
(1964) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 259 of 1963

Vinod Kumar Radhika Prasad

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 24-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
States Reorganisation Act, 1956 — Section 115, 116

Citation : AIR 1966 MP 134 : (1968) ILR (MP) 91 : (1965) JLJ 1008 : (1969) 1 LLJ 623 : (1965) MPLJ 825

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : S.C. Chaturvedi, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

The petitioner Vinod Kumar Verma in this case was holding in the former State of Vindhya Pradesh the post of District Welfare Organiser in Backward Classes Welfare Department at the time when that State became a part of the new State of Madhya Pradesh under the States Reorganisation Act, 1956 (hereinafter referred to as the Act). After the coming into force of the Act, he was allowed to continue in the post he held in Vindhya Pradesh until 24th August 1961 when an order was passed by the Director of Tribal Welfare, Madhya Pradesh, provisionally absorbing him against the post of Circle Organiser with effect from 1st November 1956 till further orders. The petitioner then filed a representation to the Government against the absorption order, which was rejected. In the provisional integration list of the Tribal Welfare Department, which was published subsequently, the petitioner's post of District Welfare Organiser in V. P. was equated with the post of Circle Organiser in the set-up of the Department in the new State. The petitioner then filed a representation against this equation of

posts. In the return filed on behalf of opponents, it has been stated that this representation of the applicant praying that his post should have been equated with the post of District Welfare Organiser was rejected by the Central Government. On 18th July 1963 an order transferring the applicant as Circle Organiser, Shahdol, was passed.

By this application under Article 226 of the Constitution, the petitioner now prays that a writ of mandamus, be issued to the respondents to equate the post he held in the former Vindhya Pradesh State with that of District Welfare Organiser in the new set-up and it be declared that he is still holding the said post; that a direction be issued to the opponents prohibiting them from transferring him as Circle Organiser; and that the order of his transfer to Shahdol be quashed by the issue of a writ of certiorari. He also prays that writs of quo warranto be issued to all the District Welfare Organisers of the Tribal Welfare Department.

The petitioner's main contentions are that as immediately before the "appointed day" fixed by the Act he was holding the post of District Welfare Organiser in the former State of Vindhya Pradesh and as he was continued in that post in the new State by virtue of Section 116 of the Act, he could not be thereafter absorbed against the post of Circle Organiser; that in the integration of the Department, the post he held in the erstwhile State of Vindhya Pradesh should have been equated with the post of District Welfare Organiser in the new set-up; that the integration of the personnel in the Department made by the State was beyond its competence and in violation of Section 115 (5) of the Act; and that the principles on which the integration was to be done were never notified by the Central Government as required by Sections 115 (5) and 129 read together. The petitioner has also relied upon the Madhya Pradesh Unification of Pay-Scales and Fixation of Pay on Absorption Rules, 1959, to support his contention that he was entitled to hold the post of District Welfare Organiser even in the new set-up. The petitioner complains that his appointment as Circle Organiser amounts to reduction in rank which was invalid as having been done contrary to the provisions of Article 311(2) of the Constitution.

Having heard learned counsel for the petitioner and the learned Government Advocate, we have reached the conclusion that this application must be dismissed. By virtue of Section 115 (1) of the Act, the petitioner must no doubt be deemed to have been allotted to the new State of Madhya Pradesh when under the Act Vindhya Pradesh became a part of the new State. u/s 116, he no doubt continued to hold in the new State the same post which he held in Vindhya Pradesh and was deemed to have been appointed to that post in the new State from the "appointed day". But this fictional appointment was only for the purpose of giving him the requisite competency and authority to discharge the duties and functions of the post in which he was continued in the new State. This continuance did not confer on him any right to be continued in that post in the new State or to prohibit the State from appointing him to another post or office. This is clear from the plain language of Section 116. Sub-section (2) of that

section specifically provides that nothing in Sub-section (1) shall be deemed to prevent a competent authority after the "appointed day" from passing in relation to such person any order affecting his continuance in such post or office. The petitioner's contention, therefore, that inasmuch as he was continued in the post of District Welfare Organiser after the "appointed day", he could not be provisionally absorbed as Circle Organiser and appointed to that post, cannot be accepted in view of the clear provisions of Sub-section (2) of Section 116. The Madhya Pradesh Unification of Pay-Scales and Fixation of Pay on Absorption Rules, 1959, relied on by the petitioner, do not in any way, assist him in his contention that he could not be provisionally absorbed as Circle Organiser. The Rules only deal with the fixation of pay to which a person is entitled on being provisionally absorbed against a certain post. They do not at all deal with the question of the provisional absorption of the personnel in any department against certain posts and do not confer on them any right of being absorbed against certain specific posts.

To support his contention that it was beyond the power of the State Government to effect integration of personnel in the Tribal Welfare Department and the integration done was in contravention of Section 115 (5) of the Act, the applicant based himself solely on the averment in paragraph 11 of the petition that the State Government constituted two committees for integration purposes which laid down certain principles of integration and equation of posts, and on the decision of a Division Bench of this Court in *P.K. Roy v. State of M. P.*, M.P. No. 371 of 1962 dated 29th April 1964 : (AIR 1964 Madh Pra 307). It is no doubt true that u/s 115 (5) the duty and responsibility of taking a final decision in regard to integration of services of State personnel has been cast on the Central Government and that function has to be discharged by the Central Government in the manner laid down by Sub-section (5). The Central Government cannot delegate this function of taking a decision to the State Government. In his petition, the applicant has not given any details or particulars of what the State Government and the Central Government did to indicate that in regard to the integration of the Tribal Welfare Department the Central Government abdicated completely its functions u/s 115 (5) in favour of the State Government. Merely saying that the State Government constituted two committees for purposes of "integration" does not lead to the conclusion that the Central Government itself never laid down any principles for integration of services or that the principles which the two State-committees laid down never met the approval of the Central Government, and that the provisional or final integration list prepared in accordance with these principles did not embody the decision of the Central Government on the matter or that the Central Government never took any decision in regard to the integration of personnel of the Tribal Welfare Department. The petitioner has not even exhibited the provisional and final gradation lists. On the other hand, if, as stated in paragraph 5 of the return filed on behalf of the respondents, the petitioner's representation against the provisional gradation list was rejected by the Central Government and a final list

of gazetted officers of the department has been published since then, that necessarily means that the Central Government has taken a final decision in the matter of integration of the personnel of the department.

It has also been stated in the return that the applicant has again sent a representation to the Central Government and that is still being considered by the said Government. If that be so, then the petitioner has at present no cause to complain to this Court and can have none. If the representation is ultimately rejected. The decision of the competent authority about the equation of posts in integration is an administrative decision which cannot be interfered with by this Court in proceedings under Article 226 of the Constitution. It must be noted that on the petitioner's contention that it is not within the province of the State to do integration work and that the competent authority is the Central Government, the relief claimed by him of a writ of mandamus to the opponents directing them to equate the post of District Welfare Officer, which the petitioner held in Vindhya Pradesh, to the post of District Officer in the new set up is really paradoxical. If, as urged by the petitioner, the State Government has no power to take any step or decision in regard to integration matter, then clearly the State Government cannot be asked to do the equation of posts desired by him.

The decision in *P.K. Roy, Asst. Engineer, Govt. of M.P., P.W.D. and Others Vs. State of Madhya Pradesh and Others*, is of no assistance to the applicant for the simple reason that it relates to the integration of the establishment of Buildings, Roads and Irrigation in the Public Works Department. In that case, the Division Bench quashed a notification of the General Administration (Integration) Department, Bhopal, publishing the final gradation list of the establishment of Buildings, Roads and Irrigation in the Public Works Department on the ground that it was not done by the Central Government and further directed the Union Government to complete the work of integration of services in the aforesaid department in accordance with Section 115(5) of the Act without delegating its essential functions to the State Government. If the integration of services in the establishment of Buildings, Roads and Irrigation in the Public Works Department was not effected by the Central Government in conformity with Section 115(5), it does not follow that it was not done in the Tribal Welfare Department also in accordance with Section 115(5). As stated earlier, the petitioner's application is utterly lacking in particulars and details in regard to what the State Government did and what the Central Government omitted to do in the matter of integration of personnel of the Tribal Welfare Department. In the absence of those particulars, it is clearly impossible to determine whether what the petitioner thought the State Government did and the Central Government omitted to do and which he did not reveal in the petition, was or was not in conformity with Section 115(5), and it would be futile to consider which steps or matters in the integration of services are of ministerial character which could be undertaken or done by the State Government without infringing: Section 115(5) and Section 117, read together.

In this view of the matter, it is not necessary to consider the submission of the learned counsel for the applicant whether if u/s 115(5) of the Act the Central Government issues directions laying down certain principles and procedure for integration of services, those directions are rules made u/s 129 of the Act which have to be laid before both the Houses of Parliament. It may, however, be mentioned in the passing that Section 115(5) (b) does not prescribe that the "ensuring of fair and equitable treatment" to all persons affected by the provisions of Section 115 and the consideration of their representations should be in accordance with rules framed under the Act. The petitioner's further submission that his posting as a Circle Organiser amounts to reduction in rank so as to attract Article 311(2) is without any merit. The placing of the applicant in the integration has not resulted in his reduction in rank, and it is also not by way of punishment.

During the course of hearing, the petitioner submitted an application for joinder of the Union Government as respondent to the petition. On the petition as it is, in which no relief has been claimed against the Union Government, the prayer for joinder of the Union Government cannot be granted. The applicant was given an opportunity of withdrawing this petition and filing a fresh one, but he was not inclined to withdraw the petition.

For the foregoing reasons, our conclusion is that this petition must be, and is, dismissed with costs. Counsel's fee is fixed at Rs. 75. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioner.