
(2009) 01 MP CK 0073
In the Madhya Pradesh High Court

Pramod Kumar Shukla

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Citation : (2009) ILR (MP) 1200

Hon'ble Judges : U.C Maheshwari, J;Ramesh Surajmal Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The appellant being aggrieved by order dated 25.9.2008 passed by the learned Single Judge in Writ Petition No 11750/2008{S} has filed this writ appeal submitting intorialia that cancellation of order dated 5.7.2008 ?(Annexure A/6) vide another order dated 9.9.2008 (Annexure A/9) is patently illegal.

2. Short facts necessary for disposal of the writ appeal are that the appellant is working as a Compounder in Autonomous Government Ayurved College, Ujjain. He made an application to the Government that for the reasons stated in the application, he be transferred from Ayurved College, Ujjain to Ayurved College, Rewa. The application was allowed vide order dated 5.7.2003 and the appellant was transferred from Autonomous Ayurved College, Ujjain to another Autonomous Ayurved College, Rewa.

3. It appears that the appellant thereafter joined at Rewa but immediately thereafter, vide Annexure A19 dated 9.9.2008, the appellant was transferred back from Rewa to Ujjain with a direction interalia that the Government does not have the power to transfer an employee of the Autonomous College from one College to another College. The appellant being aggrieved by the order of re-transfer from Rewa to Ujjain had filed Writ Petition No. 11750/2008 {S}. As observed above, the said writ petition came to be dismissed, therefore, the petitioner/appellant is before this Court.

4. Learned Counsel for the appellant submitted that as the Government has

absolute and effective control over the management and working of an Autonomous College, therefore, the said control would include a power to transfer an employee from one College to another College. It is submitted by him that on earlier occasions, the persons were transferred from one College to another College but in the case of the present appellant, such an exception has been raised, that too detrimental to the interest of the appellant, It is also submitted by him that from Annexure R/2 filed alongwith the affidavit dated 6.11.2008, it does not appear that the Government is stating in the said letter dated 14.5.2001 that it does not have the control over the Autonomous College or it does not have the power to transfer one employee from one Autonomous College to another Autonomous College.

5. Shri Vivekanand Awasthy, learned Government Advocate for respondent No. 1/ State, on the other hand, submitted that the Autonomous Colleges, undisputedly, have their own control over the employees and they have the authority and right to engage their own employees. It is also submitted by him that prior to 2001, the Government had taken certain action in transferring the employee from one College to another College and had also directed for fresh appointment of employee of one College to another College but with effect from 14.5,2001, such policy has been abandoned.

6. It is also submitted by Shri Vivekanand Awasthy, learned Government Advocate for respondent No. 1/State that in the affidavit dated 6,11.2008, it is clearly observed and stated on oath that the State had no power to transfer the employee from Ujjain to Rewa. He also submitted that the Autonomous Colleges/ Institutions are governed by the specific .rules framed/adopted by such Colleges/ Institutions, therefore, their employees are not the members of the Government cadre.

7. The sum and substance of the argument is that the employees of the Autonomous Colleges/Institutions not being the Government servants, cannot be transferred under the orders of the State Government.

8. It is not in dispute before us that the appellant was appointed as a Compounder by the Autonomous Government Ayurved College, Italia The State Government had no role to play in the appointment of the appellant. The salary/ wages are being paid to the appellant through the coffers of the Autonomous College/Institution, The State does not pay anything.

9. It is also not in dispute before us that the Autonomous Colleges/Institutions are governed by the specific rules framed/adopted by such Colleges/Institutions. Undisputedly, at the time of the appointment of such(employees, the Government has no role to play. If the Government has no role to play at the time of the appointment; the salary/wages of such employees is not being paid by the Government and the Government is not the Disciplinary Authority for such employees then undisputedly, such persons cannot be held to be Government employees.

10. If the employees are not the Government employees then unless some rules are framed or certain policies are adopted or there are other directives in the rules framed by such Autonomous Colleges/Institutions authorizing the Government to transfer an employee from one College to another College, the Government cannot step into the shoes of the employer and transfer one employee from one place to another place. In our opinion, the Government was not wrong in recalling the order dated 5th July, 2008 whereunder the appellant was transferred from Ujjain to Rewa.

11. It was contended by Shri K.C. Ghildiyal, learned Counsel for the appellant that on one side, the Government is saying that there would be a ban on the transfer policy and at the same time on oath, it is submitting that it has no power to transfer, therefore, the Court should rely upon the Circulars issued by the State Government and not on the affidavit filed by some Medical Officer.

12. Shri Vivekanand Awasthy, learned Government Advocate for respondent No. 1/State, on the other hand, is submitting that if the Government has come out with a clear stand that the employees of the Autonomous Colleges/Institutions are not the employees of the Government or are not Government employees or public servants then whether there is a "ban" imposed or "no ban", the Government would not transfer such employees from one College/Institution to another College/Institution.

13. In our opinion, when the State Government has come out with a clear stand that too on oath that the employees of the Autonomous Colleges/Institutions are not members of the Government cadre or Government employees then the Government would have no authority or power to transfer the employee of an Autonomous College/Institution from one College/Institution to another College/Institution.

14. Shri K.C. Ghildiyal, learned Counsel for the appellant apprehends that the Government in future might take up the exercise of transferring the employees from one College to another College and thereafter, may come and say before the Court that vide letter dated 14.5.2001, they had simply suspended the action of transfer but did not give up their authority or power to transfer the employees from one Autonomous College/Institution to another Autonomous College/Institution.

15. In our opinion, the apprehension expressed by Shri K.C. Ghildiyal, learned Counsel for the appellant is baseless and is misconceived, When a Government Officer under the authority of the Government, files an affidavit in the High Court then irrespective of the status, stature or authority, he is a spokesperson of the Government. If a Peon of the Government files an affidavit on behalf of the Government then the statement made by that Peon on oath, would be taken to be the stand of the Government.

16. In the present matter, if the Government had said that it has no authority to transfer an employee then in absence of the rules/some decisions at the

Government level, the State would not be entitled to transfer any employee from one Autonomous College/Institution to another Autonomous College/Institution.

17. It is also to be noted that if the Government cannot control the service condition of the employees of an Autonomous College/Institution then it cannot direct appointment of some person in such Autonomous Body/College/Institution because the stand of the Government is that the Autonomous Colleges/Institutions are governed by the specific rules framed/adopted by such Autonomous Colleges/Institutions.

18. To avoid any future complication, while dismissing the writ appeal, we hereby direct that the State Government henceforth shall not transfer any employee of any Autonomous. College/Institution to another Autonomous College/Institution nor would issue any order of appointment absorption of some person from one College into another College or a fresh. appointment because the Autonomous Colleges/Institutions are governed by the specific rules framed/adopted by such Colleges/Institutions.

19. On the merits, we dismiss the writ appeal but, however, with a specific direction to the State Government to adhere to the observations made by this Court with a further caution that if they commit any breach of any observation then they would be exposing themselves to a serious risk. We however permit the appellant to make an application to the College at Rewa for his fresh appointment. It irhowever made clear that this liberty extended in favour of the appellant would not amount to a direction of this Court to the College. The interim relief granted on earlier occasion is vacated.

20. Let a copy of this order be sent to the Principal Secretary Medical Education, Principal Secretary Health Department so also to the Chief Secretary for its due observance and compliance.