

(2015) 02 MP CK 0103
In the Madhya Pradesh High Court
Case No : Writ Petition No. 852/2015 (s)

Pawan Kumar Singhal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 56(6), 58, 58(5), 58(6)
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 38

Citation : (2015) 02 MP CK 0103

Hon'ble Judges : Sheel Nagu, J.

Bench : Single Bench

Advocate : Prashant Sharma, for the Appellant; Praveen Newaskar, Dy. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—This petition under Article 226 of the Constitution of India assails order dated 04/02/2015 (Annexure P-1) passed by Additional Secretary, Govt. of Madhya Pradesh, Urban Development and Environment Department, Bhopal, whereby, invoking the provisions of section 58(5) r/w section 56(6) of M.P. Municipal Corporation Adhiniyam, 1956 (1956 Act for brevity), the petitioner being Assistant Engineer has been transferred on deputation from Municipal Corporation, Gwalior to Municipal Corporation, Ujjain.

2. Learned counsel for the rival parties are heard on the question of admission.

3. The foundational factual matrix attending this case are that the petitioner holds the substantive post of Assistant Engineer at Municipal Corporation, Gwalior where he had been inducted in this cadre. Thus, the Municipal Corporation Gwalior is his parent Corporation and by the impugned transfer order the petitioner has been transferred from Municipal Corporation, Gwalior to Municipal Corporation, Ujjain.

4. Learned counsel for the petitioner assailing the above said order raised singular contention that in the cadre of Assistant Engineer the concept of transfer on deputation is foreign to the recruitment rules which prescribes only two modes for filling up the vacancy in this cadre. The first being direct recruitment and the other promotion. Referring to Schedule (I) r/w Rule 3 and 4 of M.P. Municipal Corporation (Appointment and Condition of Service of Officer and Servant) Rules 2000 (2000 Rules for brevity) provides for filling up post in the cadre of Assistant Engineer, 25 % by direct recruitment and remaining 75% by promotion. It is pointed out that column No. 5 of the said Schedule (I) pertains to filling up of post by deputation in the cadre of Assistant Engineer is left blank. Meaning thereby, that no induction into the cadre of Assistant Engineer can take place by way of deputation. On the anvil of this legal background, the legality and validity of impugned order is challenged.

4.1. Learned counsel for the petitioner further submits on the factual aspect that by earlier order dated 30.10.2014 vide Annexure P-6, the petitioner was transferred as Assistant Engineer from Municipal Corporation, Gwalior to Municipal Corporation, Ujjain in the same capacity and the said order on being challenged in W.P. No. 6827/2014 was stayed vide order dated 13.11.2014 on the ground that since this transfer of the petitioner was a transfer simplicitor and not on deputation, the same is impermissible under the provisions of section 58(5) and (6) of 1956 Act. It is further submitted that W.P. No. 6827/2014 is still pending and yet the impugned order dated 04.02.2015 has been passed again.

5. Considering the material placed on record and the submission made by learned counsel for the rival parties, the glaring aspect of the case which comes to the forefront is that learned counsel for the petitioner is under a misplaced impression that the provision contained in Rule 3 and 4 and Schedule (I) of 2000 Rules pertain to induction into the cadre of Assistant Engineer.

5.1. Schedule (I) appended to Rules 2000 derives strength from Rule 3 and 4 which pertains to scale of pay, classification and number of post including in the Municipal Corporation services and the method of recruitment. Neither Rule 3 nor Rule 4 and nor Schedule (I) pertain to transfer and, therefore, is of no avail to the petitioner.

In the present case, which exclusively deals with transfer the issue is governed by Section 58 of 1956 Act and Rule 14 of 2000 Rules provides thus :-

"14. Transfer :- Subject to the provisions of Section 58 of the Act, the State Government may transfer any officer or employee of the Corporation from one Corporation to another provided that such officer or employee who is in any Corporation for more than 3 years shall necessarily be transferred by the State Government." 5.2. Since the above said Rule 14 of 2000 Rules is made subject to provision of section 58 of 1956 Act, it would be fruitful and worthwhile to reproduce relevant section 58(5) and (6) of 1956 Act as follows :-

"(5) Notwithstanding anything contained in this Act or any rules or byelaws

made thereunder, the State Government may, subject to the conditions specified in sub-section (6), transfer on deputation (any officer or servant of a Municipal Corporation) to any other Municipal Corporation and it shall not be necessary for the State Government to consult either the Corporation or the Officer or Servant concerned before passing an order of transfer on deputation under this sub-section.

(6) The officer or servant transferred under subsection (5) shall, ----

(a) have his lien on the post held in the parent Corporation;

(b) not be put to disadvantageous position in respect of pay and allowances which he would have been entitled to had he continued in the parent Corporation.

(c) be entitled to deputation allowances at such rate as the State Government may by general order specify; and

(d) be governed by such other terms and conditions including disciplinary control as the State Government may, by general or special order, specify.)

(Explanation : For the purpose of sub sections (3) and (4), --

(i) "Town and Country Development Authority" means the Town and Country Development Authority constituted under section 38 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 73 of 1973);

(ii)"Government Undertaking" means an undertaking wholly or partly owned or controlled by the State Government.)"

5.3. Section 58(5) of 1956 Act which has an over riding effect over all the other provisions of 1956 Act or Rules or By-Laws framed thereunder on account of presence of non-obstante clause i.e. "notwithstanding", deals with transfer on deputation of any officer or servant of Municipal Corporation to any other Municipal Corporation.

5.4. The power of transfer is vested with the State Government. This power is circumscribed by two conditions. First being that the transfer should be on deputation and every such transfer shall remain subject to the four conditions mentioned in section 58(6) of 1956 Act. The purpose of making this said power of transferring authority subject to condition contained in section 58(6) of 1956 Act is obvious. The object is to protect the service conditions of Corporation employee/officer under transfer from being adversely affected.

5.5. Reverting to Rule 14 of 2000 Rules which is reproduced (supra), it is obvious that State has been given power to transfer any officer or employee from one Corporation to another with additional power that in case the tenure of employee at any Corporation is more than three years then his transfer would invariably be made by the State Government.

6. From the above discussion, it is evident that none of the legal grounds raised by the petitioner are tenable.

7. The fact that the State has issued the impugned transfer order during pendency of W.P. No. 6827/2014 and subsistence of interim order passed therein is of no avail to the petitioner. W.P. No. 6827/2014 was entertained by grant of interim relief on the sole ground that the order of transfer of the petitioner dated 30.10.2014 Annexure P-6 did not expressly provide that transfer to be on deputation. This Court in W.P. No. 6827/2014 prima facie found substance in the contention of petitioner that in the absence of any such express provision in the order of transfer that the same is on deputation, the protection provided to transfer u/S. 58(6) of 1956 Act may not be availed. On the other hand, in the instant case, the impugned order in categorical terms provides the transfer of the petitioner from Municipal Corporation Gwalior to Municipal Corporation Ujjain to be subject to the condition contained in section 58(5) and(6) of 1956 Act. Thus the protection provided by law u/S. 58(6) of 1956 Act would save service condition of petitioner from being adversely affected by the impugned order of transfer. Thus the State realizing their mistake committed earlier by passing the order dated 30.10.2014 have issued the impugned order.

Moreover, the petitioner ever since his initial appointment is posted continuously at Municipal Corporation, Gwalior.

8. In view of above, the petitioner has failed to make out any of the ground available for successful challenge to the impugned order.

9. The impugned order is passed neither in violation of any of the statutory provisions nor adversely affects any of the service conditions of the petitioner nor is vitiated by malafide and has neither been issued by an incompetent authority.

10. In view of above, no case for interference under Article 226 of Constitution of India is made out by learned counsel for the petitioner.

11. Accordingly, this petition deserves to be and is therefore, dismissed. No order as to cost.