

(2010) 08 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10392 of 2010 (S)

Dr. H.S. Tripathi

APPELLANT

Vs

National Council for Teachers Education and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Citation : (2011) 130 FLR 255 : (2011) LLR 916

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging the order dated 29.7.2010 - Annexure P/8 passed by. National Council for Teachers Education (hereinafter referred to as "NCTE"), New Delhi transferring the Petitioner from the post of Regional Director, Bhopal to Bhubaneshwar, on temporary basis, Petitioner has filed this writ petition.

2. Transfer of the Petitioner is challenged mainly on the ground that Petitioner was specifically appointed to the post of Regional Director, NCTE, Bhopal on deputation and, therefore, his transfer to Bhubaneshwar being contrary to the terms of appointment on deputation is illegal. According to the Petitioner in pursuance to an advertisement issued by the Respondents for filling up the post of Dy. Secretary/Regional Director in NCTE, Petitioner submitted his application vide Annexure P/1 alongwith his bio-data on 5.12.2006 and specifically sought for his appointment in Bhopal. According to the Petitioner vide Annexure P/2 he gave his consent also, in pursuance to a discussion held on 20.3.2009 for appointment at Bhopal. He was, therefore, called for an interview vide Annexure P/3, the interview was held on 24.9.2009 and thereafter the Dy. Secretary of NCTE vide Annexure P/4 on 2.6.2010, sought concurrence of Petitioner's parent employer namely Jiwaji University, for appointment of the Petitioner on deputation as Regional Director in Bhopal. Vide order Annexure P/5 issued by Jiwaji University Petitioner was given permission to join at Bhopal and vide order

Annexure P/6, the State Government appointed the Petitioner on deputation at Bhopal for one year. Petitioner joined on 10.6.2010 vide Annexure P/7 and now within a period less than 45 days as he is being transferred, therefore, this petition has been filed challenging the same.

3. Shri M.L. Jaiswal, learned Senior Advocate, alongwith Shri A.S. Raizada by referring to the aforesaid factual aspects of the matter, argued that Petitioner's consent was taken for appointment at Bhopal, the parent employer of the Petitioner namely Jiwaji University and the State Government also consented and approved his appointment to the office at Bhopal and under these circumstances transferring the Petitioner to Bhubaneshwar is illegal. It is emphasized on behalf of the Petitioner that he was appointed to a specific office at Bhopal and, therefore, he could not be transferred.

4. Respondents have filed return and by referring to the advertisement available in the internet, filed by the Petitioner at page 11 and issued in the newspaper vide Annexure R/I and by referring to the General Instructions contained therein, particularly Clause 2, it is argued that the appointment in question as made to any office in the Headquarter at New Delhi or any other Regional Committees in various places as indicated therein. It is stated that Petitioner gave his candidature in pursuance to this advertisement wherein a specific condition is stipulated for transferring him to any other office depending upon the administrative exigency. Accordingly, it is the case of the Respondents that Petitioner even though had submitted his candidature for appointment at Bhopal, the terms and conditions of the advertisement contemplated a provision for transfer and in the order of appointment issued vide Annexure R/2 on 17.6.2010, initial posting of the Petitioner was made at Bhopal. It is stated that now due to administrative exigency, Petitioner is required to go on a temporary assignment to Bhubaneshwar. By filing document - Annexure R/3, it is the case of the Respondents that due to law and order situation that has arisen in Bhubaneshwar and due to non-availability of a suitable person at Bhubaneshwar and finding Petitioner to be efficient, he has been temporarily posted to Bhubaneshwar and normally as per the rules, a temporary posting is only for 180 days. Respondents contend that Petitioner holds a transferable post and as, in case of administrative, exigency, the Respondents are empowered to transfer the Petitioner, it is argued that the action of the Respondents does not warrant any interference.

5. An averment is made in the return filed by the Respondents to the effect that during the course of hearing on 10.8.2010, Petitioner has expressed his willingness to go back to his parent department i.e. Jiwaji University and, therefore, Respondents contend that if Petitioner does not want to go to Bhubaneshwar he can apply for repatriation to his parent department as per rules.

6. Shri M.L. Jaiswal, learned Senior Advocate, pointed out that this conduct of the Respondents clearly establishes that there is no administrative exigency and

the transfer of the Petitioner is only to remove him from Bhopal. Accordingly, on the grounds as indicated hereinabove Shri Jaiswal, learned Senior Advocate, prays for interference into the matter.

7. I have heard learned Counsel for the parties and perused the records.

8. The only ground on which the temporary posting/transfer of the Petitioner to Bhubaneswar is challenged is that Petitioner was appointed in a specific office at Bhopal and, therefore, he cannot be transferred. This contention of the Petitioner seems to be wholly misconceived. No statutory rule or Regulation is brought to the notice of this Court on the basis of which it can be held that an employee appointed by NCTE on deputation, cannot be transferred. In the advertisement issued and in the general instructions, it is clearly stipulated under Clause 2 of the advertisement - Annexure R/1 that the officer selected will be posted at NCTE Headquarter, New Delhi or any Regional Committees at Jaipur, Bhopal, Bhubaneswar and Bangalore or any other Regional Committees that may be set up later. It is indicated in this Clause that the officer may also be transferred from one office to another depending upon the administrative exigency. It is, therefore, clear that when the advertisement was issued and when candidates were called upon to submit their candidature for appointment, the conditions clearly stipulated, a clause for transfer, as indicated in Clause 2 of the general instructions, Petitioner applied in pursuance to the said advertisement and even though he had offered his candidature for posting in the office at Bhopal, Respondents in their appointment, order Annexure R/2 initially posted the Petitioner as Regional Director in the Western Region NCTE, Bhopal. Contention of the Petitioner is that in the order of appointment - Annexures P/5 and P/6, he is shown to be appointed at Bhopal is not correct. Annexure P/5 is an office order issued by Jiwaji University relieving the Petitioner on his appointment and Annexure P/6 is the order, issued by the State Government with regard to appointment of the Petitioner on deputation for a period of one year. These are not appointment orders issued by the employer i.e..... NCTE. The order of appointment issued by NCTE is Annexure. R/2 dated 17.6.2010 and in this as requested by the Petitioner he is shown to be initially posted as Regional Director in Bhopal. The office order does not indicate in any manner whatsoever that the post held by the Petitioner or the appointment is on a non-transferrable post and Petitioner will always remain at Bhopal during the period of appointment. Such an inference cannot be drawn from the said, order. The terms and conditions of appointment of the Petitioner has to be read by taking note of the conditions stipulated in the advertisement and the appointment made. In the advertisement there is a clear stipulation with regard to transfer and as the initial appointment of the Petitioner is shown to be at Bhopal, there is nothing which prevents the Respondents from transferring the Petitioner in case of administrative exigency and the Respondents having indicated administrative exigency in the return filed, in the absence of any statutory rule or Regulation being violated or mala fides established, interference into the matter is not warranted. Contention of the Petitioner that he is appointed to a post in Bhopal only and cannot be transferred

is wholly misconceived, without any basis and cannot be accepted. That being so, this Court does not find any ground to interfere in the matter.

9. As far as the averment made by the Respondents with regard to repatriation of the Petitioner is concerned, the averment seems to be made based on certain general observations made by this Court at the time of hearing and, therefore, in this petition now the said question is not to be gone into. It is for the parties to decide the further course with regard to repatriation, if any, as per the rules.

10. Accordingly, finding no case for interference on the grounds raised, the petition is dismissed.