
(2018) 07 MP CK 0062

In the Madhya Pradesh High Court

Case No : Writ Petition No.14913 Of 2018

Ravi Singh

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Citation : (2018) 07 MP CK 0062

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Prashant Singh, M.S. Bhatti, Mohit Nayak, Shobhitaditya, Swapnil Ganguly

Judgement

Heard on admission as well as on interim relief.

Learned Senior Counsel for the petitioner submits that by the instant petition, the petitioner is assailing the order dated 30.06.2018 (Annexure-P/7)

whereby respondent No.4 has been directed to be transferred as Regional Manager in respondent No.3/Department from the post of Deputy

Collector, Jabalpur.

The challenge is founded mainly on the ground that the order of transfer of respondent No.4 is illegal and is in clear violation of the order passed by

the Indore Bench of this Court in W.P.No.7839/2016 (Annexure-P/5). Learned Senior Counsel submits that the order impugned clearly reveals that it

is an order of transfer but not an order of deputation and respondent No.4 cannot be sent on deputation by virtue of this order as the Rules applicable

for the employees of respondent No.3 Schedule-II attached with the Rules showing total cadre strength of the post of Regional Manager is 12 and all

the posts are already occupied, therefore, no additional appointment on the said

post by way of deputation can be made and if it is done, the same would be contrary to the statutory Rules of 1984 and in violation of law laid down by the Indore Bench of this Court. The petitioner is also apprehending that he is holding the post of Regional Manager in the respondent-Corporation and transfer of respondent No.4 on such post will disturb his posting on the said post and he would be transferred to accommodate respondent No.4.

The petitioner has also filed I.A.No.8262/2018 showing that vide order dated 05.07.2018 (Annexure-P/8) he has been directed to be transferred from the post of Regional Manager, Jabalpur to the post of Deputy General Manager, Headquarters Bhopal.

Learned Senior Counsel for the petitioner has placed reliance on Annexure-P/4, a document dated 30.12.2013, which reveals that total strength of the cadre of Deputy General Manager / Regional Manager is 12, out of which, 7 posts can be filled up by way of promotion and 5 posts by direct recruitment. Meaning thereby, there is no recruitment available on the post of Regional Manager by way of deputation.

Shri Ganguly appearing on caveat also filed a short reply opposing the interim relief and contending that the decision of Indore Bench in

W.P.No.7839/2016 is not applicable in the present case because the facts and the issue involved in the said case were altogether different with the

present case. He has further contended that no interim relief can be granted at this stage because respondent No.4 has already been relieved and

joined at the place where he has been directed to be transferred and as such complied the order impugned. He has further contended that there is no

illegality committed by the order impugned sending him on deputation and also pointed out that in pursuance to the order impugned, one Shri Narotam

Prasad Bhargava, who was holding the post of Regional Manager has been repatriated to his substantive post of Joint Collector and he has

implemented the said order. Accordingly, the vacancy of the post of Regional Manager by way of deputation can be filled up. Shri Ganguly further

submits that the document (Annexure-P/4) relied upon by the petitioner having no statutory force and the same cannot substitute the mode of

recruitment as provided in the Recruitment Rules, 1984.

Shri Shobhitaditya, learned counsel appearing for respondent No.3 has argued

that as far as the petitioner is concerned, he has been transferred by order dated 05.07.2018, which has been filed by the petitioner alongwith I.A.No.8262/2018, but the validity of the said order has not been challenged and therefore the said order attains finality and thus the petitioner having no right to challenge the order impugned passed in respect of respondent No.4.

Heard the rival contentions of the parties.Â

The Indore Bench of this Court in W.P.No.7839/2016 has considered the fact that the post of Deputy General Manager and Regional Manager lying

vacant were being tried to be filled up by way of deputation and therefore the same is exceeding the existing quota provided under the Recruitment

Rules and as such adversely affecting the rights of the employees who are due for promotion for which specific quota has been prescribed, therefore,

they raised grievance before the Court saying that no deputation would be permitted exceeding the quota of deputation against the quota of

promotional post. But, here in this case that is not the situation. However, the petitioner is assailing the order of respondent No.4 on the count that in

Annexure-P/4 there is no mode of recruitment by way of deputation, therefore, deputation of respondent No.4 cannot be made. The petitioner is also

assailing the order saying that by way of order of transfer, deputation cannot be made because as per the prevailing practice of the Department, the

order of deputation appointment is issued in specific manner.Â

Accordingly, the main contention of the petitioner regarding applicability of order dated 05.10.2017 passed in W.P.No.7839/2016 prima facie does not

seem to be proper. Secondly, the document Annexure-P/4 though not specifically provides the mode of recruitment in column No.9 but that does not

mean that mode of recruitment as provided under the Recruitment Rules has been substituted by way of document dated 30.12.2013 (Annexure-P/4).

Prima facie, it appears that Annexure-P/4 is a correspondence made between the State Authorities in respect of a proposal granting additional post

and also in respect of sanction granted by the Finance Department. Accordingly, prima facie the document (Annexure-P/4) cannot be said to be a

document having overreaching effect over the Recruitment Rules, 1984 and also the mode of recruitment provided under Schedule-II attached with

the said

Rules. The order of deputation can also be issued in the manner in which the order impugned has been issued and there is no specific format provided

in the Recruitment Rules, 1984 for sending a person on deputation or making appointment by way of deputation, I do not find any substance in the

argument of the petitioner that the order impugned can not be said to be an order directing respondent No.4 to be sent on deputation. It is also not the

case of the petitioner that the appointment of respondent No.4 by way of deputation cannot be made as post of Regional Manager under the quota of

deputation is not lying vacant. Even otherwise, as per the submission made by Shri Ganguly from the order impugned, it is clear that one Narottam

Prasad Bhargava holding the post of Regional Manager under the quota of deputation has been repatriated to his original posting of Joint Collector and

Shri Bhargava has already complied with the order. Thus, the post of Regional Manager by way of deputation can be considered to be available in the

respondent department.

Shri Shobhitaditya has rightly pointed out that there is no challenge in respect of order of transfer of the petitioner and therefore this Court at this

juncture cannot consider the arbitrariness or illegality by making frequent transfers of the petitioner and sending him Bhopal on the post of Deputy

General Manager, Headquarters Bhopal.

Considering the above facts and circumstances and taking note of the fact that the respondent Corporation has not filed reply stating that no post of

Regional Manager can be filled up by way of deputation, at-present I am of the opinion that it is not a case in which interim relief can be granted and

order of transfer/deputation of respondent No.4 can be stayed.

Accordingly, the prayer for interim relief is rejected at this stage.

Let reply be filed by respective respondents No.1, 2 and 3 within a period of four weeks positively.

List the matter on 13.08.2018.