
(2014) 01 MP CK 0077

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7106 of 2012

Smt. Mekhla Narway

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Citation : (2014) LabIC 2123

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : A.K. Nirankari in W.P. No. 7106/2012, Mr. Vijay Dutt Sharma in W.P. No. 7339/12, Mr. Nirmal Sharma in W.P. No. 7434/12, Mr. Harish Dixit in W.P. No. 6872/12 and Mr. Udit Saxena in W.P. No. 7090/2013, for the Appellant; Nidhi Patankar, Govt. Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—Since similar questions are involved in these matters, on the joint request, matters are analogously heard and decided by this common order. The admitted facts between the parties are that the petitioners were appointed on contract basis. Being contractual employees, their service conditions are governed by the terms of the contract and the executive instructions issued by the State Government governing the field. Except in W.P. No. 7339/12, in all other cases the appointment order/contract of Supervisors makes it clear that the posting of the selected Supervisors will be in any supervision area of the same district. Only difference in W.P. No. 7090/13 is that petitioner in this case is Assistant Grade-II on contract basis.

2. It is contended that as per the conditions of the contract as well as the governing policy dated 27.5.2007 and 1.10.2008, the contractual employees/ Supervisors cannot be transferred outside the district. It is contended that in exceptional circumstances such transfer can be made only in three conditions:--

1) Because of some serious ailments.

2) To facilitate the husband and wife to live together.

3) Because of marriage of the women contractual employee.

It is contended that in none of present cases these conditions are satisfied and, therefore, transfer is bad in law.

3. Mrs. Nidhi Patankar, learned Govt. Advocate submits that in administrative exigencies the petitioners were transferred. By taking this Court to Annexure P-1 dated 18.9.2012 (W.P. 7106/12), it is contended that in Sheopur District sizable number of cases of malnutrition and ailments were reported and in order to fill up the posts, employees were transferred in administrative exigency and, therefore, no fault can be found in the said exercise. In addition, it is contended that in the appointment order filed in W.P. No. 7339/12, it is clear that employees can be transferred in any place in the division. No other point is pressed by the learned counsel for the parties.

4. I have heard the learned counsel for the parties and perused the record.

5. In the considered opinion of this Court, the condition No. 1 of the contract deals with posting at the time of initial appointment. Thus, whether it is within the district or within the division will make no difference in the present case because in the present cases the employees are aggrieved by the transfer subsequent to their appointment/posting. The singular question is whether a contractual employee can be transferred? This Court in W.P. No. 843/13 (Smt. Vandana Dandotiya v. State of M.P. and others) decided on 11.7.2013 opined that as per condition of contract the employees cannot be transferred beyond the district in which they were appointed. However, in the said case, the governing circular dated 1.10.2008 was not brought to the notice of this Court. The relevant portion of the said circular reads as under:--

6. This Court held on the basis of full bench judgment of this Court reported in 2010 (3) MPJR 97 (Ashok Tiwari v. M.P. Text Book Corporation & Anr.) that transfer is permissible only if conditions of service and the contract of service contemplates a provision for transfer from one place to another. Relevant portion of which reads as under:--

23. The principle that emerges on the basis of the aforesaid judgments would clearly indicate that transfer is of a government servant or an employee, who is appointed to a post and transfer even though an accident and condition of service, is from one post to another i.e., from one place to another without altering the basis terms and conditions of service to the disadvantage of the employee concerned. That being so, one of the preconditions necessary for transfer of an employee is that he should be holder of a post, his appointment should be substantive in nature to a regular post in the establishment after following the due process contemplated for appointment to the post and even though transfer is an incident of service, but transfer is permissible only if the conditions of service and the contract of service contemplates a provision for

transfer from one place to another. It is also clear from the aforesaid judgments and the principle, that a "daily rated employee" is not appointed to any post and before he is appointed, the pre-conditions contemplated for appointment to the post are not followed. His appointment is on day-to-day basis as per the need of work and normally the conditions of service regarding transfer, suspension, disciplinary action cannot be applied to such an employee.

7. In the present case, if the appointment order/contract is conjointly read with the enabling provision/service condition mentioned in circular dated 27.5.2007 and 1.10.2008, it is clear like noon day that the contractual employees can be transferred only within the district. Only three exceptional circumstances enumerated above can be reason to transfer contractual employees beyond the district. In the considered opinion of this Court, the State Government was not oblivious of the fact that contractual employees are low paid employees. They are not given all those facilities which are given to regular/permanent civil post holders of the corresponding category.

8. Considering the aforesaid, initially in circular dated 27.5.2007 it was made clear that Supervisors can be transferred only within the district. The said order was relaxed by circular dated 1.10.2008 (Annexure P-2). The reasons for relaxation makes it clear that it was on humanitarian considerations to facilitate the contractual employees. In the further opinion of this Court, the service conditions of the contractual employees are governed by Annexure P-2 and P-3, the governing circular and the terms of contract. Apparently, the said service conditions of the petitioners is violated by the transfer order. No doubt, if there is deficiency of staff in a particular district, the State is equipped with the power to fill up those posts. However, for that the employees cannot be transferred contrary to the governing service conditions.

9. As analyzed above, the impugned order of transfer is in contravention of the service conditions of the petitioner as per the contract read with the governing circular Annexure P-2. The Apex Court in *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others*, opined that if the order of transfer violates any operative guidelines governing the transfer, the Court can interfere with it (para 4). In view of this, the impugned order of transfer cannot be permitted to stand. Resultantly, the impugned orders of transfer in all these petitions to the extent it related to the petitioners are set aside. The petitions are allowed. No cost.