
(1985) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 1986 of 1983

Vasant Waman Mahajan

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 04-10-1985

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 58(5), 58(6)

Citation : (1986) J LJ 115 : (1986) MPLJ 295

Hon'ble Judges : G.L. Oza, C.J; B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari with A.S. Khaskalam, for the Appellant; M.V. Tamaskar, Deputy Advocate-General for State, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.

This is a petition under Arts. 226 and 227 of the Constitution of India by which the petitioner who was appointed as Assistant Health Officer, Municipal Corporation, Indore, challenges his transfer order from Municipal Corporation Indore to Municipal Corporation Ujjain, seeking relief to the effect that his transfer order contained in Document-8, be quashed on the ground that the provisions of sub-sections (5) and (6) of section 58 of Municipal Corporation Act, 1956 (hereinafter referred to as the "Act") be declared ultra vires of the Constitution and, therefore, by issuing a writ in the nature of prohibition, the provisions of sub-sections (5) and (6) of section 58 of the Act, be not given effect to.

In short, the case of the petitioner is that he was appointed as Assistant Health Officer in the scale of pay Rs. 500 to 1150 with effect from 28-4-75 vide Order No. 30 dated 26-4-75 (Document No. 2) with all other Municipal Corporation Service benefits. The petitioner's appointment was made by the respondent No. 2, Municipal Corporation, Indore after obtaining the concurrence for appointment

from the respondent No. 1, the State of Madhya Pradesh vide Memo. No. 1561-18-A-75 dated 18-4-1975. This appointment was on ad hoc basis. However, after the advertisement of the post by the Public Service Commission the petitioner was selected by the Commission and as such his appointment to the post of the Assistant Health Officer, Municipal Corporation, Indore was regularised by order dated 29-3-1977. After his selection by the Public Service Commission, the petitioner was appointed on probation by order dated 27-8-77. However, it is alleged that the petitioner's work being satisfactory and commendable, therefore, by order dated 5-4-78, he was confirmed on the post of Assistant Health Officer with effect from 18-3-1978.

The petitioner's case is that the respondent No. 2, Municipal Corporation, Indore was established long back even before merger when Indore was a princely State. However, after the independence and merger of the States, when Madhya Bharat was formed as Class B" State, the administration of Municipal Corporation, Indore was being governed under the Madhya Bharat Municipal Corporation Act and after the formation of the larger Madhya Pradesh, after Reorganisation, the Municipal Corporation Act, 1956 was made applicable, according to which the petitioner's services are governed.

According to the petitioner, the controversy, as has been raised in this petition, relates to the amendment to section 58 of the Act by M.P. Municipal Corporation (Amendment) Act, 1982, according to which sub-section (5) and sub-section (6) have been added to section 58, which read thus:-

Sub-section (5)- Notwithstanding anything contained in this Act or any rules or bye-laws made thereunder, the State Government may, subject to the conditions specified in sub-section (6), transfer on deputation any officer or servant of a Municipal Corporation carrying a maximum scale of pay exceeding Rs. 400/- to any other Municipal Corporation and it shall not be necessary for the State Government to consult either the Corporation or the Officer or servant concerned before passing an order of transfer on deputation under this sub-section.

Sub-section (6)- The Officer or servant transferred under sub-section (5) shall-

- (a) has his lien on the post held in the parent Corporation,
- (b) not be put to disadvantageous position in respect of pay and allowances which he would have been entitled to, had he continued in the parent Corporation,
- (c) be entitled to deputation allowance at such rate as the State Government may by general order specify, and
- (d) be governed by such other terms and conditions including disciplinary control as the State Government may, by general or special order, specify.

By virtue of these sub-sections (5) and (6) of S. 58 of the Act, the State Government has now been empowered to transfer the officers or servants

serving in the Municipal Corporation, carrying a maximum scale of pay exceeding Rs. 400/- to another Municipal Corporation. Sub-section (5) further lays down that in such transfers, it will not be necessary for the State Government to consult either the Corporation or the Officer or the servant concerned. The provisions of these two sub-sections (5) and (6) are being challenged by the petitioner as ultra vires of the Constitution.

A bare perusal of section 58 of the Municipal Corporation Act, 1956 shows that it enumerates that Municipal Officers and servants i.e., City Engineer, Health Officer, Revenue Officer, Municipal Corporation Secretary, Officers and such other servants, for efficient carrying out the purposes of the Act, are governed by the bye-laws framed u/s 427 of the Act.

The petitioner submits that he was appointed specifically for the needs of the Municipal Corporation, Indore alone as Assistant Health Officer. According to him, he was selected for the biggest Municipal Corporation in the State, looking to the duties of the post of the Assistant Health Officer and his qualifications and experience. He further submitted that post of Assistant Health Officer does not exist in all the Municipal Corporations. The scale of that post is also different. According to him, he accepted the appointment as Assistant Health Officer only on the basis of an assurance that he will also be promoted from the post of Assistant Health Officer to the post of Health Officer only in Municipal Corporation, Indore. He further stated that there is no unified cadre or common cadre, therefore, the terms and conditions of employment of different Corporations in the State, being not similar, it will not be possible for him to be promoted on the higher post of Health Officer. He further submitted that the words "transfer on deputation" as used denote that only after the consent of an employee concerned, he could be transferred.

Therefore, it is submitted that besides other legal grounds, his transfer is violative of the Arts. 14 and 16 of the Constitution of India.

After giving our anxious considerations to the submissions made by the petitioner and the respondents and perusing the record, we do not find any substance in the submissions of the petitioner and therefore, the petition deserves to be dismissed.

It is settled law that transfer is a necessary implication of service and in the exigencies of public administration transfer is made so that a Government servant who is known for his efficient work, should not only by rendering his efficient services, extend benefit to the persons residing in a particular locality or region, but should also render his services to the person belonging to any corner of the State and the people must get advantage of the best services. By applying this yard-stick, transfers of public servants are being made. It is not the case of the petitioner that with mala fide intention or as a measure of punishment or victimization, his transfer to Municipal Corporation, Ujjain, has been made. Therefore, transfer, being necessary commitment by virtue of appointment to an

office, where statutory provisions are implicit relating to transfer, it cannot be said that there can be no condition imposed as regards to transfer from one place to another or from one Corporation to another.

The challenge to M.P. Municipal Corporation (Amendment) Act, 1982 (Act No. 5 of 1982), by which the provisions of sub-section (5) and sub-section (6) have been added to section 58 of the Act, on the ground of ultra vires of the Constitution, in our opinion, is devoid of substance. The State Legislature vide Entry No. 5 of List II of Schedule VII of the Constitution, gets jurisdiction to enact and pass such law in respect of Municipal Corporation, which also confers ancillary powers to lay down the condition of services of Corporation employees. Therefore, it cannot be said the State Legislature, while enacting Act No. 5 of 1982, thereby adding sub-sections (5) and (6) in S. 58 of the Municipal Corporation Act, 1956, in any manner, have acted beyond its legislative competence.

It is next contended that the transfer order of the petitioner is vitiated by Arts. 14 and 16 of the Constitution of India. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which enacts both Arts. 14 and 16 of the Constitution, is equality and inhabitation against discrimination. If the provisions of sub-sections (5) and (6) of S. 58 of the Act, are looked into, which empower the State Government to transfer the Corporation employees, then we fail to understand as to how the instant transfer is of discriminative nature and hits the fundamental rights guaranteed under Chapter-III of the Constitution to the citizens of India.

White testing any case of discrimination under Arts. 14 and 16 of the Constitution of India, it must be seen whether any order passed either by the State Government or by any public sector, relating to the public employment, has rational and reasonable classification and if the order impugned comes within the purview of reasonable or rational classification, the same could not be said to be violative of Constitution of India. Judging the instant case with this point of view and taking into consideration the provisions of sub-sections (5) and (6) of section 58 of the Act, which has been legally amended by the State Legislature, we reach to the conclusion that the order impugned relating to the transfer of the petitioner in no way infringes his fundamental rights guaranteed under Chapter III of the Constitution and as such the question of violation of Arts. 14 and 16 of the Constitution, does not arise at all.

The petitioner next contended that there is no unified cadre or common cadre of Assistant Health Officer in Municipal Corporations of Madhya Pradesh. It is also submitted that there is no unified scale of pay and therefore, the chances of promotion and condition of services of the petitioner will also differ, as there is no combined list of seniority as well. In *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway, Pandu and Others*, . Their Lordships of the Supreme Court have held that transfer of permanent employee and consequent transfer of his lien cannot be challenged when his transferee post does not carry less pay, even

if such transfer materially affects the chances for promotion. In the instant case, petitioner's lien to the post in Indore Corporation has been ensured and therefore, his right for promotion, whenever accrues, even in the absence of unified cadre in Corporations, is not taken away and the same will always be considered and as such the transfer order is in no way, prejudicial to the petitioner's service benefits.

In State of Madhya Pradesh Vs. Shankar Lal and Ors, while dealing with the provisions of section 94(1)(2)(7) of the Municipalities Act, 1961. Their Lordships of the Supreme Court have held that the power of transfer does vest with the State Government to transfer the Municipal employees who are covered under sub-section (1) or sub-section (2) of section 94 of the Municipalities Act, 1961 and the State Government could transfer them. Therefore, the transfer of the petitioner in our opinion, from Municipal Corporation, Indore to Municipal Corporation, Ujjain in no way fetters the powers of the State Government to transfer Corporation employees from one Corporation to another and it is valid in all respects. The transfer of the petitioner therefore, cannot be quashed by issuing any writ or writs, order or orders, direction or directions under Art. 226 of the Constitution of India.

No other grounds were argued or pressed before us.

As a result of the aforesaid discussion this petition fails and is hereby dismissed with costs. Counsel's fee Rs. 200/-, if certified. The security amount, if any shall be refunded to the petitioner.