

(2020) 08 MP CK 0200

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11456 Of 2020

Kailash Choudhary

APPELLANT

Vs

State Of M.P. & Another

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Municipal Corporation Act, 1956 — Section 58, 58(5), 58(6)

Citation : (2020) 08 MP CK 0200

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : L.C. Patne, Manu Maheshwari, Aniket Naik

Final Decision : Dismissed

Judgement

The petitioner has filed the present petition being aggrieved by the order dated 29.7.2020 whereby he has been transferred from Municipal Corporation, Indore to, Municipal Corporation, Khandwa as In-charge Superintending Engineer.

2. Facts of the case, in short, as under :

The petitioner is an employee of the Department of Urban Administration & Housing. He was initially appointed as Sub Engineer and promoted to the post of Assistant Engineer thereafter to the post of Executive Engineer respectively. Vide order dated 28.9.2019, he was transferred on deputation in the capacity of Executive Engineer from Municipal Corporation Dewas to Municipal Corporation Indore. After relieving, he joined on 3.12.2019. Now, vide impugned order dated 29.7.2020, he has been transferred from Municipal Corporation Indore to Municipal Corporation Khandwa as in charge Superintending Engineer, hence the present petition.

3. The petitioner has assailed the impugned order inter alia on the ground that he is being sent on deputation to Municipal Corporation Khandwa without obtaining his consent. Municipal Corporation Khandwa is a separate entity under

the Municipal Corporation Act, 1956, hence before transferring him, his consent was necessary. This Court has quashed a similar type of deputation order in a writ petition filed by Pradeep Kumar Saxena and Piyush Bhargav. The petitioner is also assailing the impugned order on the ground of personal hardship and inconvenience as he has been transferred within a period of one year of posting in Municipal Corporation Indore. According to the petitioner, two posts of Superintending Engineer are still lying vacant in Municipal Corporation Indore and one Mahesh Kumar Sharma has been accommodated in Indore itself. By the same impugned order, one Executive Engineer Omprakash Goyal has also been transferred, but his transfer order has been stayed by Coordinate Bench of this Court in W.P. No.11031/2020 vide order dated 7.8.2020.

4. I have heard the learned counsel appearing for the parties at length and perused the material available on record.

5. The main contention of Shri Patne, learned counsel appearing for the petitioner is that the petitioner has been transferred on deputation from One Municipal Corporation to another Municipal Corporation without obtaining his consent but impugned order nothing is mentioned that he is being sent on deputation. He is the employee of the Urban Administration & Housing Department is liable to be posted in any of the Corporations only by way of deputation without his consent .

6. Section 58 of the Municipal Corporation Act, 1956 provides for appointment and condition of service of Corporation officers and servants. Sub-section (5) of Section 58 provides that notwithstanding contained in this Act or any rules or bylaws 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. Therefore, by virtue of sub-section (5) of section 58, the State Government is competent to transfer any officer or servant of Municipal Corporation on deputation and before the transfer, neither the consent of Municipal Corporation nor the consent of officer or servant is required. Subsection 5 and 6 of Section 58 is reproduced below:-

(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.

7. The constitutional validity of sub-section (5) and (6) of Section 58 was challenged before this Court in the case of Vasant Waman Mahajan V/s. State of M.P. : 1986 MPLJ 295 and the Division Bench of this Court has held that the provisions are not ultra vires. In the case of Indore Nagar Nigam Karmachari Congress V/s. State of M.P. : 1998 (1) MPLJ 449, also the Division Bench of this Court has held that provisions of Section 58(5) and 58(6) of the M.P. Municipal Corporation Act, 1956 are not ultra vires but are valid but the State Government should exercise the power very sparingly in the exceptional case. Therefore, the ground raised by Shri Patne, learned counsel for the petitioner, is misconceived.

8. Even otherwise, vide order dated 28.9.2019, the petitioner was transferred from Municipal Corporation Dewas to Municipal Corporation Indore in the capacity of Executive Engineer but he did not challenge the said order and accepted the same because it was a transfer of his choice. The Division Bench of this Court has considered similar conduct of transfer in the case of Rajendra Prasad Mishra V/s. State of M.P. (W.A. No.1458/2019) and deprecated it vide order dated 19.9.2019. The relevant part of the order is reproduced below :

"The aforesaid Schedule makes it very clear that the Chief Municipal Officer Class A can be transferred as Dy. Commissioner which is an equivalent post. The Schedule provides that posting can be done by the Government of a Chief Municipal Officer Class A to the post of Dy. Commissioner and the petitioner has been posted as Dy. Commissioner at Bhopal. The most shocking aspect of the case is that the petitioner was earlier also transferred to the post of Dy. Commissioner Nagar Palika Nigam, Bhopal on 29/4/2015. The petitioner has complied with the aforesaid order as it was suitable to him at the relevant point of time. Again he was transferred vide order dated 5/3/2016 to Nagar Palika Parishad, Danoh, meaning thereby, the petitioner was fully aware of the Schedule and in those circumstances the learned Single Judge has observed that the petitioner has not come with clean hands before this Court.

Learned counsel for the petitioner has vehemently argued before this Court that there is no estoppel against law. It is certainly true that there is no estoppel against law. In fact, the learned Single Judge has commented upon the conduct of the petitioner and this Court is of the considered opinion that the petitioner has certainly not come with clean hands. He was earlier also posted as Dy. Commissioner and he did not raise any hue and cry, however, now as the transfer order is not conducive to him, he is raising all hue and cry in the matter. The transfer is an incident of service and unless and until it suffers from the vice

of non-application of mind or it has been passed with oblique and ulterior motive, the question of interference by this Court does not arise."

9. So far as other grounds raised by the petitioner are concerned, the petitioner has been transferred on administrative grounds. He is an Executive Engineer and transferred as Incharge Superintending Engineer. At present the promotions in the State Government are in abeyance because of stay granted by the apex Court and, therefore, it appears that the posts of Superintending Engineer in various Municipal Corporations are lying vacant and for the administrative reasons, the petitioner has been transferred as Incharge Superintending Engineer. By the same impugned order, as many as 10 other Executive Engineers have been given the charge of Superintending Engineer in different Municipal Corporations.

10. The scope of interference by the High Court in a writ petition filed under Article 226 of the Constitution of India is very limited. The Apex Court in case of *State of U.P. and another v. Siya Ram and another* [(2004) 7 SCC 405], the Supreme Court has held that unless an order of transfer is shown to be an outcome of mala fide exercise or in violation of statutory provisions prohibiting any such transfer, the Courts or Tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision. The relevant extract from the judgment read as under :

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such order as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and Anr.* (2001 (8) SCC 575)"

11. In view of the foregoing discussion, this petition being devoid of any merit deserves to be and is hereby dismissed.

No order as to costs.