
(2013) 08 MP CK 0105

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5340 of 2013 (S)

Mahipal Singh Yadav

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 08 MP CK 0105

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Pratip Visoriya, for the Appellant; Praveen Newaskar, Dy. Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Heard. Petitioners are aggrieved by the order dated 22-07-2013. By this order, the department rationalized the staff and accordingly transferred and posted the petitioners to elsewhere.

2. It is contended that clause-1 of policy (Annexure P/2) is arbitrary wherein on rationalization senior most person has been directed to be transferred. To elaborate, Shri Visoriya disputed that under the rationalization policy, the provision should be that the person who came at the last should be declared as surplus and the person last came should be transferred first. Putting it differently, it is contended that the principle of "first come last go" should be made applicable. It is further contended that the petitioners are not the persons who came last. Indeed, they are the persons who are senior most at the place of posting. Thus, contended that clause-1 of Annexure P/2 is bad in law and consequently the transfer of petitioners by Annexure P/1 is bad in law. It is opposed by Shri Newaskar, Dy. Government Advocate for the respondents/State.

3. I have heard learned counsel for the parties and perused the record.

4. In Annexure P/1 the reason for transfer is shown as under:

5. Basic question is whether the criteria of such rationalization and transfer as mentioned in clause-1 of Annexure P/2 is justified. No doubt, for the purpose of declaring a person as surplus or to retrench him under Industrial Law, the principle of "first come last go" is applied. But for applying that principle, there exists provision in the Industrial Disputes Act, 1947. The said provision is made for the purpose of terminating the services of an employee. Thus, this principle of Industrial Law cannot be pressed into services in the case of rationalization or transfer mechanically. For the purpose of transfer, the employer is best judge to decide as to which set of employees should be transferred. If in the administrative exigency, the employer decides to transfer a senior person with a view to get their experienced services at the transferred place, no fault can be found in the same. No constitutional provision or statutory condition is shown to demonstrate that clause-1 of Annexure P/2 is bad in law. Question is whether said clause violates any constitutional, statutory or vested right of petitioners. In the considered opinion of this Court, no such right is violated by clause-1 of Annexure P/2. On the contrary this is administrative policy decision taken by the Government which cannot be interfered merely because another view is possible. If such decision is shown to be unconstitutional or arbitrary, interference can be made. The Apex Court in *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, and *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, has held that administrative decision of Government should not be interfered with in a routine manner or on the ground that another view is possible. Employer is best judge to decide whose services are required at transferred place. If it decides that senior person posted at particular station should be rationalized and transferred first, it cannot be said that such decision is arbitrary, capricious or unconstitutional. I find no reason to interfere in Annexure P/2. Annexure P/1 is based on criteria/formula mentioned in clause-1. Resultantly, this order also does not require any interference from this Court. The petition is meritless and is hereby dismissed.