
(2016) 01 MP CK 0046
In the Madhya Pradesh High Court
Case No : W.P. No. 8698 of 2015

Dr. Suyash Kumar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 MPWN 167

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Alok Kumar Sharma, Advocate, for the Appellant; Amit Bansal, Dy.G.A, for the Respondent

Final Decision : Dismissed

Judgement

Rohit Arya, J.—Heard on admission.

1. This petition, under Article 226 of the Constitution of India, is directed against the order dated 21/12/15 whereby, after consideration of the representation of petitioner against transfer order dated 15/6/15 in compliance with the order dated 2/9/15 passed by a co-ordinate Bench of this Court in W.P. No.4085/15, the same has been rejected. By order dated 15/6/15, petitioner, while working as Assistant Professor, Geology, Government Adarsh Science College, Gwalior, has been transferred in the same capacity to Govt. Tilak College, Katni, on administrative grounds.

2. The following respondents are party to this petition, as well as, were arrayed as party respondents in W.P. No.4085/15:-

1. State of M.P., through the Principal Secretary, Higher Education Department, Mantralaya, Vallabh Bhawan, Bhopal
2. Commissioner, Higher Education, M.P. Satpura Bhawan, Bhopal
3. Principal, Govt. Model Science College, Gwalior (M.P.)

W.P. No.4085/15 was disposed of vide order dated 2/9/15, operative portion whereof, reads as under:-

"1. The petitioner shall file a comprehensive representation by enclosing copy of NCC Rules and submit it within ten days before the respondent nos. 1 and 2.

2. In turn, the said respondents shall consider and decide the representation by reasoned order expeditiously. It will be obligatory on the part of the respondents to deal with the contention regarding protection flowing from NCC Rules. A reasoned order be passed and communicated to the petitioner.

3. Till the said representation is decided, the interim order passed by this Court shall continue."

3. In compliance with the aforesaid directions, respondent nos. 1 and 2 have dealt with the representation of the petitioner and justified its rejection by a reasoned order, wherein it has been mentioned that the State Government has issued orders/guideline dated 16/10/15 for establishment of NCC Units in all Colleges of the State, and, Government Tilak College Katni, where the services of petitioner are required, has a well established and functional Unit of NCC. It has also been found that the sole post of Assistant Professor is lying vacant in that college which has a student strength of 138, as against two filled up posts at Government Adarsh Science College, Gwalior having a strength of only 66 students. Therefore, petitioner's transfer has been found to be in administrative exigency and wider public interest and, accordingly, representation of the petitioner has been rejected.

4. Sole challenge made to the order impugned is on the ground that representation of the petitioner ought to have been decided by the Chief Secretary and not by the Government.

5. However, there is no averment with regard to the aforesaid contention in the memo of petition. Further, Chief Secretary has not even been arrayed as respondent in this petition, nor was he made a party in W.P. No.4085/15 which has been disposed of vide order dated 2/9/15 (Supra). That order does not contain a direction to the Chief Secretary to decide the representation, but, as quoted above, the said direction is for respondent nos. 1 and 2 only. In view of the aforesaid, the contention so advanced is fully misconceived and dehors the facts on record.

6. At this stage, learned counsel has referred to the orders dated 2/11/15 and 5/11/15 passed by a co-ordinate Bench of this Court in W.P. Nos. 18645/15 and 17801/15 respectively, to bolster his submission.

7. Having gone through the aforesaid orders, in the opinion of this Court, the same are of no assistance to the petitioner, in the light of party respondents made in this petition as well as in W.P. No. 4085/15, as well as, in absence of any pleading in that behalf.

8. Moreover, the order impugned clearly stipulates that NCC Unit is well established and functional in Government Tilak College, Katni where the petitioner's services are required in administrative exigency and public interest. Further, there is no statutory bar in transferring an incumbent from one College to the other having a functional NCC Unit. As such, no exception can be taken to the impugned order.

9. The petition sans merit and is, accordingly, dismissed.