
(2022) 01 CHH CK 0045
In the Chhattisgarh High Court
Case No : Writ Petition (S) No.6833 Of 2021

Dileep Kumar Uranw

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 14-01-2022

Acts Referred:

Municipal Corporation Act, 1956 — Section 58(5), 58(6)

Citation : (2022) 01 CHH CK 0045

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Vikas Dubey, Hariom Rai, H.B.Agrawal, Swati Agrawal

Final Decision : Allowed

Judgement

1. The petitioner herein takes exception to the impugned order dated 24.11.2021 (Annexure PÂ1) passed by the State Government/respondent No.1

by which his services have been transferred from Municipal Corporation, Raigarh to Nagar Panchayat, Chandrapur.

2. The petitioner herein is working as SubÂEngineer in Municipal Corporation, Raigarh and his parent Corporation is also Municipal Corporation,

Raigarh. It is the case of the petitioner that his parent Corporation being Municipal Corporation, Raigarh, he cannot be transferred to Nagar Panchayat

constituted under the Chhattisgarh Municipalities Act, 1961 (hereinafter called as 'the Act of 1961') and at the best, he can be transferred to any other

Municipal Corporation on deputation under Section 58(5) of the Municipal Corporation Act, 1956 (hereinafter called as 'Act of 1956') and that too

subject to the provisions contained in Section 58(6) of the Act of 1956 by which he would have lien on the post held in Parent Municipal Corporation

and he will also be entitled for deputation allowance at such rate as the State

Government may by general order specify and he will be governed by such other terms and conditions including disciplinary control as the State Government may, by general or special order specify and as such, in the instant case, the petitioner has not been transferred to any other Municipal Corporation by complying the provisions contained in sub-Section (6) of Section 58 of the Act of 1956, but he has been transferred to Nagar Panchayat, Chandrapur, which is unsustainable and violative of the provisions contained in Section 58(5) & (6) of the Act of 1956 and therefore, the impugned order dated 24.11.2021 (Annexure P-1) passed by respondent No.1 is liable to be set aside. Apart from that, it is also violative of transfer policy issued by the State Government as no approval has been obtained from coordination from the competent authority and as such, it is liable to be set aside.

3. Respondents No.1 and 2 have filed their return stating that transfer order has been passed on the ground of administrative exigency, it is strictly in accordance with law and it is not violative of the provisions contained in Section 58(5) & (6) of the Act of 1956 and as such, the writ petition is liable to be dismissed.

4. Mr.Vikas Dubey, learned counsel for the petitioner, would submit that the petitioner being the officer of Municipal Corporation, Raigarh (parent Corporation) had a lien on the post of Sub-Engineer in the said Corporation and he can be transferred by virtue of the provisions contained in Section 58(5) of the Act of 1956 to any other Municipal Corporation on deputation and that too subject to the provisions contained in sub-Section (6) of Section 58 of the Act of 1956 and he will be entitled for deputation allowance, but in any case, he cannot be transferred to Nagar Panchayat constituted under the provisions of the Act of 1961. Therefore, the impugned order is liable to be set aside.

5. On the other hand, Mr.Hariom Rai, learned Panel Lawyer appearing for respondents No.1 and 2/State, would submit that on finding administrative exigency the petitioner's services has been transferred to Nagar Panchayat, Chandrapur, which is strictly in accordance with law and it is not violative of any provisions including Section 58(5) & (6) of the Act of 1956 and therefore, the writ petition is liable to be dismissed.

6. Mr.H.B.Agrawal, learned Senior Counsel with Mrs.Swati Agrawal, learned

counsel for respondent No.3, would submit that transfer order has been passed by the State Government, therefore, Municipal Corporation has no say on the order of transfer passed by the State Government.

7. None present for respondent No.4.

8. I have heard learned counsels appearing for the parties, considered their rival submissions made herein[^]above and also went through the records with utmost circumspection.

9. The question for consideration would be, whether the State Government has power and jurisdiction to transfer the services of the petitioner from

Municipal Corporation, Raigarh to Nagar Panchayat, Chandrapur constituted under the provisions of the Act of 1961.

10. In order to answer the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 58(5) of the Act of 1956, which

states as under:[^]?

[^]??58. Appointment and conditions of service of Corporation Officers and servants.[^]?

(1) to (4) xxx xxx xxx

(5) Notwithstanding anything contained in this Act or any rules or bye[^]laws made thereunder, the State Government may, subject to the conditions

specified in sub[^]section (6), transfer on deputation any officer or servant of a Municipal Corporation to any other Municipal Corporation and it shall

not be necessary for the State Government to consult either the Corporation or the Officer or Servant concerned before passing an order of transfer

on deputation under this sub[^]section.[^]??

11. A careful perusal of the aforesaid provisions would show that the State Government has been empowered to transfer any officer or servant of the

Municipal Corporation to any other Municipal Corporation only on deputation and rights of the officer or servant so transferred under sub[^]section

(5) would be subject to conditions prescribed in sub[^] section (6) of Section 58 of the Act of 1956, which states as under:[^]?

[^]??(6) The officer or servant transferred under sub[^]section (5) shall:[^]?

(a) have his lien on the post held in the parent Corporation;

(b) not be put to disadvantageous position in respect of pay and allowances which he would have been entitled to had he continued in the parent

Corporation;

(c) be entitled to deputation allowance at such rate as the State Government may be general order specify; and

(d) be governed by such other terms conditions including disciplinary control as the State Government may, by general or special order, specify.â??

12. SubÂsection (6) of Section 58 of the Act of 1956 clearly provides that the officer or servant so transferred under subÂsection (5) shall have his

lien on the post held in the parent Corporation and he will not be put to disadvantageous position in respect of pay and allowances which he would

have been entitled to had he continued in the parent Corporation and he will be entitled to deputation allowance at such rate as the State Government

may be general order specify.

13. From the aforesaid provision, it clearly appears that the State Government is empowered to transfer the officer or servant working in one

Municipal Corporation to other Municipal Corporation only on deputation and subject to rights and privileges incorporated in subÂsection (6) of Section

58 of the Act of 1956 retaining the lien on the post held in the parent Corporation and his pay and allowances are also been preserved and he will be

entitled for deputation allowance. Section 58(5) of the Act of 1956 nowhere empowers the State Government to transfer any officer or servant of

Municipal Corporation to other Municipality (Municipal Council or Nagar Panchayat as the case may be) constituted under the provisions of the Act

of 1961, as such, the State Government has no power and jurisdiction to transfer the officer and servant of Municipal Corporation to any other

Municipalities (Municipal Council or Nagar Panchayat).

14. In the matter of Indore Nagar Nigam Karmachari Congress v. State Of Madhya Pradesh and Anr. 1998 (1) MPLJ 449 the Madhya Pradesh High

Court while upholding the provisions contained in Section 58(5) & (6) of the Act of 1956 held that while transferring the employee from one Municipal

Corporation to another Municipal Corporation, there should be a valid reason. The Madhya Pradesh High Court further held that since the lien of

incumbent is kept in the parent Corporation, therefore, tenure or the period of lien should be specified and it should not be for all time to come. The

State Government should also exercise this power very sparingly in exceptional case as held by the Supreme Court in the matter of State of Madhya

Pradesh v. Shankerlal AIR 1980 SC 643.

15. As such, no such power has been conferred to the State Government to transfer any officer or servant of Municipal Corporation to any

Municipality or Nagar Panchayat so constituted under the Act of 1961. In absence of any enabling provisions in the Act of 1956 or in the

Municipalities Act, 1961 empowering the State Government to transfer any officer or servant from Municipal Corporation to Municipal Council or

Nagar Panchayat, the impugned order of transfer of the petitioner from Municipal Corporation, Raigarh to Nagar Panchayat, Chandrapur is liable to

be quashed.

16. Accordingly, the impugned order dated 24.11.2021 (Annexure PÂ1) to the extent of the petitioner passed by respondent No.1 transferring the

services of the petitioner from Municipal Corporation, Raigarh to Nagar Panchayat, Chandrapur is hereby quashed.

17. The writ petition is allowed to the extent indicated herein above. No order as to cost(s).