

(2010) 05 MP CK 0034
In the Madhya Pradesh High Court

Rajaram Pal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Madhya Pradesh Fundamental Rules — Rule 110

Citation : (2010) ILR (MP) 2299 : (2010) 3 MPHT 466 : (2011) 1 MPJR 97 :
(2010) 3 MPLJ 452

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

With consent heard finally.

Petitioner is working on the post of Sub Divisional Forest Officer in the Forest Department of the State Government. He has been sent on deputation from the post of SDO Forest, Sendhwa to Rajya Laghu Vanopaj Sangh as Deputy Manager vide order dated 10-9-2009 (Annexure P-I). Through the same order, the private respondent No. 4 has been posted in place of the petitioner by amending his earlier transfer order. Aggrieved, the petitioner has filed this petition.

According to the petitioner he has been sent on deputation to accommodate the 4th respondent. He submits that he had joined at Sendhwa only on 20-8-2008 (Annexure P-2) and as such before completion of normal tenure of posting the impugned order could not have been issued. He further submits that the impugned order of deputation being passed without seeking his consent, the same is liable to be quashed.

The respondents have filed reply and have stated that M.P. Laghu Vanopaj Sangh is a wing of Forest Department of the State Government and is controlled by the Forest Department of the State Government. It is stated that the petitioner's department has not been changed and he will remain under the Forest

Department. In the circumstances the case of the respondents is that for posting of the petitioner in M.P. Laghu Vanopaj Sangh no consent is required as the M.P. Laghu Vanopaj Sangh is wholly under the administrative control of the Forest Department of the State Government. It has been stated that in view of Fundamental Rule 110 a Government servant can be sent to the service of a body, incorporated or not, which is wholly or substantially owned and controlled by the Government without seeking his consent.

As regards petitioner's contention that he had joined at Sendhwa only on 20-8-2008 and as such he could not be shifted from Sendhwa prior to completion of normal tenure of posting at one place, it has been stated that prior to his promotion order dated 20-8-2008 the petitioner was posted at Sendhwa itself right from the year 2006 and, therefore, it cannot be said that he has not completed normal tenure of posting at Sendhwa. The respondents have also denied the petitioner's contention that in order to accommodate the 4th respondent he has been shifted.

Heard learned Counsel for the parties and perused the annexures.

True it is that there cannot be a deputation without the consent of the person deputed. The consent of the lending authority, borrowing authority and the employee concerned is necessary before passing the order of deputation. The term "deputation" has been explained by Supreme Court by observing that deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority which controls the service or post from which the employee is transferred. It has been further observed that the deputation means assignment of an employee of one department/cadre/organisation to another department/ cadre/organisation [See State of Punjab and Others Vs. Inder Singh and Others, and Umapati Choudhary Vs. State of Bihar and Another, In the present case, the petitioner has been posted in the M.P. Laghu Vanopaj Sangh, which is under the control of the Forest Department of the State Government. Fundamental Rule 110 empowers the State Government to transfer service of Government servant to a body incorporated or not which is wholly or substantially owned and controlled by the Government without seeking his consent. The petitioner's service was and still is under the control of the Forest Department. In the circumstances for passing of the impugned order, the petitioner's consent was not at all necessary. Merely, because the fourth respondent has been posted in place of the petitioner, it cannot be said that he has been accommodated more particularly when the petitioner has remained posted at Sendhwa since 2006 he cannot make any grievance if the fourth respondent has been posted at his place by modifying his earlier posting order.

Accordingly, I find no merit in the petition. In the circumstances, no case for interference in the impugned order is made out. The petition fails and is hereby dismissed.