

(2001) 08 MP CK 0070
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1201 of 2000

Sobaran Singh Yadav

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2001) 3 MPLJ 472

Hon'ble Judges : S.P. Srivastava, J; R.B. Dixit, J

Bench : Division Bench

Advocate : Jitendra Maheshwari, for the Appellant; K.B. Chaturvedi, Government Advocate For State, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

The petitioner who was posted as an Assistant Teacher in Primary School, Prathmik Vidyalaya (Balak), Jaura Khurd, district Morena, was transferred vide the order dated 30-6-2000 passed by the Zila Shiksha Adhikari, district Morena and posted in the same capacity in Prathmik Vidyalaya, Palpura, district Morena, challenged the said order before the Madhya Pradesh State Administrative Tribunal, Gwalior, without any success as the Tribunal vide its order dated 7-7-2000 relying upon the directions issued by the State Government vide the circular dated 7-6-2000 and observing that there was nothing to show that the order stood vitiated on account of arbitrariness, mala fides or was against any statutory rules dismissed the application of the petitioner filed u/s 19 of the Administrative Tribunals Act.

Feeling aggrieved the petitioner has now approached this Court seeking redress, praying for the quashing of the impugned orders or in the alternative to remit the case to the Tribunal for deciding the same afresh.

The respondents Nos. 1 to 3 have filed a return/counter affidavit in opposition to

the writ petition denying the right claimed by the petitioner to hold the post at Joura-khurd asserting that the transfer order in question had been passed by a Competent Authority having full jurisdiction in the matter.

We have heard the learned counsel for the parties and have carefully perused the record.

The State Government in an attempt to up-lift the standard of education had determined a "Teacher-Taught" ratio to be maintained and taking that into account rationalise the number of the teachers in Government service ensuring prevention of wastage of money and talent as it was found that there were many institutions where the number of students was less whereas the number of teachers was far in excess. At some places the number of students was quite large but the number of teachers was far less. The rationalisation scheme covered the cases of the transfer of teachers from educational institutions situate in the urban area as well as the rural area. In order to implement the scheme with the object of up-lifting the standard of education and maintaining the "teacher-taught" ratio as well as preventing unnecessary expenditure and wastage of talent, the State Government took various decisions which covered the cases of transfer of the Assistant Teachers of the institutions from one urban area to another urban area, from one urban area to another rural area, from rural area to urban area and from rural area to another rural area.

On 7th of June 2000, the State Government issued an order directing the Zila Yojana Samitis functioning in each District to effect transfers from urban area to rural area taking into account the number of posts of teachers ensuring rationalisation and in this process the teachers found in excess could be transferred to the rural area along with the post held by them. In the aforesaid connection, the State Government referring to its policy decision declared that after ascertaining the total number of posts in the urban and the rural areas, proposals for re-deployment of the teachers be prepared taking into account the teacher-taught ratio to be 1:45 for the purposes of Primary School to Higher Secondary School of the District which were functioning in urban and rural areas. The proposals for re-deployment had to be prepared by the Zila Yojana Samiti functioning in each District and if necessary, proposals could be for transfer of a teacher along with the post.

On 27-6-2000, the Director, Lok Shikshan Madhya Pradesh, issued another direction communicating the decision of the State Government dated 10th May, 2000, to the effect that every Zila Yojana Samiti shall, taking into account the number of sanctioned posts of the teachers should effect transfer ensuring rationalisation of the extra teachers whose number shall be determined taking into account the teacher-taught ratio as determined to be maintained and such teachers who are found in excess shall be transferred from urban area to rural area.

On 30-6-2000, the State Government accepting the recommendation of the Zila

Yojana Samiti and with the approval of the Zila Sthanantaran Board while giving effect to the rationalisation policy issued an order for the transfer of Assistant Teachers from urban area to rural area along with the post and from rural area to rural area.

The petitioner, Sobaran Singh Yadav, who was an Assistant Teacher in the Prathmik Vidyalaya (Balak), Jaura-Khurd, was transferred in the same capacity to Prathmik Vidyalaya, Palpura.

It may be noticed that superseding all the directions issued earlier, a fresh direction had been issued by the State Government vide its circular dated 6th June, 1996. In these directions, sofaras the Assistant Teachers posted in the educational institutions functioning under the Zila Panchayat were concerned, it had been specifically provided that the jurisdiction of the Zila Panchayat in the matter relating to the, transfers of such Assistant Teachers from rural area to rural area shall be limited to the extent of 3 per cent of the total strength of the cadre of the Assistant Teachers and limited to the extent of 5 per cent of the total strength of the cadre of teachers and limited to the extent of 10 percent of the total strength of the cadre of Lecturers. The expression "cadre", it may be observed has to be taken and understood as a separately sanctioned unit of service consisting of a certain number of posts. It was further provided that the Zila Panchayat of its own or on the basis of the recommendations of the Janpad Panchayat could exercise the jurisdiction vested in it as specified in the aforesaid order in the matter relating to general transfers but subject to the guidelines specified in paragraph 8 of the circular dated 6th June, 1996. It is significant to note that sofaras the teachers were concerned the continuance in office at a place for a period of three years was not to be treated as a case fit for general transfer. It was also indicated that wherever Zila Panchayat had been referred to in the aforesaid order, it will be taken to be the "Samanya Prashashnik Samiti" of the Zila Panchayat and wherever Janpad Panchayat had been referred to that would be taken to mean the "Samanya Prashashnik Samiti" of the Panchayat.

In view of what has been indicated above, there could be no escape from the conclusion that the jurisdiction of the Zila Panchayat in the matter relating to transfer of the Assistant Teachers or Teachers or Lecturers from one institution functioning in the rural area to another institution functioning in the rural area was of a very limited extent. The jurisdiction sofaras the matter relating to transfer of the Assistant Teacher, Teacher or Lecturer from one rural area to another rural area within the jurisdiction of the Zila Panchayat over and above the limits referred to hereinabove was retained by the State Government.

At this stage, it may be noticed that on 30-3-1999, the State Government had issued a direction that all transfers of the employees falling in the categories II, III and IV from urban to rural area or from rural to urban area or from one urban area to another urban area in accordance with the transfer policy of the State Government had to be effected by Adhyaksha, Zila Yojana Samiti providing further that for the group of the employees which had been put at the disposal of

the Panchayat Raj Sanstha and Nagariya Nikaya, the jurisdiction for their transfer was being continued to remain as before with such Sanstha or Nikaya.

With the issuance of the circular dated 7th June, 2000, and 27th June, 2000, the order dated 30-3-1999, stood automatically superseded as in view of the decision of the State Government as disclosed in the circulars dated 7-6-2000 and 27-6-2000, the Zila Yojana Samiti stood vested with the jurisdiction to effect transfers of those employees also whose service has been put at the disposal of the Zila Panchayat subject, however, to the limitation as indicated in the circular dated 6th June, 1996 and this jurisdiction could be exercised in respect of posts so far as Assistant Teachers are concerned, only to the extent of 97 per cent of the total strength of the cadre and so far as cadre of Teachers was concerned, only to the extent of 95 per cent of the total strength of the cadre and so far as the Lecturers was concerned 90 per cent of the total strength of the cadre. This obvious result is consequent upon the limit prescribed within which the jurisdiction of transfer could be exercised by the Zila Panchayat to which a reference has already been made hereinabove.

The State Government brought into effect the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 to constitute the District Planning Committees for the purposes of Article 243ZD of the Constitution of India and to discharge the functions of the State Government in regard to the items of business of the Government and for matters ancillary thereto. Under the provisions of the said Act, a District Planning Committee was constituted in each district to consolidate the plans prepared by the Panchayats and Municipalities in the district and to prepare a draft development plan for the district as a whole and to exercise such other powers as may be entrusted to it by the State Government from time to time. With the amendment incorporated in the said Act vide the M.P. Act No. 2 of 1999, brought into effect from 29-3-1999, section 3 of the said Act was amended accordingly.

The relevant provision of section 3 of the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 (hereinafter referred to as the Act, for short), is reproduced below:--

3. District Planning Committee. -- (1) There shall be constituted in each district a District Planning Committee, to consolidate the plans prepared by the Panchayats and Municipalities in the district and to prepare a draft development plan for the district as a whole and to exercise such other powers as may be entrusted to it by the State Government from time to time.

(2)

(Emphasis supplied)

It may be noticed that the provision contained in section 7 of the aforesaid Act which enumerate the Functions of the Committee specifically provided in sub-clause (14) thereof to the following effect:--

7. Functions of the Committee. --

(14) Any other functions which may be entrusted by the State Government".

In our considered opinion, the provisions referred to hereinabove, stipulate vesting of sufficient authority in the State Government to issue directions to the District Planning Committee to effect transfers and implement the rationalisation scheme in the manner approved and as directed by the State Government.

In the present case, the impugned order of transfer had been effected on the recommendation made by the Zila Yojana Samiti as well as the District Transfer Board.

It may be noticed at this stage that section 7(A) was added in the Act vide the M.P. Act No. 2 of 1999 with effect from 29-3-1999 vesting the Zila Yojana Samiti with the jurisdiction to exercise the powers in the matters relating to the functions/business of the State Government which were notified in exercise of the jurisdiction vesting in the State Government under the said Act or were allotted to it. u/s 7(A)(3) of the Act, it was further provided that while exercising such powers, the Committee shall be deemed to be a body subordinate to the State Government and shall exercise these powers, for and on behalf of the State Government.

It may be observed that the provisions contained in section 7(A) newly added in the Act did not militate against securing of the jurisdiction with the State Government in the matter in question as contemplated u/s 3 or section 7(14) of the Act but it has the effect of facilitating the exercise of such jurisdiction.

It may further be observed that the delegation of jurisdiction in favour of the Zila Yojana Samiti had to be taken so far as the matters relating to transfers are concerned, subject to the extent reserved for the Zila Panchayat under the Madhya Pradesh Panchayat Raj Adhiniyam, 1993. The extent as indicated in the policy decision contained in the circular dated 6-6-1996 had to be taken as unaffected.

The learned counsel for the petitioner has strenuously urged that the Tribunal had acted with manifest illegality in not following the decision of a Division Bench decision of the Tribunal in the case of Pramod Kumar Sanghi vs. State of M.P. and another reported in 2000 (II) M.P.L.S.R. 52 which was squarely attracted to the facts and circumstances of the present case and erred in taking a decision running contrary to the decision in the aforesaid case without taking recourse to refer the matter in case of disagreement to a larger Bench.

In the aforesaid connection, it may be noticed that the Apex Court in its decision in the case of Dr. Vijay Laxmi Sadho vs. Jagdish reported in AIR 2001 SCW 223 had reiterated its earlier view expressed in the case of Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, wherein it had been indicated as follows:--

....If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction

in a High Court start overruling one another's decision. If one division bench of a High court is unable to distinguish a previous decision of another division bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of the opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all Courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court....

The contention is that in the aforesaid circumstances, the only course open to the Tribunal was to refer the matter to a larger Bench and not to dismiss the original application.

In its decision in the case of Pramod Kumar Sanghi (*supra*) which was rendered on 6-1-2000, when the transfer policy for the year 1999-2000 was in force, there could be no occasion to consider the State Government's policy decision for the year 2000-2001 and the decisions of the State Government reflected in its circulars dated 7-6-2000 and 27-6-2000.

The Tribunal in its decision in the case of Pramod Kumar Sanghi (*supra*) had come to the conclusion that the Zila Yojana Samiti had no role in respect of the transfer of such employees who had been transferred from one rural area to another rural area. It was held by the Tribunal in its aforesaid decision that the circulars dated 8-6-1994 and 6-6-1996 which had been issued under the provisions of the Madhya Pradesh Panchayat Raj Adhiniyam, 1998 had the force of law and any act in violation of the aforesaid circulars was, therefore, illegal and void. The order of the Executive Officer relating to the transfers in question in that case from one rural area to another rural area in the absence of the recommendations of the Committee duly constituted on that subject was held to be bad in law and without jurisdiction. It was also found that the transferring authority had transferred the applicants in that case not pursuant to the decision of the Zila Yojana Samiti but transferred them in view of the circulars dated 3-6-1999 and 16-6-1999 providing rationalization in the educational institutions. But the impugned order did not make any reference of such meeting of the Zila Yojana Samiti and it was not correct to say that the transferring authority had issued the transfer orders in that case pursuant to the decision of the Zila Yojana Samiti held on 20-3-1999. It was also found that the transfers from one rural area to another rural area could not be directed by the Chief Executive Officer of the Zila Panchayat/Ex-Officio Additional Director, Education Gwalior could not be deemed to have any power to effect such transfers. In fact, the Tribunal had gone to the extent of observing that the aforesaid officers could not be deemed to be vesting with any jurisdiction to effect the transfers from urban area to rural area, rural area to urban area and urban area to urban area as well. This power, it was indicated could only be exercised by the Chairman of the Zila Yojana

Samiti and order could be issued or certified by the authority if so authorized by the power, only in the name of and or by the order of the Chairman of the Zila Yojana Samiti. It was also indicated that the impugned orders of transfers had been issued during the ban period and without approval of the District Transfer Board as enumerated in the transfer policy itself issued by the State Government.

In the present case, the Tribunal when the aforesaid decision was brought to its notice had observed that the facts of the case of Pramod Kumar Sanghi (supra) were quite different than the facts of the present case as the State Government had changed its policy vide the circular dated 7-6-2000. In other words, the case of Pramod Kumar Sanghi (supra) was held to be distinguishable on facts and further the ratio decidendi of that decision was found to be not attracted to the facts and circumstances as brought on record in the present case.

In our considered view, the petitioner cannot derive any advantage out of the stray observations made in the decision in the case of Pramod Kumar Sanghi (supra) which have to be taken to be confined to the peculiar facts and the controversy raised in that case.

From what has been indicated hereinbefore, it is obvious that the order of transfer dated 30-6-2000 impugned in the present case taking into account the developments which had taken place subsequent to the issuance of the order dated 9-7-1999 which was the subject-matter for consideration in the case of Pramod Kumar Sanghi (supra), there could be no justification for interference as sought for by the present petitioner, applying the ratio of the decision in the case of Pramod Kumar Sanghi (supra) which cannot be deemed to have been attracted at all and cannot come to his rescue.

We are further of the considered view that the impugned order could not be taken to have been issued by an authority having no jurisdiction and it cannot further be held to be vitiated on account of any mala fides or could be taken to have resulted in uncalled for victimisation of the petitioner so as to warrant an interference in the present proceedings.

It has been urged that in fact taking into consideration the teacher-taught ratio, there could be no occasion for dislodging the petitioner from the post held by him prior to the issuance of the order of transfer in question. So far as this aspect of the matter is concerned, it necessarily involves an enquiry into the disputed questions of fact. The petitioner has relied upon an alleged admission of the contesting respondent occurring in the counter -affidavit/return in regard to the total strength of the students getting education in the institution where the petitioner stood posted.

The learned Government Advocate, however, had produced a chart showing the number of the students to have been reduced which necessitated the transfer of the Assistant Teachers from the institution where the petitioner was posted.

The learned Government Advocate has stated that in the counter -affidavit/

return, a factual mistake had occurred in mentioning the number of students. The alleged admission heavily relied upon by the petitioner was thus sought to be explained away.

We are not inclined to enter into the aforesaid controversy where basic facts are disputed and also require spot verification. This cannot be appropriately done in the present proceedings. In case the petitioner submits an application before the concerned authority giving necessary facts in this regard supported by evidence, there is no reason why the said authority shall not reconsider its order as it has to be in accordance with the rationalisation policy and if any mistake had occurred that has to be rectified.

We hope and trust that the executive authorities exercising the delegated jurisdiction shall not issue any such order which instead of implementing the rationalisation policy has a totally different and opposite effect and might amount to victimisation in the name of the implementation of the policy. It will be open to the petitioner or any employee similarly situated to approach the concerned authority bringing to its notice the necessary facts in this regard and seek rectification of any such mistake which if established shall be promptly rectified.

Taking into consideration the pleadings of the parties and the position in law referred to hereinabove, we are not satisfied that the present one is a fit case for interference while exercising the extraordinary jurisdiction envisage under Article 227 of the Constitution of India.

This writ petition in the circumstances deserves to be dismissed subject to the observations/directions referred to hereinabove.

Ordered accordingly.