
(2016) 06 MP CK 0031
In the Madhya Pradesh High Court
Case No : W.P. No. 7823 of 2015

Dr. V.B. Singh Baghel

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 MPLJ 152 : (2016) 6 SLR 178

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri R.N. Singh, learned Senior Counsel with Shri Jay Shukla, learned Counsel, for the Appellant; Shri Pushpendra Yadav, learned Government Advocate, Shri K.C. Ghildiyal, learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—The petitioner and the respondent No. 3 are at logger heads on the question of posting as In-charge Chief Medical and Health Officer (C.M.H.O.), Sidhi.

2. Shorn of unnecessary details the relevant facts are that the petitioner and the respondent No. 3 are substantively holding the post of Specialist in the respondent-department. The respondent No. 1 by order dated 19-05-2015 (Annexure P/2) posted the respondent No. 3 as C.M.H.O. on current charge basis. In other words, the respondent No. 3 was given officiating charge of the said post at Sidhi.

3. Shri R.N. Singh, learned Senior Counsel for the petitioner criticized this order by contending that the petitioner is admittedly senior to respondent No. 3. The petitioner's name finds place at S.No. 288 of seniority list whereas the name of respondent No. 3 finds place at S. No. 350. By placing reliance on executive instruction dated 30-12-2003, it is contended that being senior, petitioner has a preferential right to get charge on the post of C.M.H.O. Shri Singh further

submits that posting of respondent No. 3 on the said post runs contrary to the said circular. He also placed reliance on document dated 11-11-2011 (Annexure R-3/7) to contend that in the manner this order is issued shows volumes about the conduct of the official respondents.

4. Shri Pushpendra Yadav, learned Government Advocate supported the order. He contended that the petitioner was posted as In-charge Civil Surgeon-cum-Chief Hospital Superintendent, Sidhi by order dated 19-05-2015 (Annexure P/1). In obedience of this order, the petitioner joined on the new place of posting. However, he did not disclose this material fact in the present petition. For this reason alone, the petition may be dismissed. He further urged that after joining at the new place of posting pursuant to Annexure P/1, the petitioner is "estopped" from challenging the impugned order. He further submits that the petitioner has no vested or fundamental right to claim the charge of a higher post. He further submits that the petitioner was earlier given charge of C.M.H.O., Sidhi in the year 2011. During that period, epidemic of Malaria was spread and the petitioner could not control it in effective manner. Hence, a conscious decision has been taken to ignore the seniority of the petitioner and give charge to respondent No. 3. He urged that the circular dated 30-12-2003 is directory in nature and the department is free to take a decision in administrative exigency and in general public interest.

5. Shri K.C. Ghildiyal, learned counsel for the respondent No. 3 also opposed the prayer and contended that in view of the judgment of Supreme Court reported in (1993) 3 SCC 590 (State of Andhra Pradesh v. Dr. N. Ramachandra Rao and others) seniority of the specialist is to be drawn in a different manner. If seniority is drawn in consonance with the said judgment, the respondent No. 3 will be senior to the present petitioner. He borrowed the other contentions of learned Government Advocate.

6. Parties confined their arguments to the extent mentioned here in above.

7. I have bestowed my anxious consideration on the rival contentions of the parties and perused the record.

8. This is admitted between the parties that the petitioner is senior to respondent No. 3 on the post of specialist. In nutshell, the petitioner is seeking enforcement of instructions dated 30-12-2003. The relevant portion of this letter reads as under:-

"2- ;g ns[kus esa vk;k gS fd dgha&dgha mijksDr in fjDr gksus ij izHkkj nsus esa ofj"Brk dze dk ikyu ugha fd;k x;k gS ftlls iz"kkldh; O;oLFkk foijhr :i ls izHkkfor gks ldrh gSA jkT; "kklu us fu.kZ; fy;k gS fd Hkfo"; esa eq[; fpfdRlk ,oa LokLF; vf/kdkjh vFkok flfoG ItZu lg eq[; vLirky v/kh{kd dk in fjDr gksus vkSj foHkkx }kjk fu;fer inLFkkiuk fd;s tkus rd fuEkuqlkj gh izHkkj fn;k tk;s%&

1- eq[; fpfdRlk ,oa LokLF; vf/kdkjh dk izHkkj ftGs esa inLFk ofj"Bre fo"ks"kk@Mh0,p0vks0 dks gh fn;k tk;sA nksuksa laoxksZa ds vf/kdkfj;ksa dh

ijLij ofj"Brk r; djrs le; lgk;d "kY; fpfdRld laoxZ esa izFke fu;qfDr dks /;ku esa j[kk tk;sA"

9. The question is whether this executive instructions can be enforced in a writ petition. This aspect is no more res-integra. A five judge bench judgment of Supreme Court in AIR 1965 SC 1196 (State of Assam and Another v. Ajit Kumar Sarma and others) held that executive instructions confer no right of any kind and the same cannot be a reason for the High Court to issue mandamus against the State Government. It is relevant to note here that the petitioner has not alleged and argued that the impugned order is malicious in nature. The Government is the best judge to decide the question of posting of an officer at a particular place. Unless such posting runs contrary to any statutory provision or infringes any fundamental or statutory right of an employee, no mandamus can be issued. A Division Bench of this Court in 2007 (4) MPLJ 548 (Bhartiya Kishan Sangh District Bhind v. Union of India and Others) held that existence of legal right and public duty to be performed by either side coupled with statutory duties are the necessary ingredients for issuance of writ of mandamus or for the purpose of administrative functions. In AIR 1975 SC 2135 (Isha Beevi and others v. Tax Recovery Officer and others), the Apex Court held that "No occasion for the issue of writ of mandamus can arise unless the applicants show non-compliance with some mandatory provision and seek to get that provision enforced because some obligations towards them is not carried out by the authority alleged to be flouting the law. In AIR 1993 SC 2273 (State of Haryana v. S.M. Sharma and Others), the Apex Court held that the High Court extended its extraordinary jurisdiction under Article 226 of the Constitution to a frivolity. It was held that no one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to the employee. He had no cause of action whatsoever to invoke the writ of jurisdiction of the High Court. The Apex Court observed that it was a patent misuse of process of the Court by the High Court. (Para 11)

10. In the said case also, the petitioner was claiming the charge on officiating/ current charge basis. In view of aforesaid, in my view, no legal vested, statutory or constitutional right of the petitioner is infringed by the respondents. The respondents cannot be compelled to implement the circular (Annexure P/3) by issuing a writ of mandamus. The decision taken by the Government is in public interest and for public good need not be interfered in discretionary jurisdiction of this Court under Article 226 of the Constitution unless it is proved that the said order is malicious in nature or infringes any fundamental/statutory or vested right of the employee. For these reasons, no interference can be made in this petition.

11. The petition sans substance and is hereby dismissed. No cost.