

(2012) 03 MP CK 0082

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11837 of 2010

Satyendra Dubey

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004 — Rule 14

Citation : (2012) 03 MP CK 0082

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Shri N.K. Mody, J.—The prayer in the petition is for quashment of the order dated 9.9.2010 Annexure P/6 issued by respondent No. 1 and order dated 15.9.2010 Annexure P/7 issued by respondent No. 2, whereby petitioner has been transferred and relieved from Govt. Polytechnic College, Ujjain to newly formed Polytechnic College, Mandsaur on the higher post of Principal. Short facts of the case are that petitioner was initially appointed on the post of Lecturer in Civil Engineering. Petitioner was confirmed on the said post. Vide Gazette Notification dated 29.5.97, State Government declared the Govt. Polytechnic College, Durg, Bhopal, Jabalpur, Gwalior, Ujjain, Dhar and Women Polytechnic College, Raipur as autonomous institutions to be managed and controlled by the registered societies. Since the petitioner was posted at Govt. Polytechnic, Ujjain, therefore, petitioner was transferred vide Annexure P/6 from Ujjain to Mandsaur and was relieved vide order Annexure P/7, hence this petition.

2. Learned counsel for petitioner submits that since the institution in which the petitioner was posted is autonomous institution an is to be managed and controlled by the governing body, therefore, petitioner cannot be transferred without his consent to some other institution. Learned counsel placed reliance on Rule 14 of the M.P. Technical Education Polytechnic College (Teaching Cadre)

Service (Recruitment) Rules, 2004, which reads as under :

14. Lien.-If a person who at the commencement of these rules is holding a post specified in column (3) to (7) of Schedule I in a substantive capacity shall be on deputation and if selected after the commencement of these Rules for a higher post in accordance with the provisions of these rules shall be permitted to retain lien on his substantive post for a maximum period of three years. Before completion of the period specified above the Appointing Authority of the institute in which he is serving will have to take a final decision about the absorption of the candidate.

3. Learned counsel submits that since the post on which the petitioner is working is specified in column (3) to (7) of the Schedule I, therefore, petitioner cannot be sent on deputation without his consent. It is submitted that petition filed by the petitioner be allowed and the impugned order be set aside.

4. Smt. Vinita Phaye, learned counsel for respondents, submits that petitioner has not been sent on deputation and as per the Govt. policy the State Government has decided to send the experienced staff to the newly set up institutions. It is submitted that as the petitioner is an experienced Lecturer, therefore, petitioner has been transferred from Ujjain to Mandsaur. It is submitted that since the petitioner is not sent on deputation, therefore, question of taking consent is not necessary. It is submitted that Rule 14 is not applicable in the case of the petitioner. It is submitted that petition has no substance and the same be dismissed.

5. Vide interim order dated 29.9.2010 operation of order Annexure P/6 dated 9.9.2010 has been stayed by this Court. In the matter of State of Punjab Vs. Inder Singh, reported in 1998 SCC (L&S) 34, Hon''ble Apex Court had an occasion to take into consideration the word "deputation" and observed that deputation is a service outside the cadre or the department on temporary basis amounts to deputation. It was also held by the Apex Court that without consent of an employee deputation is not permissible. In the matter of Umapati Choudhary Vs. State of Bihar, reported in 1999 SCC (L&S) 902, while taking into consideration the word deputation, Hon''ble Apex Court held that deputation means assignment of an employee of one department/cadre/organization to another department/cadre/ organization in public interest. From the Gazette Notification dated 29.5.97 it is evident that while constituting the governing body of each and every Polytechnic institution State Government has constituted the governing body. Clause 4 of the Notification reads as under :

Keeping in view the law laid down by the Hon''ble Apex Court relating to deputation and also keeping in view the Gazette Notification Annexure P/4, this Court is of the view that the order passed by respondent No. 2 cannot be allowed to sustain. The Polytechnic Institution, Ujjain is an autonomous body, where petitioner is working as Lecturer. In view of this petition filed by the petitioner is allowed and the impugned order stands quashed. No order as to costs.