
(2008) 04 MP CK 0018
In the Madhya Pradesh High Court

Chhogalal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Citation : (2008) 118 FLR 651 : (2008) 2 MPLJ 566

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Viney Mittal, J.

This order shall dispose of six writ petitions being W.P. No. 2861/2006(S), W.P. No. 2.862/2006(S), W.P. No. 2863/2006(S), W.P. No. 2864/2006(S), W.P. No. 6702/2006(S) and W.P. No. 310/2007(S) as the facts in these cases are identical and similar contentions have been raised by the learned Counsel for the parties. For the sake of convenience, the facts are borrowed from W.P. No. 2861/2006(S).

The petitioner-Chhogalal was initially appointed on the post of Proudh Shiksha Paryavekshak (hereinafter referred to as Adult Education. Supervisor) in the Social Welfare Department of the State Government w.e.f. July 25, 1994. The services of the Adult Education Supervisor were declared surplus and as a result thereof, the said employees were transferred/posted on various posts in the School Education Department. As a matter of fact, the School Education Department was even declared their parent department. Subsequently an order dated June 6, 1998 was issued by the State Government, whereby the services of the Adult Education Supervisors, who had earlier been sent to the Education Department, were ordered to be absorbed as Upper Division Teachers. A copy of the order dated June 6, 1998 has been appended as Annexure P--3 with the present petition.

A perusal of the order Annexure P-3, however shows that although the absorption of the aforesaid employees had been sanctioned, but the matter of

their posting in the concerned districts was left to the Commissioner, Public Instructions.

The petitioner has pleaded that after the absorption order was passed by the State Government, his services were duly absorbed in the Education Department of the State Government and as per the settled principles of law, his seniority was fixed at the tail of the seniority of the Upper Division Teachers, existing on the date of absorption. The petitioner has placed the seniority list issued on April 15, 2005, whereby the petitioner has been indicated at serial No. 35 by showing his absorption w.e.f. June 6, 1998 and accordingly his seniority fixed.

It has also been pleaded by the petitioner that as per the aforesaid seniority position allotted to the petitioner, he was considered for promotion as Head Master, Government Middle School and was so promoted w.e.f. May 20, 2005. The copy of the promotion order has been appended as Annexure P-5 with the present petition. However, later on, on May 4, 2006, a show cause notice was issued to the petitioner requiring him to explain as to why his seniority place be not altered, since it had been wrongly given w.e.f., June 6, 1998, where as he was entitled to be assigned seniority place only from the date of posting. The show cause notice also required the petitioner to explain as to why the promotion order granted to the petitioner be not withdrawn. The petitioner submitted his detailed reply to the show cause notice and defended his assigned place in the seniority list, as well as the promotion granted to him by the Department.

It was claimed by the petitioner that the due sanction having been granted by the State Government, and the absorption order having been passed on June 6, 1998, the petitioner for all intents and purposes was to be considered an employee of the Education Department and therefore, was entitled to be assigned the due seniority position. The petitioner also defended his promotion made on the basis of said seniority position. However, an order dated May 19, 2006 has been passed by the respondent No. 3, District Education Officer, Shajapur, whereby the seniority position of the petitioner assigned to him w.e.f. June 6, 1998 has been withdrawn, and the promotion order passed in favour of the petitioner has also been cancelled. The copy of the aforesaid order dated May 19, 2006 passed by respondent No. 3 is Annexure P-I on the record and is subject matter of challenge by the petitioner before this Court.

The claim of the petitioner has been contested by the respondents. A reply has been filed. In the reply, it has been maintained that sanction order, Annexure P-3 dated June 6, 1998 was merely an approval of the absorption of the petitioner in the Education Department, but his absorption in fact, was to take effect only from the date of his posting order, which the respondent has claimed, had in fact taken place in the year 2002. On that basis, the respondent have alleged that the petitioner was entitled to be assigned a seniority place in the gradation list of Upper Division Teachers of the Education Department only with effect from the date when he was so posted in the year 2002 and because the seniority place had been wrongly assigned to the petitioner w.e.f. June 6, 1998, therefore, the

said mistake had been rectified.

It has also been claimed by the respondents that the pay scales of Upper Division Teacher, which the petitioner had been so assigned in the Education Department, were in fact higher than the post of Adult Education Supervisor in the Social Welfare Department and therefore, the assignment of the petitioner in the gradation list w.e.f. June 6, 1998 would actually mean granting him a promotion.

I have heard the learned Counsel for the parties at some length and have also gone through the record of the case.

In my considered view, the present petition deserves to be allowed.

The facts on record depict that Adult Education Supervisors in the Social Welfare Department had been declared surplus. A policy decision was taken by the State Government to absorb the aforesaid surplus employees in some other department. Consequently, the writ petitioners were ordered to be posted/transferred to Education Department vide order dated July 25, 1994. The Education Department was declared as their parent Department in the year 1994 itself. However, at that point of time, the petitioners were not absorbed. They continued to remain the employees of the Social Welfare Department. For the first time, when the orders dated June 6, 1998 were passed i.e. after a period of almost four years, the aforesaid employees were absorbed by the State Government as Upper Division Teachers. It was at that point of time, that all the writ petitioner ceased to have any lien with the Social Welfare Department and for all practical purposes became the employees of the Education Department.

The order Annexure P-3, qua such employees is totally unequivocal and does not admit of any two interpretations, The latter part of the order however, does mention the fact that the separate orders were to be passed by the Commissioner, Public Instructions, regarding the posting of such employees. The absorption of an employee is independent and distinct than his posting. Whereas from the date of absorption, the employees is deemed to have severed all his links with his parent Department, the date of posting depends upon the sweet will of the new Department, assigning a place of work to the employee.

Thus, the order, Annexure P/3, whereby the powers had been given to the Commissioner, Public Instructions, to issue posting orders qua the said employees, who stood absorbed vide the said order, cannot be taken to mean that seniority of the said employees was to be determined on the basis of the posting order. If the interpretation as suggested by the respondents were to be accepted, it would lead to anomalous results. It could mean a person who was senior to another person in the parent Social Welfare Department, may become junior to the said other person on account of his posting orders being issued later by the competent authority than the posting orders of his juniors. This could never be allowed to happen nor it could be the intention of the State Government.

It is well settled that whenever a person is repatriated from one department to

another department and absorbed in the new department, either having been declared surplus or on his own request, then for the purposes of inter se seniority viz-a-viz other existing employees of the new Department, the new entrant is always placed at the tail end of the seniority list, already existing on the date of his absorption.

It is conceded between the learned Counsel for the parties, that the aforesaid principle was followed when the petitioners had been assigned their appropriate place in the seniority list, having been absorbed on June 6, 1998. However, while passing the impugned order on May 19, 2006, the Department has chosen to change not only the assigned seniority place of the petitioners, but in fact the date of absorption itself. This could never be permitted, in view of the order, Annexure P-3, issued by the State Government.

Consequently, the present petitions are allowed. The orders disturbing the seniority of the petitioners (Annexure P-1 in W.P. No. 2861/2006(S)) are hereby quashed and the original seniority assigned to the petitioners, having been absorbed w.e.f., June 6, 1998 is ordered to be maintained.

C.C. as per rules.