
(2012) 08 MP CK 0165
In the Madhya Pradesh High Court
Case No : Writ petition No. 2200 of 2012

Dr. Ashish Vyas

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 MP CK 0165

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Brijesh Sharma, for the Appellant; A.S. Rathore, P.L. for the respondents/State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, Judge

1. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order Annexure P-1 whereby charge of District Tuberculosis Officer, Shivpuri was given to Dr. R.K. Jain, respondent No. 4 herein.

The brief facts necessary for adjudication of this matter are as under:-

The petitioner has taken training, namely Post Graduate Diploma in Public Health Management, 2011 from State Institute of Health Management and Communication, Gwalior. Subsequently, the petitioner by order dated 20.9.2011 was posted as District T.B. Officer, Shivpuri. Alongwith petitioner, 35 other officers were posted at various places/posts by Annexure P-3. The petitioner promptly joined vide Annexure P-4 dated 25.9.2011 and thereafter performed the duties of T.B. Officer at Shivpuri. Various other charges were also handed over to the petitioner for which various documents are filed alongwith the petition.

2. The grievance of the petitioner is that by Annexure P-1 the private

respondent is posted as T.B. Officer, Shivpuri whereas the said post was already occupied by the petitioner and no order was passed with regard to the petitioner. This Court passed interim order on 22.3.2012 and directed the parties to file their response. The official respondents have filed their reply but respondent No. 4, despite service of notice, has not chosen to file any reply.

3. I have heard the learned counsel for the parties at length.

4. The singular question is whether the order Annexure P-1 is valid and justified. The case of the petitioner is that he was regularly posted vide Annexure P-3 as District T.B. Officer, Shivpuri and was continuing on the said post. The respondents presumed that the said post of T.B. Officer, Shivpuri is lying vacant and under that erroneous presumption, posted the private respondent herein. In reply, the respondents have stated as under:-

That it is pertinent to mention here that the petitioner has completed his post graduation diploma in Public Health Management Course and the petitioner was earlier made In charge District Tuberculosis Officer. It is submitted that the post of District Tuberculosis Officer is a Class II post, however, there was a post vacant in District Shivpuri and hence the respondent No. 4 was made In charge District Tuberculosis Officer in order to fill up the vacant post.

(Emphasis supplied)

5. A bare perusal of para 4 of the return shows that the respondents concluded that the post of District T.B. Officer at Shivpuri was lying vacant. The respondents have not taken pains to show as to how after the aforesaid posting of the petitioner on the said post by Annexure P-3 it can be treated to be vacant. In other words, the respondents have not chosen to explain as to how the post can be treated to be vacant when the petitioner was already posted on the said post by Annexure P-3. Although it is stated in the return that petitioner was made In-charge T.B. Officer, there is no material to support the same. In Annexure P-3 by which petitioner was posted, there is no mention that petitioner is made In-charge. If the said assertion was correct, the respondents were obliged to inform as to what is the substantive posting of the petitioner. Thus, the said contention is without any basis and cannot be accepted.

6. Consequently, on the basis of return, I am unable to hold that the post of T.B. Officer, District Shivpuri was lying vacant. On the contrary, Annexure P-3 and other documents show that the post was very much occupied by the petitioner and, therefore, the singular basis assigned by the respondents that the post was lying vacant and petitioner was In charge runs contrary to the record and is not supported by any material. At the end, Shri A.S. Rathore, P.L. submits that respondent No. 4 is a Class-I officer, senior to the petitioner and is more meritorious. The post of T.B. Officer is a Class-II post and even if the respondent No. 4 is a Class-I Officer, it does not give him any preferential right to occupy a Class-II post, more so when no order is passed with regard to the petitioner. On the basis of aforesaid analysis, Annexure P-1 cannot be permitted to stand. It is

therefore, set aside. Petition is allowed. No cost.