
(2010) 08 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 3716 of 2010 and

Durga Prasad Sindoor

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Cantonments Act, 1924 — Section 280(2)(c)

Madhya Pradesh Municipal Corporation Act, 1956 — Section 433, 58, 58(5)

Citation : (2011) 1 MPHT 21

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : P.S. Koshy, Mr. Vinod Deshmukh and Mr. N. Naha Roy, for the Appellant; U.N.S. Deo, Govt. Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—The 2 petitioners are working on the post of Assistant Revenue Officers in Municipal Corporation, Raipur. By the impugned common order dated 13-7-2010, they have been transferred from Municipal Corporation Raipur to Municipal Corporation, Korba on administrative grounds. The petitioners have challenged the validity of the said order in the present writ petitions. Learned Counsel for the petitioners mainly argued that the employee of one Municipal Corporation cannot be transferred to another Municipal Corporation in the above manner as their transfer was only possible on deputation as contained in Section 58 of the M.P. & C.G. Municipal Corporation Act, 1956 (hereinafter referred to as "the Act, 1956"). In the present cases, no consent has been obtained for sending them on deputation, therefore, an order of transfer simpliciter was without jurisdiction and was not in accordance with law. They relied on the judgment of the Supreme Court rendered in the matter of General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, .

2. To appreciate the arguments advanced by learned Counsel for the petitioners,

let us firstly see the order dated 13-7-2010 which reads as under:--

3. It is not in dispute that petitioners are holding the transferable post. Section 58 (5) of the Municipal Corporation Act, 1956 provides for transfer of any officer or servant of a Municipal Corporation to any other Municipal Corporation. Sub-sections (5) and (6) of Section 58 read as under:--

(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.

(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 by general order specify; and

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

4. In exercise of the power conferred by Section 433 read with subsection (1) of Section 58 of the Act, 1956, the State Government has framed the Rules known as "Chhattisgarh Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rules, 2007". Rule 14 of the aforesaid Rules provides for transfer and says that subject to the provisions of Section 58 of the said Act, the State Government may transfer any officer or employee of the Corporation from one Corporation to another provided that such officer or employee who is in any Corporation for more than 5 years (to be revised) shall necessarily be transferred by the State Government.

5. In light of the provisions of Section 58 (5) of the Act, 1956 and Rule 14 of the Rules, 2007, it is apparent that an officer or employee of the Corporation can be transferred to another Corporation, though on certain terms which are specified in sub-section (5) of Section 58. Section 58 (5) provides that such transfer shall be subject to the conditions specified in sub-section (6) and they would be transferred on deputation but it clearly provides that for the purpose of such transfer, consultation from the concerned Corporation or the officer or servant concerned would not be required. Therefore, the argument advanced by learned Counsel for the petitioners that the order was bad-in-law because no consent was obtained from the petitioners cannot be sustained. After going through the contents of the order, we do not find that the said order of transfer in any

manner violates the provisions of sub-section (6) as nothing of the kind has been mentioned in the order. On the contrary the order specifies that the officers are being transferred on similar service conditions and terms, which would necessarily mean subject to the terms of their services contained in the Act or Rules, for which the order is commonly worded as "Saman Sewa Sharto Awam Nibandhano Per".

6. Reliance placed by learned Counsel for the petitioners on the judgment of Dr. Subhash Chandra Yadav (*supra*), is totally misconceived. In the said case, the respondent was an employee of the Cantonment Board and provisions of Cantonment Act, 1924 was applicable to him. By an order dated 27-10-1986, the respondent was transferred from Lucknow to Varanasi. The said transfer order was passed under Rule 5-C of the Cantonment funds Servants Rules, 1937. The respondent challenged the validity of the aforesaid Rule before Allahabad High Court and he also challenged his order of transfer. The High Court struck down the Rules and quashed the order of transfer. This was challenged by the employer in the Supreme Court. The Supreme Court observed that in spite of Section 280 (2) (c) of the Cantonments Act, even after its amendment in 1983, the Central Government will not be entitled to frame rules for transfer of an employee from one Cantonment Board to another within the State. There can be no such transfer, because (1) the Cantonment Boards are autonomous bodies; (2) the service under the Cantonment Board is neither a centralised service nor is it a service at the State level; and (3) any such transfer of an employee will mean termination of service of the employee in the Cantonment Board from where he is transferred and a fresh appointment by the Cantonment Board which he joins on such transfer. It was also held that before the amendment, clause (c) did not confer on the Central Government power to frame rules regarding conditions of service which necessarily include transfer of the employees of the Boards. Rule 5-C, which was inserted in the Rules by a notification dated November 23, 1972 providing for the transfer of the employees of the Cantonment Board, is on the face of it contrary to the rule making power of the Central Government, as it stood before the amendment of the Act in 1983. The Supreme Court upheld the order on these grounds and the appeal was dismissed. The aforesaid orders of the Courts were based on the principle that the Rule providing jurisdiction for transfer of an employee was held to be invalid and was struck down. Therefore, the order of transfer of the respondent was without any authority of law. In the present case, Section 58 (5) and (6) of the Act, 1956 are still on Statute Book and Rule 14 of the Rules, 2007 is also in existence which provides jurisdiction to the State Government to transfer the employee of one Municipal Corporation to another Municipal Corporation. So long the above provisions of the Act and Rules are in force, the impugned order of transfer of the petitioners cannot be held to be illegal or without jurisdiction on the grounds raised by learned Counsel for the petitioners. In this connection, we further note that the provision of sub-section (5) and (6) of Section 58 of the M.P. (C.G.) Municipal Corporation Act, 1956 were challenged before the High

Court of Madhya Pradesh on the ground that they were ultra vires of the Constitution, but the said contention was rejected by the Division Bench of Madhya Pradesh High Court and the validity of the aforesaid provisions were upheld in the matter of Vasant Waman Mahajan Vs. State of Madhya Pradesh and others, . For the foregoing reasons, I do not find any substance in the writ petitions. The petitions are liable to be dismissed and are hereby dismissed at the motion stage itself.