
(2008) 07 MP CK 0006
In the Madhya Pradesh High Court

State of Madhya Pradesh and Others	Vs	APPELLANT
Ashok Kumar Sharma and Others		RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 86

Citation : (2008) ILR (MP) 2527 : (2008) 3 JLJ 34 : (2009) 2 MPHT 446 :
(2008) 3 MPJR 367 : (2008) 3 MPJR 357 : (2008) 4 MPLJ 169

Hon'ble Judges : Subhash Samvatsar, J;Indrani Datta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Subhash Samvatsar, J.

This writ appeal is filed by the appellants State of Madhya Pradesh challenging the order dated 28th July, 2006 passed by Single Bench of this Court in Writ Petition No. 2661/03 whereby the Writ Court has allowed the writ petition filed by the petitioners ("respondents" herein) and declared them to be the State employees.

Brief facts of the case are that the respondents employees have filed a writ petition before the Single Bench alleging that they were appointed in a cell constituted by the State Government namely Madhya Pradesh State Municipal Services (Technical Cell) in exercise of the powers u/s 86 of the Madhya Pradesh Municipalities Act, 1961 (for short "the Act"). These employees were appointed by the Director, Urban Administration, Bhopal and Deputy Director, Urban Administration. The main object of constituting the said cell was to look after the construction work, water supply facility and other technical jobs of the municipalities. Copy of the decision for constituting the said Cell is Annexure P-1 with the record of the writ petition dated 27th May, 1976. In the said decision, it is mentioned that at a number of times, there are financial difficulties with the small municipalities and they cannot engage highly paid employees for carrying on their work. Hence, the Government has decide to constitute the cell and to

post Engineer, Sub-Engineers, Tracers, etc., in various municipalities. It was agreed to by Annexure P-2, with the record of the writ petition, that these employees shall get the same pay scale which is payable to the employees of the State Government and Public Works Department, however, these employees shall be treated as municipal employees. Vide Annexure P-3 with the record of the writ petition, the Government has decided that the Engineers appointed under the said cell shall be entitled to the same allowances and other benefits and GPF will be deducted from their salary, so that they can get pension. Vide Annexure P-4, dated 3-12-1976, it was further mentioned that these Engineers will get the same salary which is payable to the Government employees and they will also be entitled to the same benefits and, compulsory deductions will be made from their salary. Annexure P-5 is the circular seeking clarification about the facilities to these employees and it was clarified that these employees shall get the same facilities as are available to the Government employees. Vide Annexure P-6, dated 18-10-1985 it was again mentioned that Executive Engineers, Sub-Engineers, Tracers, etc. will get the same salary which is payable to the employees of Public Works Department. Thus, it is clear that the Appointing Authority of these employees are the Director, Urban Administration, Bhopal and Deputy Director, Urban Administration and they are their Disciplinary Authorities. The Government has right to transfer these employees from one municipality to another.

Considering all these aspects, the Writ Court has held that the total control over the respondents employees is that of the State Government, hence, the Single Bench allowed the writ petition filed by the petitioners (respondents herein) and declared that these employees to be State Government employees. The reasoning assigned by the learned Writ Court Bench is as under:

With regard to functions of the petitioners, it is clear that the petitioners are working in the office of Deputy Director, Urban Administration, Gwalior Division, Gwalior. They have been appointed in the aforesaid office. The office was created in order to extend the help and supervise the construction work taken by the municipalities. The municipalities have been assigned the work of construction also in their respective areas. Earlier the work was assigned to the Public Works Department. Hence, from the above facts, it is clear that the office of Deputy Director, Urban Administration in which the petitioners are working is performing the functions of the State Government and from the facts stated above, it is clear that the State Government has total control with regard to their appointment, disciplinary action and payment of salary, creation of posts, fixation of terms and conditions of employment. In such circumstances, in my opinion, the petitioners are the employees of the State Government and they fall within the definition of "State Employees".

The aforesaid order passed by the learned Writ Court is under challenge in this writ appeal.

The contention of Shrimati Ami Prabal, the learned Deputy Advocate General,

appearing for the appellants State is that even though the State Government has full control over the respondents employees, still they cannot be declared as State Employees in view of various circulars and the provisions of the Act and the rules framed thereunder.

Shrimati Ami Prabal, learned Deputy Advocate General, appearing for the appellants State has invited attention of this Court first to Section 86 of the Act which provides that the State Government may, for the purpose of providing officers to the Council u/s 87 or 88, constitute in the prescribed manner, the following Municipal Services for the State to be called:

- (a) State Municipal Service (Executive);
- (b) State Municipal Service (Health); and
- (c) State Municipal Service (Engineering).

Sub-section (2) of Section 86 provides that the State Government may make rules in respect of recruitment, qualification, appointment, promotion, leave scale of pay, allowances whatever name called. Thus, from this sub-section, it is clear that the State Government has power to frame rules in respect of the above service conditions.

In exercise of these powers, the State Government has framed rules namely Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules, 1968 (hereinafter referred to as "1968 Rules"). Shrimati Prabal has invited attention of this Court to the said rules. The words "Municipal Employee" and "Municipal Service" are defined in Clauses (e) and (f) respectively of Rule 2 of the said Rules. Clause (e) defines "Municipal Employee" and as per the said definition, municipal employee means a person appointed to or borne on the cadre of the Staff other than a member of the State Municipal Service (Executive). Similarly, "Municipal Service" is defined in Clause (f) of the said rule and as per the said definition, "Municipal Service" means the service or group of posts in connection with the affairs of the municipalities other than the State Municipal Service (Executive).

Contention of the learned Counsel for the appellants is that the members of State Municipal Service (Executive) are excluded from the definition of "Municipal Employee". Thus, as per the said definition, the employees covered under category (a) of Section 86 of the Act are excluded from Municipal Employee and Municipal Service and this aspect is not considered by the learned Writ Court.

Learned Counsel for the appellants pointed out that the Writ Court has relied upon a Full Bench decision of this Court in the case of Suresh Chandra Sharma and Others Vs. State of M.P. and Others, . From perusal of the said judgment, it is clear that the Full Bench in the aforesaid case was considering the question whether the Chief Municipal Officer is a Government servant or not. Undisputedly, the Chief Municipal Officer will be covered by category (a) of Section 86, i.e., State Municipal Service (Executive) which is specifically excluded

from the definition of "Municipal Service" as per Clause (f) of Rule 2 of 1968 Rules and, therefore, the Full Bench has rightly held that the Chief Municipal Officer is a Government Servant.

In reply to the arguments raised by the learned Counsel for the appellants, Shri S.P. Shrivastava, learned Counsel for the respondents employees submitted that the entire control over these employees is that of the State Government, i.e., these employees are appointed by the Director, Urban Administration, Bhopal and Deputy Director and perform the functions of the State Government. The State Government has total control with regard to appointment, disciplinary action, payment of salary, creation of posts, fixation of terms and conditions of these employees etc., and, therefore, the Writ Court has rightly held that the respondents employees are the State Employees.

In support of this contention, Counsel for the respondents has relied upon a judgment in the case of Vidya Sagar Kulshreshtha v. State of M.P. and Ors. 1993 M.P.L.S.R. 513. This judgment is delivered by the State Administrative Tribunal. He admitted that this judgment has no binding effect over this Court. However, he submitted that SLP filed by the State Government against the said judgment is dismissed by the Apex Court.

From perusal of the order passed by the Apex Court in the aforesaid SLP, we find that the said SLP was dismissed without discussion of law. The order is single line order dismissing the SLP. Hence, the said judgment cannot be a precedent under Article 141 of the Constitution of India as no law is laid down by the Apex Court while dismissing the said SLP.

Shri S.P. Shrivastava, learned Counsel for the respondents employees has referred to Section 94 of the Act which provides powers to the Council to appoint staff. According to him, as the respondents employees were not appointed u/s 94 of the Act and were appointed u/s 86 of the Act, they are not the members of service.

Said argument raised by the learned Counsel for the respondents employees is without any merit, because the question is whether the respondents are the employees of the State Government or not. Clauses (e) and (f) of Rule 2 of 1968 Rules specifically exclude the State Municipal Service (Executive) who are covered by category (a) of Section 86 of the Act and not of categories (b) and (c) of Section 86, i.e., the State Municipal Service (Health) and State Municipal Service (Engineering). This itself makes it clear that the present respondents are covered by the definition of "Municipal Service" and "Municipal Employee" and so long as the said rule is not challenged by the present respondents, they are not entitled to get any benefit.

Shri Shrivastava has also invited attention of this Court to the judgment of the Apex Court in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , wherein the Apex Court was dealing with the provisions of Gujarat Panchayat Act and the Apex Court has held that the members of Gujarat

Panchayat Service are Government servants. Said judgment turns upon the construction of the provisions of Gujarat Panchayat Act.

In the present case, there is a specific rule which provides that only State Municipal Service (Executive) are excluded from the definition of "municipal service" and "municipal employee" and other categories, i.e., State Municipal Service (Health) and State Municipal Service (Engineering) are included in the said definition. Respondents employees belong to category (c), i.e., State Municipal Service (Engineering), hence, they are covered by the definition of "municipal service" and "municipal employee". Hence, so long as said definitions are not challenged, the respondents employees cannot claim that they are the employees of the State Government, even though they are getting the same salary and benefits as are available to the State Government employees.

In the present case, the learned Single Judge has not considered the effect of the definition of "municipal employee" and "municipal service" as defined in Rule 2 (e) and (f) of 1968 Rules and has held the petitioners (respondents herein) as Government employees only because the State Government is in overall control over these employees and thus has committed grave error.

Resultantly, this appeal is allowed and the impugned judgment is set aside. The writ petition filed by the respondents-writ petitioners is dismissed with no order as to costs.