
(2012) 08 MP CK 0151
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8282 of 2012

Smt. Pramila Rajak

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Madhya Pradesh Jan Shiksha Adhiniyam, 2002 — Section 16, 35, 36

Citation : (2012) 08 MP CK 0151

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : P.R. Bhave, assisted by Mr. Rajesh Dubey, for the Appellant; Nirmala Nayak, learned Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Justice K.K. Trivedi, J.—The petitioner, who is serving in the Education Department, has assailed the order dated 23.5.2012, by which she has been repatriated to her parent department without any reasons. It is contended by the petitioner that she was taken on deputation to work as District Project Coordinator. For the said purposes, the respondent No. 2 issued an advertisement on 2.4.2010. The advertisement specifically mentioned that in 50 districts of the State, under the Sarva Shiksha Abhiyan, one post each in every district, of the District Project Coordinator is sanctioned. The applications were invited only from the employees already serving in the Government services to be appointed on deputation on the said post. A cut off date was prescribed. The selection was made and thereafter the orders of appointment were issued in respect of persons. In fact, a tentative merit list was published inviting objections and thereafter the orders of appointment were independently issued to the selected candidates. It is the case of the petitioner that she was appointed as District Project Coordinator in District Education Centre, Neemach, vide order dated 22.10.2010 and was later on transferred on her own request to District Education Centre Tikamgarh vide order dated 4.3.2011. The petitioner is

discharging the duty at such a place after her relieving from Neemach. All of a sudden, a list was prepared and on 17.5.2012, it was intimated that those persons who have completed four years of deputation posting as District Project Coordinator were to be repatriated back to their parent department. Without there being any justified reasons even when the petitioner has not completed the period of four years, her name was included in the list and on 23.5.2012, the petitioner was repatriated to the parent department. It is contended that such an action was de hors the Scheme made by the respondents and, therefore, such an order was bad in law. It is contended that when the selection was initiated and a tentative list was published way back in 2010, the said action was called in question by some of the persons who were already working, before this Court and in their cases interim relief has been granted, therefore, such an order is initiated against the petitioner with malafide intention. It is contended that in terms of the provisions made in the M.P. Jan Shiksha Adhiniyam, 2002 and the Rules made thereunder, the action of the respondents is bad in law. On receipt of the notice of the writ petition, the respondents have filed a return and have contended that the entire petition is based on misconceived and misleading facts. It is contended that the petitioner was taken on deputation and since for administrative reason, her deputation posting was not feasible, she was repatriated back to her parent department. Such a condition is specifically mentioned in the order of appointment issued in respect of the petitioner. It is contended that the judicial review of such an action of the respondents is not justified. It is claimed that the petition is liable to be dismissed.

2. After hearing learned counsel for the parties at length, this Court is of the considered opinion that such a stand taken by the respondent-State cannot be accepted. Firstly, the Scheme is made by the State Government for initiating Education Programme under the enactment made by the Legislative Assembly. The M.P. Jan Shiksha Adhiniyam 2002 (hereinafter referred to as the "Act" for brevity) contemplates that the Schemes are to be made by the State Government to provide elementary education to the children. It is specifically prescribed that every children has right to access education and for the said purposes the Shiksha Kendra are to be established. The establishment of Zila Shiksha Kendra is prescribed u/s 16 of the Act which says that there shall be a Zila Shiksha Kendra at district level for coordination, supervision and support of the Jan Shiksha Yozna at the District level. Sub-section (2) of Section 16 of the Act prescribes that Zila Shiksha Kendra shall be constituted in such a manner as may be prescribed and it shall discharge such functions as may be prescribed. The power to make rules to fulfill the object of the Act is conferred on the State Government u/s 36 of the Act. Similarly, there is power to issue direction, conferred on the State Government u/s 35 of the Act, which prescribes that the State Government shall have powers to issue directions to any person/body/ authority in consonance with the provisions of the Act and the rules made thereunder. M.P. Jan Shiksha Niyam, 2003 (hereinafter referred to as the Rules for short) have been framed by the State Government to fulfill the object of the

Act. Constitution of Zila Shiksha Kendra is prescribed under Rule 17 of the Rules, which contains that the Collector of the district will be the Ex-Officio head of the said Kendra, which includes the Chief Executive Officer of Zila Panchayat, to coordinate the functions, the District Education Officer, the District Institute for Education and Training, and the District Project Officer of Shiksha Mission. Sub-rule (2) of Rule 17 of the Rules prescribes that there shall be three designated officers at the Zila Shiksha Kendra, the Education Programme Officer-I, II & III respectively, who will coordinate the activities of elementary education in the district. The District Project Coordinator of the district unit of Shiksha Mission shall be the ex-officio Education Programme Officer-I. No other manner is prescribed for constitution of such a Shiksha Kendra. Precisely this is the prescription of the Zila Shiksha Kendra for which the posts of District Project Coordinator are sanctioned in each district of the State.

3. Rule 18 of the Rules prescribes the duties and responsibilities of Zila Shiksha Kendra. Precisely this is the reason, the officers from Education branch are taken on deputation to be posted as District Project Coordinator because they have to function as Education Programme Officer-I. This being so, the applications were invited vide advertisement dated 2.4.2010, pursuance to which the petitioner has also made the application. She was considered, found fit and was included in the list. The manner in which the selection was to be done, was also prescribed by the respondent No. 2 in the note sheet. After due approval, the order of appointment of petitioner was issued, but no period of deputation posting was prescribed. Later on, the petitioner was transferred to Tikamgarh where she has joined and is working. There were certain questions raised in the Legislative Assembly where the attachment of teachers in the Education Projects under the Sarva Shiksha Abhiyan were objected. The Government at the highest level had taken a decision to repatriate those who have completed a period of four years posting on deputation as District Project Coordinator. For that reason only memo was issued on 17.5.2012 Annx.P/12 by the Commissioner Rajya Shiksha Kendra. Apparently, the petitioner had not completed the period of four years posting on deputation and, therefore, there was no question of referring the matter for her repatriation as it was the policy made by the State Government which is to be inferred by the conduct of the respondents that a person taken on deputation is to be allowed to continue for a period of four years. The respondents have simply said that the petitioner has no vested right to be remained on deputation for a longer period. When the period itself was not completed, which is prescribed for such deputation posting and if it is curtailed in between on account of unsatisfactory performance of duties by the petitioner, it was necessary to point out such facts to the petitioner and then only to repatriate her to the parent department. Further, the deputation posting of the petitioner was required to be done with the consent of the parent department of petitioner. Before repatriation the services of the petitioner to the parent department neither any information was sent to the parent department nor any posting order was issued in respect of the petitioner by her parent department and, therefore immediate repatriation

of the petitioner was not permissible. This being so, the explanation as extended by the respondents in support of the action of repatriation of the petitioner cannot be accepted.

4. Learned counsel appearing for respondents has put her reliance heavily in the case of Dr. S.M.P. Sharma and Another Vs. State of M.P. and Another, It is contended that in view of the law laid down by the Apex Court as relied by the Division Bench of this court, the petitioner is not entitled to continue on deputation. It is further submitted by learned counsel for respondents that if the petitioner is sent back to her parent department, no arbitrary or discriminatory action can be alleged against the respondents.

5. True it is that deputation posting of an employee is not a right, but if it is made under a Scheme, which specifically prescribes a period of deputation posting, it is not required to be curtailed unless the good cause or the administrative exigencies are pointed out. Had it been so, it was necessary to give a reason in writing as to why the petitioner is repatriated even if no show cause notice was given to her. Nothing has been said in the return. The Scheme itself has not been placed on record deliberately though on the basis of such a Scheme, most probably, made in exercise of powers u/s 35 of the Act, the deputation posting of the petitioner was done after due selection. If the petitioner was selected for a particular period as is clearly inferable from the memos produced along with the writ petition which have not been denied by the respondents, she should not have been repatriated otherwise, without a cogent reason before the expiry of the period of deputation posting. As has been held above, the memo was sent only for giving the information with respect to those who have completed the period of four years of posting on deputation and not for the persons who have not completed the period of four years. The petitioner has not completed the period of four years deputation posting and, therefore, she was not required to be repatriated. In absence of such a justified reasons, the order of respondents cannot be sustained. Consequently, the writ petition is allowed. The order dated 23.5.2012 in so far as it relates to the repatriation of the petitioner from the post of District Project Coordinator Tikamgarh is hereby quashed. The petitioner be allowed to continue on her post till she completes period of deputation posting. There shall be no order as to costs.