

THE HIGH COURT OF MADHYA PRADESH
WP 5350/2017
Ramesh Chandra Verma vs. State of MP

Gwalior, dtd. 05/12/2018

Shri MPS Raghuvanshi, counsel for the petitioner.

Shri Vivek Jain, Govt. Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed, seeking the following reliefs:-

"7.(i) That, the present petition filed by the petitioner may kindly be allowed.

(ii) That, the impugned order dated 9.8.2016 Annexure P/1 may kindly be directed to be set aside. The relieving order Annexure P/4 be held to be nonest and therefore, the same may kindly be directed to be quashed.

(iii) That, it may be held that the petitioner is entitled to receive all the benefits including salary between 1.1.2001 to 14.3.2002 (438 days) and the said period may kindly be directed to be regularized with all consequential benefits. The arrears of pension and salary may kindly be directed to be paid to the petitioner with interest at the rate of 18% per annum.

(iv) That, the respondents may kindly be further directed to implement the benefit of 6th Pay Commission with arrears and other benefits within the stipulated period with 18% interest per annum with effect from due date to actual date of payment.

(v) That, the respondents may kindly be directed to make payment of remaining amount of gratuity with interest at the rate of 18% per annum with effect from the due date till the actual date of payment.

(vi) That, the respondents may kindly be directed to pay all other retiral dues including encashment of leave. The pension of the petitioner which is anticipatory pension is being paid to the petitioner be directed to be paid full from the date of entitlement of the petitioner by granting him arrears thereof with 18% per annum interest from due date to the date of actual payment.

(vii) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner."

The necessary facts for the disposal of the present petition

in short are that the petitioner was holding the post of Executive Engineer and at the relevant time, he was posted under the Chief Engineer, PWD, Gwalior. In the year 2000, w.e.f. 01/11/2000, the State of Chhattisgarh came into existence and the State of Madhya Pradesh was reorganized and accordingly, the Madhya Pradesh Reorganization Act, 2000 was passed. A policy was formulated by the Government of MP in pursuance to the direction issued by the Government of India for allocation of employees between two States. The said policy was formulated under the provisions of Section 68 of the Madhya Pradesh Reorganization Act, 2000. A tentative allocation list was issued by the Government and according to which, the petitioner was allocated to the State of Chhattisgarh. It was the policy of the Government that the employees were granted liberty to make representation in case they were aggrieved by the allocation and only after issuance of final allocation list, the employees were to be relieved. It is submitted that the petitioner was tentatively allocated to the State of Chhattisgarh, against which the petitioner had made a representation. However, the petitioner was relieved by order dated 13/12/2000 for submitting his joining in the State of Chhattisgarh. The order of relieving was challenged by the petitioner before the MP State Administrative Tribunal, Jabalpur by filing Original Application No.7309/2000. During pendency of the said Original Application, the final allocation list was issued and the petitioner was allocated to the State of MP and accordingly, by order dated 08/03/2002, the petitioner was directed to immediately report to the Office of Engineer-in-Chief, Bhopal. As the final allocation list was issued, therefore, Original Application No.7309/2000, which was pending before the MP State Administrative Tribunal was finally disposed of as having become infructuous. Later on, the petitioner stood retired on 28/02/2009 after having attained the age of

superannuation. Thereafter, the petitioner filed a writ petition before this Court, seeking prayer for grant of salary during the period 01/01/2001 to 14/03/2002 and the said petition was registered as Writ Petition No.2024/2015(S), which was disposed of by this Court by order dated 01/04/2014, with the following observations:-

" Thus, at this stage, I am only inclined to direct the respondents to take a final decision on the points mentioned in Annexure P-1 within 45 days positively and decide the question of grant of retiral dues in favour of the petitioner. The dues which are payable to the petitioner in accordance with law shall be paid immediately on taking a decision on Annexure P-1. It is expected that the respondents will pass a reasoned and speaking order in accordance with rules with a view to decide the claim of retiral dues of the petitioner.

With the aforesaid and without expressing any opinion on the merits of the case, petition stands disposed of."

Accordingly, a recommendation was made by the Office of Engineer-in-Chief to the Principal Secretary, PWD, Government of MP, Vallabh Bhawan, Bhopal by its letter dated 11/04/2016 (Annexure P8) that the petitioner had remained on unauthorized leave from 01/01/2001 to 14/03/2002 and, therefore, after adjusting the Earned Leave of 182 days and Half Pay Leave of 28 days, the remaining period of 228 days be declared as *dies non*. Accordingly, the respondent No.1 by order dated 09/08/2016 (Annexure P1) has held that the petitioner did not join in the State of Chhattisgarh after his release by order dated 13/12/2000 and he remained unauthorizedly absent from his duties without giving any information to the Department and thus, the petitioner had remained on unauthorized leave for 438 days and accordingly, the period of unauthorized absence from 01/01/2001 to 14/03/2002 was declared as *dies non*.

Challenging the order passed by the respondent No.1, it is

submitted by the counsel for the petitioner that as per the policy, the tentative allocation list was to be prepared and the employees were to be relieved only after the issuance of their final allocation list. In the present case, the order dated 13/12/2000 was issued, thereby relieving the petitioner for serving in the State of Chhattisgarh on the basis of tentative list, which was bad. It is further submitted that after the final allocation list was issued, allocating the petitioner to the State of Madhya Pradesh, it should be inferred that the petitioner was never allocated in the State of Chhattisgarh. It is further submitted that under Section 68(3) of the Madhya Pradesh Reorganization Act, 2000, every person who is finally allocated under the provisions of sub-section (2) of Section 68, to a successor State, was required to be made available for serving in the successor State from such date as may be agreed upon between the Government concerned or in default of such agreement, as may be determined by the Central Government. Since the relieving of the petitioner for joining in the successor State of Chhattisgarh on the basis of the tentative allocation list was bad, therefore, the respondents were wrong in declaring the period of absence as *dies non*. It is further submitted that this Court in the case of **Mahesh Kumar Shrivastava vs. State of MP and Others** reported in **2007 (3) MPLJ 525** has held that *dies non* is a major penalty, which cannot be imposed without holding a Departmental Enquiry and in the present case, no departmental enquiry was conducted and, hence, the order dated 09/08/2016 (Annexure P1) is bad on that count also.

Per contra, the petition is opposed by the Government Advocate for the State. It is submitted by the Government Advocate that in the relieving order dated 12/12/2000 itself, it was mentioned that the Union of India has issued an order dated 31/10/2000 under Section 68(1) of the Madhya Pradesh

Reorganization Act, 2000 and accordingly, the services of the petitioner were provisionally allocated to the State of Chhattisgarh and consequently, he was relieved for serving in the State of Chhattisgarh. By referring to Section 68(1) of the Madhya Pradesh Reorganization Act, 2000, it submitted by the Government Advocate for the State that sub-section(1) of Section 68 is an exception to sub-section (3) of Section 68 and the employees could be directed to provisionally serve in connection with State of Chhattisgarh by general and special order of the Central Government. In the present case, there is a general order of the Central Government. Only in the light of the general order of the Central Government, the petitioner was provisionally relieved to serve in the State of Chhattisgarh. So far as the question of declaring the period of unauthorized absence of the petitioner as *dies non* is concerned, it is submitted that the petitioner has already stood retired. He has not clarified as to how his pension has suffered adversely because of declaration of period authorized absence as *dies non*.

Heard the learned counsel for the parties.

Section 68 of the Madhya Pradesh Reorganization Act, 2000 reads as under:-

"68. Provisions relating to services in Madhya Pradesh and Chhattisgarh-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person

referred to in sub-section(1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government. "

Heard the learned counsel for the parties.

The entire controversy of this case revolves around the order dated 13/12/2000 by which the petitioner was relieved for serving in the State of Chhattisgarh and thereafter, the final allocation list was issued and the service of the petitioner were allocated to the State of Madhya Pradesh. It is not disputed that in the tentative allocation list, the services of the petitioner were allocated to the State of Chhattisgarh. Against the order dated 13/12/2000, by which the petitioner was relieved for the State of Chhattisgarh was challenged before the MP State Administrative Tribunal, Jabalpur by filing Original Application No.7309/2000 and the said Original Application was dismissed as having rendered infructuous by order dated 17/01/2003, by holding that now because of issuance of final allocation list, no cause of action survives on the basis of provisional allocation order and it was also observed that if the petitioner feels aggrieved by final allocation list, he can challenge it by filing a fresh petition. Thus, it can be said that there was an unsuccessful attempt on the part of the petitioner to challenge the order dated 13/12/2000. Once the Original Application by which the order dated 13/12/2000 was challenged by the petitioner, has been dismissed and the petitioner had allowed the said order to attain finality, then the petitioner cannot challenge the validity of the order dated 13/12/2000 in the present case. Only the liberty which was

granted to the petitioner by MP State Administrative Tribunal was to file a fresh petition if he feels aggrieved by the final allocation list. In the present case, admittedly, the petitioner has no grievance against the final allocation list. Thus, the validity of the order dated 13/12/2000 cannot be reopened and the said challenge is barred by the principle of *res judicata*. Even otherwise, it is specifically mentioned in the order dated 13/12/2000 that in view of general order dated 31/10/2000 issued by the Central Government and on provisional allocation of services of the applicant to the successor State of Chhattisgarh, he was relieved, which was done under Section 68(1) of the Madhya Pradesh Reorganization Act, 2000.

It is an undisputed fact that after his relieve for joining in the State of Chhattisgarh by order dated 13/12/2000, the petitioner did not join in the State of Chhattisgarh and he waited till issuance of final allocation list and accordingly, by order dated 08/03/2002 the petitioner was permitted to submit his joining in the Office of Engineer-in-Chief, PWD, State of MP. The petitioner remained on leave without any information to the Department, is also an undisputed fact. Under these circumstances, the submission made by the the counsel for the petitioner that the order of *dies non* is a major punishment, therefore, the respondents should have conducted a Departmental Enquiry, cannot be accepted under the peculiar facts and circumstances of the case. Even if a Departmental Enquiry is conducted, then in the light of the order dated 17/01/2003 passed by MP State Administrative Tribunal, Jabalpur in Original Application No.7309/2000, the petitioner would not be able to reopen the correctness of the order dated 13/12/2000, by which he was relieved for joining in the State of Chhattisgarh and it is not the case of the petitioner that he did join in the State of Chhattisgarh but it is the case of the petitioner himself that since

he was wrongly relieved, therefore, he did not join in the State of Chhattisgarh and awaited for issuance of final allocation list. Under these circumstances, this Court is of the considered opinion that holding of a departmental enquiry would be nothing but a futile attempt.

Even otherwise, the petitioner has already stood retired from service and he had claimed the benefits of his salary for the period of his unauthorized absence after his retirement. It is not the case of the petitioner that because of the fact that his period of unauthorized absence has adversely affected his pension, therefore, in absence of any adverse effect on the pension of the petitioner because of declaration of his unauthorized absence as *dies non*, this Court is of the considered opinion that no fault can be found with the order dated 09/08/2016 (Annexure P-1) passed by the respondent No.1 by declaring the period of unauthorized absence of the petitioner as *dies non*, and even in the light of judgment in the case of *Mahesh Kumar Shrivastava (supra)*, the Departmental Enquiry is not necessary for declaring the period of unauthorized absence as *dies non*, where it has not adversely affected the pension.

Accordingly, this petition fails and is hereby **dismissed**.

(G. S. Ahluwalia)
Judge