
(2005) 07 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5555 of 2005

Ram Prasad Parewa

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Constitution (Seventy-Third Amendment) Act, 1992 — Article 226, 243
Rajasthan Municipalities Act, 1959 — Section 297, 310A

Citation : (2006) 1 RLW 67 : (2005) 4 WLC 518

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Manish Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The prayer of the petitioner in the instant writ petition is as under:-

to quash and set aside the impugned transfer order dated July 15, 2005 (Ann.7). In the alternative, it may be declared that if the Government is given any administrative control on day to day affairs of municipalities and that too by virtue of any provision then such provision should be ordered to be ceased to exist in view of the amended provisions of the Constitution i.e., by virtue of 73rd Amendment of 1992.

2. As per the facts averred in the writ petition the petitioner was initially appointed on the post of Lower Division Clerk vide order dated January 13, 1977. The appointment was made under the Rajasthan Municipal (Ministerial) Service Rules, 1963 (for short "Rules 1963"). The petitioner was transferred to Badi Sadri vide transfer order dated July 9, 2004. The petitioner was relieved to join at Badi Sadri, but he was not allowed to join the duty on the ground that he was working on the post of LDC, whereas in the order of transfer he has been shown to be UDC. Therefore the Municipal Board Rajgarh made a request for necessary

correction vide letter dated July 14, 2004. The petitioner was not allowed to join on the post of UDC on the ground that the post of UDC is not available vide order dated July 16, 2004. Vide order dated August 4, 2004 the petitioner was kept under awaiting of posting. In the process of joining, the petitioner firstly remained at Badi Sadri and at Jaipur. Vide order dated September 25, 2004 the petitioner was transferred to Bandikui and the petitioner joined at Bandikui. The petitioner again transferred vide order dated July 14, 2005. When the petitioner was trying to settle his family affairs the Chairman, Municipal Board Bandikui issued the letter dated July 15, 2005. Feeling aggrieved by the transfer order dated July 14, 2005 the petitioner has preferred the instant petition.

3. Learned counsel appearing for the petitioner canvassed that in view of the constitutional amendment in the year 1992 the Municipalities and Panchayats are to work on the pattern of self government and thereby the Government is not authorised to pass an administrative order of the impugned order. The competence of the Government to transfer the municipal employees goes contrary to the constitutional provisions. In view of the constitutional amendment and as per Article 243 of the Constitution of India now the Panchayats and Municipalities have been given the status of self government and for that reason even time frame was given to Government to make amendment in the relevant laws so that the State Legislation are regulated by the frame work of the Constitution. It was incumbent upon on the part of the Government to frame their laws to make it in consonance with the Constitutional provisions. Constitution further provides that if any law exists contrary to the constitutional provisions then it will cease to exist after the lapse of period so given under Article 243 of the Constitution of India. Any law made in violation of Constitutional provisions and take away the character of the Municipalities is unconstitutional and it cannot co-exist after lapse of period as provided under the Constitutional amendment itself. If any law was in existence giving powers to the Government to transfer the employees appointed by the Municipality itself cannot now be treated as existing as the Constitution was amended in the year 1992 and after lapse of period of one year of contrary legislation ceases to exist. Thus by virtue of the constitutional provisions in that regard Government's power under any provisions of Act or rules cease to exist. It seems that the Government had passed the order of transfer in a routine manner as if they are not under any obligation to follow the provisions of the Constitution. The routine order so passed by the Government is without jurisdiction and being contrary to the Constitutional provisions it deserves to be quashed and set aside. Learned counsel further contended that there was a focus in the news paper dated July 16, 2005 to the effect that the Government had made 20,000 transfers in a day which otherwise was said to be a record. The Government is having main business of transferring the employees and not to undertake the development work. No one can think of 20000 transfers in a day that too for administrative reasons rather herein the transfer goes contrary to the interest of administration and the public at large. Learned counsel further contended that in Bandikui there

exists two posts of UDCs looking to the work strength available. Without there being any post vice the petitioner, he has been transferred to Rajgarh keeping one post vacant. Hence it cannot be said to be a case where the order has been passed in the exigencies of service or otherwise rather it is against the public interest. The petitioner has been otherwise made to suffer by frequent transfers in as much the petitioner was initially transferred to Badi Sadri, where the petitioner had remained for some period and finally when he was not allowed to join his service he had to remain at Jaipur under awaiting posting following by his subsequent transfer to Bandikui only 9 months back and now the petitioner has again been made to suffer by way of impugned order of transfer. It becomes a clear case of frequent transfers of the employee that too when he is a low paid employee working on the post of UDC. Learned counsel further contended that Municipalities and Panchayats are now to be governed by the elected members which otherwise needs the pattern of self government. The transfer orders being made without taking desire of the elected members show that the Government is not in a mood to follow constitutional mandate but is to act otherwise and on their own political whims. It is not only the case of the petitioner but a wholesale transfer of the Municipal Employees is not only illegal, arbitrary but against the constitution itself. Therefore in order to save the basic character of the municipalities and panchayats the impugned order needs to be quashed and set aside.

4. I am not impressed by the submissions. The power of the High Court under Article 226 is not intended to be used as an inquisitorial power to interfere with the actions and orders of the executive authority. High Courts are not inquisitorial Tribunal supervising, criticising, modifying or cancelling the actions and orders of different departments of executive authority, institutions and public bodies. Judicial review of executive action is permissible but there are well accepted exceptions to this. If an executive action is not governed by a statute or rule and if it does not affect a legal or constitutional rights of a citizen or a person, it will not be amenable to judicial review.

5. The impugned transfer order has been issued u/s 310A of the Rajasthan Municipalities Act, 1959, which provides as under:-

310A. Any officer or servant of a board who is a member of subordinate service, ministerial service or class IV service may be transferred by the State Government from the service of one board to the services of another board in accordance with the rules made u/s 297.

This court in *Ganpat Lal v. State* RLW 1994 (2) 716 indicated that power to transfer municipal employee from one municipal board to another board vests in the State Government.

6. Since executive action of the State Government in transferring the petitioner from one place to another neither affects nor has affected a legal or constitutional rights of the petitioner, such an action would not be amenable to

judicial review. 73rd Amendment of the Constitution does not help the petitioner in any manner.

7. For these reasons the writ petition stands dismissed summarily.