
(1968) 08 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 282 of 1968

Shankarlal and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 20-08-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 94, 94(7), 95

Citation : (1968) J LJ 1062

Hon'ble Judges : P.V. Dixit, C.J;G.P. Singh, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Singh, J.—The Petitioners who are six in number are employees of the Municipal Council, Sagar and are employed as lecturers and teachers in Municipal Higher Secondary Schools of Sagar. By orders of the State Government issued in June 1968, which are exhibited as Annexure C, D and E, the Petitioners have been transferred from Sagar to different places in schools belonging to other Municipal Councils. The Petitioners are aggrieved by these transfers and have filed this petition under Article 226 of the Constitution for issuance of proper writs to have the orders of transfers quashed.

2. The only point agreed by the Learned Counsel for the Petitioners is that the State Government has no power of transferring lecturers and teachers of one Municipal Council to another Municipal Council In reply the learned Government Advocate has supported the orders u/s 94(7) of the Madhya Pradesh Municipalities Act, 1961.

3. Section 94 in so far as it is relevant for the present case reads as follows:

94. Appointment of staff:

(1) Every Council having an annual income of five lakhs of rupees or more shall subject to Rules framed u/s 95, appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties.

(2) Every Council not falling under Sub-section (1) shall, subject to Rules framed u/s 95, appoint a Sanitary Inspector, an Overseer, a Revenue Inspector, and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties;

(7) The State Government may transfer any officer or servant of a Council mentioned in Sub-sections (1) and (2) and in receipt of total emoluments exceeding one hundred rupees to any other Council.

4. The power of the State Government under Sub-section (7) of transferring employees of one Municipal Council to another Council is limited to "any officer or servant mentioned in Sub-sections (1) and (2)." Sub-section (1) relates to Councils having an income of five lakhs or more. In terms of the Sub-section, such Councils shall appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary for the efficient discharge of their duties. Sub-section (2) deals with Councils which do not fall under Sub-section (1) i.e. annual income of which is less than five lakhs. Every Council falling under Sub-section (2) shall appoint a Sanitary Inspector, an Overseer, a Revenue Inspector and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties. Sub-sections (1) and (2) thus enumerate the officers and servants which the Councils shall appoint. In addition to enumerated officers, the Councils may appoint such other officers and servants which may be necessary for the efficient discharge of their duties. The enumerated officers and servants are Revenue Officers, Accounts Officer, Sanitary Inspector, Overseer, Revenue Inspector and Accountant. In our opinion these are the only officers mentioned in subsections. (1) and (2) and "other officers and servants" which a Council may appoint for the efficient discharge of its duties are not the officers and servants mentioned in the Sub-sections. The word "mentioned" in the context of Sub-section (7) means "named". Officers and servants not specifically enumerated cannot be said to be named or mentioned. This construction is supported by other considerations. Firstly, if Sub-section (7) applies even to such officers and servants which are not enumerated in Sub-sections (1) and but which Councils may appoint for the efficient discharge of their duties then the power of transfer will be available for transferring any officer or servant in receipt of total emoluments exceeding one hundred rupees and the words "mentioned in Sub-sections (1) and (2)" as they occur in Sub-section (7) will become otiose or redundant. Secondly, the officers and servants enumerated in Sub-sections (1) and (2) are again enumerated in Sub-section (4) and the appointment and dismissal of these officers and servants is subject to approval of the State Government. The enumerated categories of officers are thus treated differently

from other officers and servants and it is reasonable to infer that the Legislature intended by Sub-section (7) to confer on the State Government power of transfer only in respect of enumerated categories of officers and servants. Lastly, the predecessor Act viz, the C.P. and Berar Municipalities Act, 1922, in Section 259 conferred on the State Government power to transfer "any officer or servant" whereas the present Act in Section 94(7) by using the language "any officer or servant mentioned in Sub-sections (1) and (2)" evinces an intention to restrict the power of transfer and not to make it available for "any officer or servant" not mentioned in those Sub-sections. In our opinion the power of transfer u/s 94(7) is available only in respect of officers and servants specifically named or enumerated in Section 94(1) and (2), and not in respect of other officers and servants which a Council may appoint.

5. As lecturers and teachers are not the enumerated categories of officers and servants in Section 94(1) and (2), the orders of transfer issued by the State Government in respect of the Petitioners were in excess of the power conferred by Sub-section (7).

6. The petition is allowed. The orders transferring the Petitioners from the Municipal Council, Sagar to other Councils are quashed. The Petitioners will have their costs of this petition from the State Government. Counsel's fee Rs. 100. The security deposit will be refunded to the Petitioners.