Cell). Same copy of the representation duly supported by all documents be also served on the concerned Departments of both the States after obtaining the acknowledgment and both the States to forward the same to the Central Government with their comments and the requisite information and complete details within 30 days, in order to enable the Central Government to decide the representation. It is open to the Central Govt. to seek such further information from the State Governments and on such requisition being made from the Central Government, the State Governments will apply the same expeditiously. On such a representation being made, the Central Government shall consider and decide the same as early as possible preferably on or before 31st July, 2003 by passing appropriate orders.

22. So far as the cases of revised options are concerned, the Petitioners of those cases are directed to specifically mention this fact in the representation. Their representation shall be decided by the Central Government as directed above. It is also made clear that all the Petitioners/employees will remain on duty on 01.08.2003 to receive the decision of the Central Government on their representation.

The High Court of Madhya Pradesh in the matter of Rajendra Kumar Soni v. State of M.P. and others, 2003 (2) MPJR 493 while considering function of the Advisory Committee u/s 71 of the MPRA held as under:

9. In view of the aforesaid contentions raised by the learned Counsel for the parties, all the matters deserve to be reconsidered by the Central Government. The reason behind of it is that the High Court of Chhattisgarh by the aforesaid order has directed for consideration of the representations by the Central Government. As stated at the Bar that the Central Government has decided to implement the aforesaid order and the Central Government will decide the representations of the employees as directed by the High Court of Chhattisgarh naturally, the Central Government has to give effect to the aforesaid order. As the aforesaid exercise has to be done by the Central Government in respect of the employees who were Petitioners before the High Court of Chhattisgarh, similar treatment deserves to be given to the Petitioners herein. The grievances are similar and all the employees have to be dealt with similarly on the principle of parity. Apart from this, u/s 71 of the aforesaid Act, the Central Government is

empowered to decide the representations through Advisory Committee. There is no bar u/s 71 of the Act to reconsider the representations either by the same Advisory Committee or by constituting a fresh Advisory Committee. As the aforesaid provision empowers the Central Government to establish one or more Advisory Committee for the purpose of implementing the objects of the Act, the liability of the Government is to cover fair and equitable treatment to all the employees affected by the allocation. The employees have been given a statutory right for proper consideration of the representations. The proper consideration will include the application of mind, consideration of the grievance and decision thereon. It is not mere an eye-wash given by the statutes. It is a fact and common knowledge that the partition gives pain to every affected person, if an employee has to go to another State without his willingness or he is having some genuine ground to remain in the State of his choice, then his grievance is to be considered fairly and properly. This duty is cast on the Central Government and if such prayer is made by the employees hereinabove, then it is to be seen that their grievance may not be thrown without examining by the appropriate authority. As the Central Government is to implement the order of High Court of Chhattisgarh by deciding the representations as directed by the High Court of Chhattisgarh, in the circumstances, in these petitions similar directions are to be issued to the Respondents, as agreed hereinabove.

Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training Government of India issued a letter dated 01.05.2003 to Chief Secretary, Government of Madhya Pradesh, Bhopal and Chief Secretary, Government of Chhattisgarh, Raipur, requesting them to process all the representations and forward for consideration to the Central Government as under:

1. New Additions:

This includes such cases where an incumbent's name does not figure either in the provisional allocation list or in the tentative final allocation list, but figures in the final allocation list issued by the Central Government. Attention in this connection is invited to this Department's letter No. 14/233/2002-SR(S) dated 01.11.2002 through which suitable instructions were issued to the successor State Governments in respect of new additions asking them to invite representations from the above personnel and to forward their representations along with the departmental comments to the Central Government.

2 No Allocation:

This would include such cases where a person's name figures neither in the provisional/tentative final allocation lists nor in the final allocation orders issued by the Central Government. However, being State service personal, they are required to be finally allocated to one of the successor States. The State Governments through their respective Departments may furnish details of such cases for consideration of the Central Government.

3 Change of allocation after Tentative Final Allocation List: This would include cases where a person's name originally figured in the tentative final allocation list for one successor State and who did not prefer any representation but was finally allocated to the other successor State. Since personnel under this category were denied the opportunity to represent against their final allocation, their representations along with departmental comments may be forwarded to the Central Government for consideration.

4 Spouse in State/Sub-State Cadre:

This would include cases of such spouses where one of them is in the State cadre (those having All State Transfer Liability and where posts are not exclusively relatable to one successor State only) and the other spouse is in the sub-State cadre namely Tehsil, Village, District etc. Attention of the successor State Governments is invited to the first meeting of the Advisory Committee held on 23.02.2001, wherein it was decided that if one of the spouse is in the State cadre and the other in the sub-State cadre, then the spouse in the sub-State cadre would be allocated to that successor State to which the spouse in the State cadre has been finally allocated. Central Government desires that in respect of the above, the successor State Governments may consider these cases at their own level, subject to written representations being received in this regard from spouses working in sub-States cadres. 1.5. The Central Government desires that representations indicated in Paras 1.1 to 1.4 above, may not be forwarded in piecemeal manner, but all representations pertaining to a particular Department may be processed and forwarded for consideration of the Central Government. 2. Mutual Transfer cases:

A large number of representations have been received from personnel requesting for consideration of their mutual transfer with another consenting State service personnel. Since the Central Government has already issued final allocation orders, it finds no reason to entertain such requests. However, it is open to the successor State Governments to consider requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia either defining the terms and conditions for such consideration or by framing suitable rules for this purpose.

Yours faithfully, (R.K. Goel) Director (CS)

Thereafter, several letters were exchanged between both the State Governments. The Government of India vide order dated 01.10.2004 in exercise of power conferred by Section 71 of the MPRA constituted the State Advisory Committee in regard to the State Government employees other than All-India Services for a period of three months to review and decide the allocation of the State Government employees, after considering the merits and grievances raised in the representations submitted by them under Chairmanship of Retired Chief Secretary, Shri K.S. Sharma, Secretary, General Administration Department, Government of M.P., Secretary, General Administration Department, Government

of CG and Director/DS/(SR) or US(SR), Department of Personnel and Training, Government of India were nominated as members. The term of the said committee was for a period of three months. It appears that at present there is no committee in existence which can decide the remaining matters of allocations.

The Government of India, vide its letter dated 8th June, 2006, addressed to Chief Secretary, Madhya Pradesh and Chief Secretary, Chhattisgarh, has informed that the Central Government has already issued final allocation orders. Review of the allocation may be considered by the State Government.

Learned Counsel appearing for the Petitioners made a serious grievance that the Committee is not following the guidelines issued by the Government of India and further submitted that the letter dated 13.12.2006 sent by Government of CG to the Principal Secretary, GAD, Government of M.P. should also be incorporated as guidelines for allocation of disputed cases of the employees. Learned Counsel appearing for the parties have expressed their apprehension with regard to fairness of the Committee as the Committee was headed by the then Chief Secretary of State of M.P.

Shri S.K. Beriwal, Learned Standing Counsel with Shri Manish Mohan, Deputy Secretary, Government of India, Ministry of Public Grievances appearing for Union of India, per contra, would submit that the allegations are vague. The Committee so constituted by Government of India is functioning on behalf of the Government of India as the Government of India is final arbiter under provisions of MPRA. The representations made by various employees are being considered and appropriate orders have been passed. The Petitioners cannot question the decision of the Committee except in case of any infirmity, irregularity or procedural error committed by the Committee. That is not the case in the present petitions.

Shri V.V.S. Murthy, learned Deputy Advocate General with Shri Sushil Dubey, Learned Government Advocate appearing for the State of CG would submit that the Authority sitting at Bhopal is not responding properly to the State of Chhattisgarh. The State of M.P., despite various efforts made by counsel appearing for the State of M.P., did not submit any response.

I have heard learned Counsel for the parties, perused the pleadings and the documents appended thereto. It is evident that the Government of India is the final authority to decide the issue of allocation/re-allocation of the employees of the then existing State of M.P. except in case of mutual transfer. In the cases on hand, there are cases where the orders have been passed for mutual transfer which had not been given effect to. This Court, keeping in view of the pending disputes in this Court, had passed the stay order in favour of the some of the Petitioners to continue at places where they were working till disposal of these petitions.

The Government of India being the final authority is under an obligation to ensure that fair allocation of services of employees of the then existing State of

M.P. takes place. The conduct of the State of M.P. by not furnishing any information speaks volumes. Without going into allegations and counter allegations by the parties, it is desirable in the interest of employees as well as in the interest of both the State Governments that the Government of India should be and is directed to appoint a Committee in exercise of its power u/s 71 of the Madhya Pradesh Re-organization Act, headed by the senior officer belonging to any other State, not from State of M.P. or C.G. and the members can be appointed from both the States for proper processing and decision of the representations. The Committee so constituted is directed to consider the representations made by the Petitioners, if their representations are not considered earlier or if their representations have not been considered fairly, as early as possible within a period of 3 months from the date of Constitution of the Committee. Government of India is further directed to issue fresh guidelines keeping in view fair allocation of the employees having regard to residence of the employees, continuity of service in one State, posting of spouses and other similar factors which the Government may deem fit and proper. This exercise on the part of the Government of India may be completed within a period of one month from the date of receipt of a copy of this order.

With the aforesaid observations and directions, these petitions stand disposed of.