
(2005) 10 MP CK 0039
In the Madhya Pradesh High Court
Case No : Writ Petition (S) No. 4380 of 2005

Mrs. Padma Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Samvita Shala Shikshak (Niyojan Avam Samvita Ki Sharthe) Niyam,
2005 — Rule 4

Citation : (2006) 108 FLR 991 : (2006) 1 MPHT 203 : (2006) 1 MPLJ 71

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Jitendra Maheshwari, for the Appellant; Brijesh Sharma, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

As identical facts and legal questions are involved in all these petitions hearing W.P. (S) No. 4380/05, W.P. (S) No. 4381/05, W.P. (S) No. 4388/05, W.P. (S) No. 4389/05, W.P. (S) No. 4390/05, W.P. (S) No. 4392/05 and W.P. (S) No. 4393/05, they are being disposed of by this common order.

All the petitioners are working as Lecturers in the subject of Chemistry, Mathematics and Biology in various Higher Secondary Schools and by a common order Annexure P-1, dated 29-9-05 issued by the Directorate of Public Instructions, Bhopal, they have been transferred from the school where they are working for to present to various other schools.

Grievance of the petitioners are that they are working in various schools situated in Gwalior District and by the impugned order, they are being transferred to various other schools either in district of Gwalior or to the nearby district of Bhind.

It is the case of each of the petitioners that the order of transfer is issued on the pretext of a rationalisation scheme. Grievance of the petitioner are that the power of transfer under the aforesaid rationalisation scheme have been undertaken in a mechanical manner, without application of mind and only to accommodate certain other persons.

Bringing on record the circular Annexure P-2, dated 26-5-05 issued in this regard, Shri Jitendra Maheshwari, learned Counsel for the petitioner argued that as per Clause 2 of the aforesaid policy, the entire process of evaluating surplus staff has to be undertaken by a committee to be constituted under the Chairmanship of the District Collector and the entire process of identifying surplus staff is to be completed by 31st May, 2005 and orders of transfers issued. Procedure as per the aforesaid clauses, it is argued has not been complied with. No proper committee was constituted and the orders are issued after 31st May, 2005. Grievance of the petitioners are that process of rationalisation undertaken is contrary to the aforesaid policy Annexure P-2, dated 26-5-05. That apart, the other grounds raised is that no proper material was placed before the authorities concerned for evaluating and identifying the surplus teacher and the order of the transfers were made on the ground that petitioners are surplus in the institute in question in an arbitrary manner. It is stated that evaluation of surplus staff has not been made properly and even though, many of the petitioners have been transferred showing them to be surplus but in their place teachers from other schools are being posted. Accordingly, Shri Maheshwari argued that in an arbitrary manner, transfer is being effected without considering the question of surplus teacher properly.

Taking me through, the evaluation made in different cases Shri Maheshwari, learned Counsel tried to demonstrate that in the subject of Mathematics, most of the petitioners have been declared as surplus in the institute where they are working but after transferring the petitioners, other teachers for the same subject who are being posted in their place. That apart, it was pointed out that the strength of the students in the institute have not been calculated in accordance with the guidelines issued in the matter. Contention of the petitioners in all these cases are that the process of rationalisation, calculation of surplus and evaluation of the strength of the students and teachers in the institute has been undertaken in an arbitrary manner, without application of mind and therefore, it is stated that the transfer order issued in the manner requires reconsideration and this Court should interfere in the matter and quash the order of transfer.

By bringing on record, the Recruitment Rule with regard to appointment of Madhya Pradesh Samvita Shala Shikshak (Niyojan Avam Samvita Ki Sharthe) Niyam, 2005, Annexure P-3, Shri Maheshwari tried to emphasise that vacancies are to be undertaken as per Rule 4 therein and in the present case the Committee constituted for considering the surplus post is not in accordance with the aforesaid rule.

Shri Vivek Khedkar, learned Counsel for respondents has refuted the aforesaid contention and it is argued by him that action taken in the matter by the Competent Authority does not call for any interference.

I have heard the learned Counsel for parties and perused the record.

It is clear from the nature of grievances put forth by the petitioner in each of the petition that their contentions are that the process of rationalisation undertaken is contrary to the circular Annexure P-2 dated 26-5-05. It is the case of the petitioners that transferring them from the institute or school where they are working to the other schools are not in conformity with the policy laid down in the circular Annexure P-2. Even though, some reference was made to the statutory rules as contained in Annexure P-3. But, none of the petitioner in this petition are contract teachers to whom the aforesaid statutory rules applies. That being so, petitioner can not take advantage from the aforesaid statutory rules.

Submissions and contentions of the petitioners are that the calculation of surplus staff in their institute is not properly done and therefore, they have challenged the process of identification of surplus staff undertaken by the respondents. Question involved is as to whether on such consideration interference can be made in a petition under Article 226 of the Constitution of India in such matters and to adjudicate the dispute as to whether the petitioners are surplus or not enquiry into the factual aspect of the matter is called for.

While considering the question of judicial review into the administrative order of transfer in the case of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, , it was observed by the Supreme Court that when adjudicating a dispute of transfer in a case if Court is required to go into factual enquiry of certain issues, examination of such a question of fact by exercising jurisdiction in a petition under Articles 226 and 227 of the Constitution is not permissible. In the aforesaid case Supreme Court has clearly disapproved enquiry into factual aspect of the matter. To adjudicate the dispute as to whether calculation of surplus staff or teacher in an institute has been done properly or not so also for considering the question as to whether the strength of students and teachers have been properly determined or not, this Court is required to conduct a factual enquiry with regard to the strength of the students or the staff and other aspects of the matter for assessing surplus in the institute. As factual enquiry in such matter is beyond the scope and jurisdiction of this Court as held by the Supreme Court in the case of Janardhan Debanath (supra), this Court has to restrict interference with regard to only questions of law, if any involved in the matter.

As far as the legal questions involved are concerned, it is clear that petitioners seek interference in the matter only because of violation of the policy or guidelines Annexure P-2, dated 26-5-05 issued by the department with regard to rationalisation scheme and transfer of teachers. While considering the scope of interference into orders of transfer in the case of State of U.P. and Others Vs.

Gobardhan Lal, , it has been held by the Supreme Court that transfer is the prerogative of the employer and the authorities concerned and Courts should not normally interfere therewith, except when the transfer order is shown to be vitiated by malafides or is in violation of any statutory provision or passed by an incompetent authority. None of the aforesaid three ingredients are available in the present case. Thereafter, the scope of interference in the matter of transfer on grounds of violation of transfer guidelines and circulars have been considered by the Supreme Court in Para 7 of the aforesaid judgment and it has been held by the Supreme Court that administrative guidelines or policies regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but can not be looked into by the Court and it has been held that Courts can not interfere in matter of transfers on the ground of violation or breach administrative guidelines or policies. It has been held that such guidelines and policies do not confer any legally enforceable right. Keeping in view the observations made in Para 7 of the aforesaid judgment, it is clear that merely on the ground of violation of transfer policies Annexure P-2, dated 26-5-05 interference in the matter can not be made by this Court. It would be for the petitioner to point out violation of the aforesaid guidelines before the Competent Authority and it would be for the Competent Authority of the State Govt. to consider such violation and take action on the administrative side in case they are satisfied that there are violations warranting interference. Accordingly, in the facts and circumstances of the case, I find no ground to interfere in the matter. All the petitions are dismissed with the liberty to the petitioners to approach the Competent Authority of the department for redressal of their grievances.

Certified copy as per rules.