
(2013) 06 MP CK 0001
In the Madhya Pradesh High Court
Case No : W.P. No. 17182/2012

Laxmikant Pandey

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2014) 2 MPJR 27

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The grievance of the petitioner is with respect to two orders, one by which the respondent No. 5 is taken on deputation to be posted as B.R.C.C. in the Sarv Shiksha Abhiyan under the control of the Rajya Shiksha Kendra and the other order by which the services of the petitioner have been repatriated and he has been posted in the Tribal Department of Sidhi district. The grievance of the petitioner is that he was working in a school established by the Tribal Department within the Sidhi district and under the policy made by the State Government since the school was transferred to the School Education Department, the petitioner became the member of the services in the School Education Department of the Government of Madhya Pradesh. Since a scheme was made by the State Government on 03.01.2006 fixing the seniority of those who were said to be working on deputation in the respective department where the schools were transferred under the scheme of 1995 and it was categorically provided that if option is not given for absorption in particular department where the school is transferred, it will be deemed that such employee is absorbed in the respective department where the school has been transferred, the petitioner should have been treated to be absorbed in the School Education Department. However, since the petitioner was taken on deputation after the shifting of his school treating as if the petitioner is a member of the services of the Tribal Department, he has been repatriated back to the said department and a posting

order is issued on 17.09.2012 and by the order of the even date the respondent No. 5 has been posted in place of the petitioner. The grievance of the petitioner is that this could not have been done as repatriation of the petitioner is to a wrong department and there was no posting order issued in his respect. In terms of the policy made by the Rajya Shiksha Kendra, the relieving of the petitioner was permissible only when the posting order is issued by the parent department from where his services were taken on deputation. It is further contended that the respondent No. 5 could not have been taken on deputation as he is only a Varishtha Adhyapak and for the said category persons it was specifically provided in the scheme of the Rajya Shiksha Kendra that the deputation posting was to be ordered only when an order is issued by the State Government. Contending inter alia on these grounds, the petitioner has sought the relief as indicated herein after:

(i) To issue a writ of certiorari for quashment of impugned order dt. 17.9.12 (Ann. P/11) and impugned order dated 17.9.2012 (Ann. P/12).

(ii) Any other relief/order or directions which this Hon"ble Court may deems fit and proper also be passed in favour of the petitioner, in the ends of justice.

2. No interim relief was granted in the present writ petition to the petitioner and he stood relieved from the deputation post. A return has been filed by the respondents-State and it has been contended that since the petitioner had completed the age of 48 years and since he has further completed 4 years of posting on deputation, he was to be repatriated to his parent department and to that extent the order was issued by the competent authority. It is contended that since the petitioner was taken on deputation while he was working in the Tribal Department, the petitioner has rightly been repatriated to the Tribal Department and no fault can be found in the order so issued by the respondents-State. The respondent No. 5 has been selected for his posting on deputation as B.R.C.C. and this order has been issued, therefore, there cannot be any fault in directing relieving of the petitioner and posting of respondent No. 5. Thus, it is contended that the petition is misconceived and is liable to be dismissed.

3. The respondent No. 5 has filed independent return and has contended that in terms of the policy made, the respondent No. 5 was selected for his deputation posting, orders in that respect were issued and since he has given his joining, interference in the order of posting is not called for. It is further pointed out by filing additional return by the respondent No. 5 that instructions in respect of issuing the order of posting in case of those, who were to be repatriated, were given by the Commissioner, Public Instructions, Madhya Pradesh, on 19.03.2012 and all the Collectors of respective districts were authorized to make the posting orders. In terms of the policy made, the authorization was granted by the School Education Department in respect of deputation posting of persons like respondent No. 5 on 26.05.2011 and by virtue of such order, further instructions were issued by the Commissioner, Rajya Shiksha Kendra, on 03.01.2012 authorizing posting of the persons like respondent No. 5. Thus, it is contended

that actions taken by the respondents are just and proper and the petitioner is not entitled to any relief.

4. After hearing learned Counsel for the parties at length and on perusal of the record, one thing is clear. The petitioner has wrongly been treated to be a member of the services of the Tribal Department. As back as in the year 2006, the policy was made by the State Government and the said policy specifically contemplates that an employee working in a particular school transferred under the policy of the year 1995 to a different department is deemed to be working on deputation in the said department till final orders are issued and in case option is not given, treating as if the employee concerned has given his option, he is deemed to be absorbed in the transferee department. That being so, in view of the policy dated 03.01.2006 even if the petitioner has not given any option to be absorbed in the School Education Department where the school in which he was initially appointed, has been transferred by the Tribal Department, he was to be treated as absorbed finally in the services of the School Education Department. Since even after making policy, such a claim of the petitioner was not being considered, he has approached this Court by filing W.P. No. 12022/2008 (S), which came to be decided on 04.12.2009 and this Court has categorically directed to consider the representation of the petitioner, made in that respect, within a period of three months and to pass an order to that effect, keeping in view the policy made by the State Government. Nothing is indicated by the respondents whether such an order passed by this Court has been complied with or not and whether the petitioner has been treated to be finally absorbed in the services of the School Education Department. However, no doubt is left in view of the policy dated 03.01.2006 that now the petitioner is deemed to be absorbed in the services of the School Education Department and would be entitled to all the service benefits from the said department.

5. Now coming to the question whether the repatriation of the petitioner was justified or not. It has to be seen that the petitioner is repatriated by the order dated 17.09.2012 but while repatriating the services, the petitioner has been sent to the Tribal Department where he could not be sent for the simple reason that the school of the said department was already transferred to the School Education Department at Sidhi. That being so, the petitioner should have been sent to the School Education Department and his posting should have been done only and only by the authorities of the School Education Department at Sidhi. In view of this, the order dated 17.09.2012 cannot be given a stamp of approval by this Court. This being so, an appropriate order in respect of relieving of the petitioner from the post of B.R.C.C. and his sending back to the School Education Department of Government of Madhya Pradesh in Sidhi district be issued within 15 days from today. On receipt of such an order, the petitioner would be obliged to join in the School Education Department at Sidhi for his posting on a substantive rank held by him.

6. As far as posting of respondent No. 5 is concerned as is directed by the order

of the even date, it need no interference by this Court in view of the fact that same is done by the Collector after due authorization issued by the competent authority in terms of the orders issued by the School Education Department. That being so, challenge to order dated 17.09.2012 (Annexure P-11) is not sustainable. The writ petition, to that extent, stands dismissed.

7. Concluding now, it is directed that the petitioner be relieved for joining in the School Education Department at Sidhi for his posting on any suitable place according to the substantive post held by him within 15 days. The period of absence of the petitioner is directed to be regularized as working period for all the aforesaid time and he be paid salary for the said period by the respondents-State. This is being ordered in view of the fact that fault was committed in repatriating the services of the petitioner to a department in which he was not to be posted at all. In view of the above, the writ petition is allowed and disposed of to the extent indicated herein above. However, there shall be no order as to costs.