
(2002) 02 MP CK 0086
In the Madhya Pradesh High Court
Case No : Writ Petition No. 503 of 2000

Nannulal Sharma	Vs	APPELLANT
State of M.P. and Another		RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 95 FLR 127 : (2002) 3 MPHT 369 : (2002) 1 MPJR 420

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : S.K. Jain, for the Appellant; J.D. Suryavanshi, Government Advocate for Respondent No. 1 and R.A. Roman, for the Respondent

Judgement

Arun Mishra, J.

The petitioner assails the order of his removal pursuant to the directions issued by the Govt. to remove all daily wage employees appointed after 1-1-1989.

Petitioner submits that he was employed in Municipal Council, Ganj Basoda, Distt. Vidisha. The petitioner was appointed in the year 1995. The petitioner submits that he had filed previously writ petition before this Court in W.P. No. 1117/99 in which this Court had issued following directions :--

"Considering the facts of the case, no directions for regularisation can be passed in two petitions as disputed questions of fact pertaining to nature of employment and period of service are involved. In such circumstances, it will be appropriate to direct each municipality to consider the case of the petitioners in the light of the Rules of 1967 for absorption. Since Municipality is an Industry, therefore, conditions of service of employees are governed by Standard Standing Orders. Therefore, each case is to be examined in the light of the Rules of 1967 and Standard Standing Orders, the blanket order for removal by the State Government i. e., Annexure P-I is quashed, with a direction to the Municipalities to consider the case of each and every petitioner in the light of the Rules of 1967

and Standard Standing Orders. After screening, if it is found that the petitioner or some of the petitioners cannot be absorbed or continued on account of non-availability of posts or funds, appropriate orders shall be passed by the Municipality according to law. If any person aggrieved by the action, he may avail remedy available to him according to law. If the Municipalities feel that they require more posts for effective functioning of the Municipality they shall request the State Government for sanctioning of the posts. If such request is made, it is expected that the State Government shall decide the request within a period of two months from the date of request. It is made clear that till request is not decided, persons eligible to continue against relevant post pending sanction shall be allowed to continue. The Municipalities shall also consider the cases of each individual and decide their cases within a period of the months where sanction of the Government is not necessary."

The respondent No. 2 in its return contends that petitioner should avail alternative remedy for redressal of the grievance, if any, as it contends that there was direction by Govt. as per order dated 14-2-2000 the scrutiny of independent cases is to be carried out.

Shri J.D. Suryavanshi, appearing for the Govt. placed his reliance on decision of this Court in Tilak Singh Tomar Vs. State of Madhya Pradesh and Others, where direction was issued that petitioner should avail the appropriate forum for industrial disputes. It is however submitted that petitioner has not been removed so far and respondents are not going to remove without following due procedure of law. He will be removed only after giving him due opportunity of hearing.

In the facts of this case I am not inclined to direct that petitioner should avail alternative remedy. Availability alternative of an remedy is not the absolute bar.

The blanket order of removal on the basis of Govt. instructions cannot be issued. Scrutiny is required of each case. In Jawahar Singh and Ors. v. State of M. P. and Ors. 2000(3) M.P.H.T. 55 (NOC). This Court laid down in Para 9 the following criteria for scrutiny of the cases :--

"In the light of the above willingness indicated by the petitioners to the course suggested by the State Government for consideration of individual employees, these petitions are disposed of with the direction that the Competent Authority or the Committee constituted in this behalf shall-

(i) consider the case of each petitioner entitled to such consideration in accordance with the order dated 14-2-2000 and dated 26-2-2000 as explained vide D. O. dated 8-3-2000 on the criteria contained therein for such scrutiny;

(ii) take into consideration the representations received in this behalf from these employees or their representatives and the other material placed by them during such scrutiny before taking the decision;

(iii) grant relaxation in age, if necessary, to the extent of the service rendered by the employee while considering the age-bar;

(iv) give due weightage to the inter se seniority as per length of service, other things being equal;

(v) make proposals for creation of posts as per the directives contained in the above orders of the Government subject to the limitations prescribed therein; and

(vi) communicate the decision to each such employee.

Till communication of the decision to the employee as aforesaid, he shall be deemed to have continued notwithstanding the orders, written or oral, issued earlier, the employee concerned, on being communicated the decision/ order, shall be at liberty to challenge the same, if aggrieved, before the appropriate forum in accordance with law.

In view of the aforesaid observations it is clear that petitioner has not been removed at present. He cannot be removed arbitrarily. His case has to be dealt with in accordance with the directions issued by this Court in para 7 of W.P. No. 1109/99, as quoted above and para 9 of Jawahar Singh case (supra).

This writ petition is disposed of with the aforesaid directions.