
(2007) 10 MP CK 0037
In the Madhya Pradesh High Court

Paras Nath Singh	Vs	APPELLANT
G.C. Kewalremani and Others		RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Madhya Pradesh Re-organisation Act, 2000 — Section 68

Citation : (2007) ILR (MP) 1566 : (2008) 2 MPHT 176

Hon'ble Judges : A.K. Patnaik, C.J;A.K.Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.—This is an appeal against the orders dated 11-12-2006 and 8-1-2007 passed by learned Single Judge in W.P. No. 10342/2005(S) and MCC No. 4/2007.

2. The facts briefly are that respondent No. 1 was working as a Joint Registrar, Co-operative Societies, in the State of Madhya Pradesh when the State of Madhya Pradesh was bifurcated to Madhya Pradesh and Chhattisgarh by the Madhya Pradesh Re-organisation Act, 2000 (for short "the Act"). u/s 68 of the Act, every person who immediately before the appointed day was serving in connection with the affairs of the existing State of Madhya Pradesh was to continue to serve in connection with the affairs of the State of Madhya Pradesh unless by general or special order of the Central Government he was finally allotted to the State of Madhya Pradesh or to the State of Chhattisgarh. Respondent No. 1 was allotted to the State of Chhattisgarh and was relieved to join in the State of Chhattisgarh as Joint Registrar, Firms and Societies by memo dated 22-12-2004. Respondent No. 1 filed a Writ Petition No. 10342/2005 (S) contending, inter alia, that the State of Chhattisgarh had informed the Government of Madhya Pradesh, Co-operative Department that as against 8 posts of Joint Registrar and 14 posts of Dy. Registrar, it requires 6 posts of Joint Registrar and 18 posts of Dy. Registrar and that in the six posts of Joint Registrar, six officers have already given their option for the State of Chhattisgarh and,

therefore, steps should be taken by the Lohani Committee and the Central Government for allocation of two Joint Registrars including respondent No. 1 to the State of Madhya Pradesh. The contention of petitioner before the learned Single Judge in the writ petition is that since the requirement of Chhattisgarh State was only six Joint Registrars and six Joint Registrars had already been allotted to the State of Chhattisgarh on the basis of their option given for the State of Chhattisgarh, the order allotting respondent No. 1 to the State of Madhya Pradesh should be quashed and respondent No. 1 should be allowed to continue in the State of Madhya Pradesh.

3. The learned Single Judge upheld the aforesaid contention of respondent No. 1 and further held that when both the States have agreed that respondent No. 1 be retained in the State of Madhya Pradesh and was also seeking cancellation of allocation of respondent No. 1 to the State of Chhattisgarh for the reason that the post for which respondent No. 1 was sought to be allocated has already been filled up, the allocation order of respondent No. 1 deserves to be quashed and, accordingly, quashed the order dated 5-9-2002 allocated respondent No. 1 to the State of Chhattisgarh and directed that respondent No. 1 shall be allowed to continue in the State of Madhya Pradesh by the impugned order dated 11-12-2006.

4. Aggrieved by the impugned order dated 11-12-2006 passed by the learned Single Judge in W.P. No. 10342/2005 (S) the appellant, who was not a party in the writ petition, has filed this appeal. Mrs. Menon, learned Senior Counsel for the appellant, submitted that the appellant is also serving as a Joint Registrar in the Cooperative Department in the State of Madhya Pradesh but was junior to respondent No. 1 in service and by the impugned order dated 11-12-2006 passed by learned Single Judge quashing the order allotting the services of respondent No. 1 to the State of Chhattisgarh and directing that respondent No. 1 shall continue in the State of Madhya Pradesh, the appellant is affected inasmuch as he will have less chances of promotion to the higher posts in the Cooperative Department. She submitted that the learned Single Judge has taken a view in the impugned order that allocation of Government employees to the State of Madhya Pradesh and to the State of Chhattisgarh cannot be made on the basis of the consent of the two States because the language of Section 68 of the Act will show that the allocation has to be done as per general or special orders passed by the Central Government.

5. Mr. Rajneesh Gupta, learned Counsel appearing for respondent No. 1, on the other hand, submitted that when the State of Chhattisgarh required only six posts of Joint Registrars and six Joint Registrars have already given their option for the State of Chhattisgarh and had been allotted to the State of Chhattisgarh, the order passed by learned Single Judge cannot be said to be bad in law.

6. Mr. Dharmendra Sharma, Assistant Solicitor General appearing for Union of India and Mr. P.N. Dubey, learned Dy. Advocate General, appearing for the State of Madhya Pradesh, submitted that the Union of India and the State of Madhya

Pradesh have not filed any appeal against the impugned order passed by learned Single Judge and they accepted the same.

7. Section 68 of the Act on which Mrs. Menon has placed reliance is quoted hereunder:

68. Provisions relating to services in Madhya Pradesh and Chhattisgarh.- (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) of a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

8. It is clear from the language of Section 68 of the Act that the employees serving in connection with the affairs of the State of Madhya Pradesh at the time when the reorganisation took place on the appointed day by bifurcation of the State of Madhya Pradesh to Madhya Pradesh and Chhattisgarh, have to be allocated either to the State of Madhya Pradesh or to the State of Chhattisgarh as per determination made by the Central Government in a general or special order. Section 68 does not state in what manner the posts in which the Government employees were working in the State of Madhya Pradesh on the appointed day when the reorganisation took place were to be divided between the two successor States, Madhya Pradesh and Chhattisgarh, for making allocation of Government employees within the two successor States, Madhya Pradesh and Chhattisgarh. It may be, however, necessary to work out the number of posts to be divided between the two successor States before allocation of the Government employees to the two States but Section 68 does not put restrictions on the two successor States to agree to the number of posts in a cadre to be allotted to a State. Thus, if the two States have agreed with regard to the number of particular posts which will be divided between the States of Madhya Pradesh and Chhattisgarh, the same cannot be held to be in violation of Section 68 of the Act.

9. While, however, agreeing to the number of posts to be allotted to the two States, the Governments of the two States cannot deviate from the principles determined by the Central Government in its general or special order u/s 68 of the Act, because such deviation will affect the rights of the Government employees. Mrs. Menon, learned Senior Counsel, is, therefore, right in her submission that allocation of Government employees working in the erstwhile State of Madhya Pradesh to the successor State of Chhattisgarh will have to be on the basis of principles laid down by the Central Government in its orders issued from time to time u/s 68 of the Act.

10. As we find from the record of this case that by communication dated 17-11-2001, the Government of Chhattisgarh, Co-operative Department informed the Secretary, Government of Madhya Pradesh, Co-operative Department that the State of Chhattisgarh has been given total of 8 Joint Registrars and 14 Dy. Registrars, but the requirement of the Chhattisgarh Government is 6 Joint Registrars and 18 Dy. Registrars. In the communication dated 17-11-2001, the Government of Chhattisgarh, Co-operative Department, also intimated the Government of Madhya Pradesh, Co-operative Department that six Joint Registrars and 18 Dy. Registrars had already been given their option for the State of Chhattisgarh. In the communication dated 17-11-2001 the Government of Chhattisgarh, Co-operative Department also requested the Madhya Pradesh Government to take necessary steps before Lohani Committee and Central Government for allocation of two Joint Registrars including respondent No. 1 who were willing to serve in the Madhya Pradesh State Service. It further appears from the record that by communication dated 11-12-2001 made by the Secretary, Government of Madhya Pradesh, Co-operative Department to the Principal Secretary of General Administration Department, State Reorganisation Cell and Shri Lohani Committee, informing the authorities that the requirement of the State of Chhattisgarh is six Joint Registrars and 18 Dy. Registrars and these required number of officers have already given their option for allocation to the State of Chhattisgarh. In the communication dated 11-12-2001, the Secretary, M.P. Government, Co-operative Department also informed the aforesaid authorities that the two Joint Registrars including respondent No. 1 were willing to serve in the State of Madhya Pradesh. By the communication dated 11-12-2001 the Secretary, Government of Madhya Pradesh, Co-operative Department also intimated the aforesaid authorities that the Madhya Pradesh Government and Government of Chhattisgarh were willing for allocation of the service personnel as mentioned in the communication and, therefore, State Allocation can be done and concurrence of Central Government may be obtained. The English translation of the communication dated 11-12-2001 of the Government of Madhya Pradesh, Co-operative Department being relevant for disposal of this writ appeal is quoted hereunder:

GOVERNMENT OF MADHYA PRADESH CO-OPERATIVE DEPARTMENT MINISTRY

No. 4050/3483/15-2 Bhopal, dated 11-12-2001

To, The Principal Secretary, General Administration Deptt., State Re-organisation Cell, Shri Lohani Committee, Vallabh Bhawan, BHOPAL Subject:- Proposed allocation of four Deputy Registrars State Service Personnel of M.P. to State Service Personnel of State of Chhattisgarh and proposed allocation of two Joint Registrars of Chhattisgarh State Service Personnel willing to serve as M.P. State Service Personnel, relating to.

Presently, State of Chhattisgarh has been allocated with 8 Joint Registrars and 14 Deputy Registrars. As per the requirement of State of Chhattisgarh, 6 Joint Registrars and 18 Deputy Registrars are needed. The required numbers of such officers have given their option for allocation to State of Chhattisgarh.

The four Deputy Registrars, bonafide resident of State of Chhattisgarh, whose names are given as hereunder have opted for their allocation to Chhattisgarh:

- (1) Shri Sunil Tiwari, Deputy Registrar
- (2) Shri N.N. Tandon, Deputy Registrar
- (3) Shri P.S. Sarparaj, Deputy Registrar
- (4) Shri S.R. Bhagat, Deputy Registrar

The two Joint Registrars willing to serve in State of M.P. are as hereunder:

- (1) Shri G.C. Kewalremani, Jt. Registrar, bonafide resident of Kanker (Bastar).
- (2) Shri S.N. Gupta, Jt. Registrar, Distt. Raigarh.

Both the above officers have opted to serve State of M.P. M.P. Government and Government of Chhattisgarh are willing for allocation of aforesaid service personnel. Therefore, State Allocation (Service Personnel Allocation) may be done and obtaining of concurrence of Central Government is requested.

Sd/- (O.P. Rawat) Secretary, M.P. Government Co-operative Deptt. No. 4051/3403/15-2 Bhopal, dated 11-10-2001

Copy to: Shri R.R. Prabandh Sanchalak (RS) Government of India, Personnel & Pension Department, Third Floor, Loknayak Bhavan, Khan Market, New Delhi - for information and necessary action.

11. It further appears that the Government of Madhya Pradesh, Co-operative Department addressed letter dated 8-10-2002 to Director (S.R.), Govt. of India, Department of Personnel & Training, New Delhi in which it was stated that Government of India issued Order No. 70/2, dated 5-9-2002 acceding to the request of the State of Chhattisgarh for allotment of four Deputy Registrars and all the four Deputy Registrars have been allotted to the State of Chhattisgarh whereas instead of allotting to the State of Madhya Pradesh Cadre the two Joint Registrars who had requested for allotment to the State of Madhya Pradesh Cadre, the two Joint Registrars have been allotted to the State of Chhattisgarh. In the communication dated 8-10-2002 Secretary, Govt. of Madhya Pradesh, Co-

operative Department also intimated the Director (S.R.), Govt. of India, Deptt. of Personnel and Training, New Delhi that only half of the proposal was implemented which was sent after the consent of the parties and there is no decision on the other part of the proposal. Accordingly, the Secretary, Government of Madhya Pradesh made a request in the communication dated 8-10-2002 that two Joint Registrars including respondent No. 1 be allotted to the State of Madhya Pradesh instead of State of Chhattisgarh.

12. The aforesaid discussion would show that the Central Government considered the proposal of the Government of Chhattisgarh and the Government of Madhya Pradesh for allotting 6 Joint Registrars and 18 Dy. Registrars instead of 8 Joint Registrars and 14 Deputy Registrars to the State of Chhattisgarh but finally allotted 8 Joint Registrars and 18 Dy. Registrars. When the proposal of the State of Chhattisgarh as well as the State of Madhya Pradesh was that as against 8 Joint Registrars and 14 Dy. Registrars, 6 Joint Registrars and 18 Dy. Registrars should be allotted to the State of Chhattisgarh, we fail to appreciate why the Central Government had accepted part of the proposal and allotted 18 Dy. Registrars to the State of Chhattisgarh but did not accept the other part of the proposal and allotted 8 Joint Registrars instead of 6 Joint Registrars to the State of Chhattisgarh particularly when the State Governments of Madhya Pradesh and Chhattisgarh had agreed between themselves for allotment of 6 Joint Registrars and 18 Dy. Registrars in place of 8 Joint Registrars and 14 Dy. Registrars in the State of Chhattisgarh.

13. It is not disputed that as per the principles laid down by the Central Government in its order issued u/s 68 of the Act, out of every cadre, firstly willing employees were to be allocated to the State of Chhattisgarh and it is also not disputed before us that there were 6 Joint Registrars who were willing to serve in the State of Chhattisgarh and we were accordingly allotted to the State of Chhattisgarh. Thus, so far as the allocation of the 6 employees to 6 posts of Joint Registrars to the State of Chhattisgarh is concerned, the same was in accordance with the order issued by the Central Government u/s 68 of the Act and was not contrary to Section 68 of the Act.

13.1 The aforesaid analysis would show that the agreement between the State of Madhya Pradesh and the State of Chhattisgarh was with regard to number of posts of the Joint Registrars and Dy. Registrars in the Co-operative Department to be allotted to the State of Chhattisgarh and not with regard to the allocation of Government employees in such posts. The aforesaid analysis would further show that the allocation of the Joint Registrars and Dy. Registrars was made on the basis of the orders passed by the Central Government and in particular the principles determined in the orders issued by the Central Government that allocation of officers belonging to any cadre shall be made first on the basis of their willingness to serve the State of Chhattisgarh.

14. For the aforesaid reasons we do not find any merit in the submission that the learned Single Judge erred in quashing the order of allocation of respondent No.

1 and in directing that respondent No. 1 will continue in the State of Madhya Pradesh. The writ appeal is, accordingly, dismissed.