
(2020) 09 MP CK 0098

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 9742, 9755, 9794, 10842, 11711 Of 2020

Ranjeet Bhale

APPELLANT

Vs

M.P. State Civil Supplies Corporation Ltd.

RESPONDENT

Date of Decision : 10-09-2020

Acts Referred:

Citation : (2020) 09 MP CK 0098

Hon'ble Judges : S. C. Sharma, J

Bench : Single Bench

Advocate : Aviral Vikas Khare, Abhishek Tugnawat

Final Decision : Allowed

Judgement

1. The petitioner before this Court has filed this present petition being aggrieved by the transfer order dated 16.04.2020 passed during the Covid-19 pandemic period. The petitioner's contention is that he was appointed in the services of M.P. Civil Supply Corporation Limited in the year 1985 and earlier the date of retirement was 60 years and the petitioner was due for retirement on 30.06.2019.

2. The petitioner as well as the other employees being aggrieved by their retirement at the age of 60 years approached this Court and various interim orders were passed from time to time. In the case of the petitioner, an interim order was passed on 24.06.2019 in W.P. No.7800/2019 and the petition is still pending and the interim relief is continuing and all such cases have been transferred to the principal seat at Jabalpur by the order passed by Hon'ble The Chief Justice.

3. The petitioner's grievance is that in spite of an interim order passed by this Court and in spite of repeated representations, the petitioner was not permitted to join and it was only on 24.12.2019, the petitioner was allowed to join only when the managing director was called before this Court in contempt of court proceeding.

4. The petitioner has further stated that after his joining on 24.12.2019, he was shifted from Ujjain to Seoni on 28.12.2019 and thereafter again he was transferred back from Seoni to Ujjain on 07.02.2020. The petitioner has further stated that the respondents have not paid salary to the petitioner and is forcing him to become a shuttle cock from 'A' place to 'B' place without paying any salary and the petitioner has submitted representation on 31.05.2020.

5. The petitioner has further stated that the respondent with a vindictive attitude has passed an order transferring the petitioner during Covid-19 period i.e. on 16.04.2020 forcing the petitioner to join at Rewa. The petitioner has further stated that in the present petition also an interim order was passed in favour of the petitioner on 15.07.2020 and the respondents have again stopped payment of salary to the petitioner. The petitioner's contention is that the petitioner is a victim of frequent transfer and he is due for retirement on 30.06.2021 and only 9 months are left, therefore, no purpose is going to be served by putting the petitioner to great inconvenience at the fag end of his service career.

6. On the other hand, learned counsel for the respondents has argued before this Court that pursuant to the order dated 24.06.2019 passed in W.P. No.7800/2019, the petitioner was permitted to join on 24.12.2019, meaning thereby, the respondents have admitted that they have complied with the interim order passed by this Court only after 6 months that too when a contempt petition was filed.

7. The respondents have not denied that the petitioner was shifted from Ujjain to Seoni on 28.12.2019 and again from Seoni to Ujjain on 07.02.2020. Seoni is not a neighbor district, it is far away from Ujjain. The respondents have further stated that the transfer is an incidence of service and it is not a case of malafide transfer.

8. Reliance has been placed upon a judgment delivered in the case of Govind Deshpande Vs. State of Madhya Pradesh (W.P. No.7927/2020) and their contention is that in light of the judgment delivered by the learned Single Judge, the question of malafide does not arise and the writ petition deserves to be dismissed.

9. Reliance has also been placed upon another judgment delivered by the Division Bench of this Court in the case of Dr. Bhagwan Singh Jadhav Vs. Higher Education Department (W.A. No.527/2019) and the contention of the respondents is that in light of the aforesaid judgment as the petitioner is continuing at Ujjain since 1995, the question of interference by this Court does not arise.

10. Heard the learned counsel for the parties at length and perused the record.

11. Undisputed facts reveal that the petitioner is due for retirement on 30.06.2021 and hardly 9 months are left for his retirement. The statement made by the respondents that the petitioner is continuing at Ujjain since 1995 is

factually incorrect. The petitioner was shifted from Ujjain to Seoni on 28.12.2019 and again from Seoni to Ujjain vide order dated 07.02.2020.

12. Undisputed fact reveals that this Court vide order dated 24.06.2019 granted an interim order in W.P. No.7800/2019 and the respondents took 6 months to comply with the order that too when a contempt petition was filed. The petitioner only because of the aforesaid become an eye sore has been shifted at the fag end of his service career by the impugned order.

13. The impugned order has not been passed keeping in view the administrative exigencies. In the judgment relied upon by the learned counsel, there was no shifting of the employee in the manner and method shifting has taken place in the present case and, therefore, the judgments relied upon by the learned counsel for the respondents are of no help to the respondents.

14. In the present case, the petitioner is due for retirement on 30.06.2021 and only less than a year is left for his retirement. The policy of the State Government permits an employee retiring within one year to continue at the place of posting. It is true that the transfer is the province of an employer, however, if the transfer order is passed contrary to the executive instructions issued by the State Government/transfer policy or it is passed with malafide intention, the Courts do have the power to interfere with the transfer. Resultantly, the impugned orders are hereby quashed. The writ petition is allowed

No order as to costs.

W.P. No.9755/2020

In connected matter, transfer order was passed during Covid-19 pandemic period transferring the petitioner from Alirajpur to Datia. Alirajpur is a tribal place and normally people avoid posting at Alirajpur and the petitioner, who is due for retirement on 30.06.2021 is being shifted out knowingly well that Covid-19 pandemic is not permitting the shifting of persons, the petitioner has been transferred in similar manner only because he has approached this Court.

Resultantly, the transfer order of the petitioner from Alirajpur to Datia can never said to be done in the interest of administrative exigency nor in the public interest. The impugned order dated 26.04.2020 is also quashed.

The most important aspect of the case is that the petitioner has not been paid salary. The petitioner has also approached this Court by filing W.P. No.7800/2019 and this Court has passed an interim order on 24.06.2019.

It is really unfortunate that even during Covid-19 pandemic not a single rupee towards salary has been paid in spite of an interim order permitting the petitioner in service and the respondents are forcing the petitioner to move from Alirajpur to Datia. It is really strange. An employee who is hand to mouth is being forced to join at transferred place with empty pockets. Resultantly, the impugned order does suffer from malafide and it can never said to be passed

keeping in view the administrative exigencies and in the interest of public interest. It is hereby quashed.

W.P. No.9794/2020

In the present case, the impugned order is dated 26.04.2020 transferring the petitioner from Khargone to Harda. The transfer order has been passed during Covid-19 pandemic.

The infection of Covid-19 pandemic is at its peak and people are not going out of their houses. The Government is making all efforts to ensure that the public at large remains safe and the petitioner has been slapped with the transfer order only because he has approached this Court earlier. The respondents have paid only a month's salary till date.

The petitioner, in the present case, is due for retirement on 31.07.2021, meaning thereby, less than a year is left for his retirement and, therefore, the transfer order as it is contrary to the transfer policy issued by the State Government and also suffers from voice of non-application of mind, it is malafide, deserves to be quashed and is accordingly quashed.

Another aspect of the case is that in W.P. No.9794/2020, there is a document on record which is the letter of Collector and the Collector has categorically stated in his letter that the transfer of the petitioner is not going to serve any purpose as it is going to affect adversely the Pradhan Mantri Garib Kalyan Yojna and in spite of there being a letter of the Collector, who is head of the district and is having immediate control over the petitioner, the respondents are bent upon to throw out the petitioners from the places where they are posted only because they have approached this Court in the earlier round of litigation. Resultantly, the transfer order is quashed.

W.P. No.10842/2020

The petitioner has been transferred during Covid-19 pandemic that too when the rate of infection is at its peak. There is acute shortage of beds in the hospitals and the petitioner will be exposing himself by shifting his family from Dhar to Tikamgarh. The petitioner is due for retirement on 31.12.2021. The transfer order as stated in other cases does suffer from the voice of non-application of mind and it cannot be said to be passed in the administrative exigencies nor in public interest. It is accordingly quashed.

W.P. No.11711/2020

The petitioner before this Court is aggrieved with the transfer order dated 26.04.2020. He has been transferred from Agar Malwa to Shivpuri. He was earlier also subjected to transfer in the year 2016 and in the year 2018 and it is not a case where the petitioner is continuing at Agar Malwa since long. The petitioner is due for retirement on 31.12.2021 and he has also been made escape goat only because he has approached this Court by filing a writ petition

like other identically placed employees of the corporation.

The respondents/State have not been able to demonstrate the administrative exigencies involved in the matter necessitating the transfer of the petitioner and therefore, as the petitioner is due for retirement on 31.12.2021 and as the Covid-19 pandemic is at its peak, the petitioner cannot shift his family at this juncture, he is a low paid employee, the transfer order deserves to be quashed and is accordingly quashed.

It is pertinent to note that the petitioner has approached this Court by filing a writ petition i.e. W.P. No.7800/2019 and interim order was passed by this Court 24.06.2019. The respondents though have permitted the petitioner to join but have not paid a single rupee to him till date and they want him to join at transferred place. This Court is of the opinion that the impugned transfer order deserves to be quashed and is, accordingly, quashed.

The respondents shall pay salary positively within 30 days from today.

With the aforesaid, all the writ petitions are allowed.

The impugned orders are quashed.

Certified copy as per rules.