

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

SINGLE BENCH : HON'BLE JUSTICE SMT. S.R. WAGHMARE

W.P. No.3457/2015

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Shri Arpit Kumar Oswal, learned Counsel for the petitioner.
Ms. Mini Ravindran, learned Dy. G.A. for the respondent/State.

ORDER

(Passed on 04th of September, 2015)

These bunch of cases have been dealt together since they arise out of same cause of action under the identical

circumstances and this common order shall regulate all the seven cases.

02. These are bunch of seven petitions, by which the petitioners have challenged the transfer order dated 23/05/2015, passed by the Additional Director General of Police, Bhopal, whereby the service of the petitioners were transferred from Indore to various places, which is contrary to the M.P. Business Allocation Rules and transfer policy of the State Government.

03. Briefly stated the facts of the case are that the petitioners are working on the post of Constable or Head Constable, Fireman, Driver in Fire Services Department since the initial date of appointment and are posted at the Fire Brigade Station, Indore. By gazetted notification dated 07/06/2010 issued, the Government of M.P. by amendment in the M.P. Business Allocation Rules; entry at serial No.29 "Fire Prevention" has been deleted from the heading "II Home Department".

04. Counsel for the petitioners urged that, in view of the said notification the services of the Fire Department were transferred to the Head of the Urban Administration and Development Department and consequently, the fire services i.e. Fire Brigade Department ceased to be under the Home Department and is now under the administrative control of Urban Administration and Development

Department.

05. Although, Counsel candidly admitted that there was a separate Directorate (Headquarter) of Fire Brigade Services, which will function under the Urban Administration and Development Department (U.A.D.D.) and the said resolution and order dated 02/03/2012 was passed and Directorate was, therefore, responsible for the petitioners' promotion/appointments/transfers etc. and the petitioners' services were under the administrative control of respondent No.5 The Commissioner, Ministry of Urban Administration & Development Department, Mantralaya, Vallabh Bhawan, Bhopal (M.P.).

06. However, the petitioner was suddenly faced with the order of transfer dated 23/05/2015, passed by the respondent No.4 The Additional Director General of Police, Police Headquarters, Bhopal (M.P.), transferring the petitioners services from Indore to Pithampur (whereas different place in case of other petitioners).

07. The transfer orders have been challenged mainly on the ground that prior approval, which was necessary from the Government of M.P. has not been obtained. No reason has been assigned for the transfer and more seriously since an amendment in Gazette dated 07/06/2010, whereby entry of serial No.29, prior to "Fire Prevention" has been deleted and matter of policy dealt with the Department and

inserted entry as at serial No. “18(C)” under the heading “ XVIII- Urban Administration & Development Department” in Part (A) of heading “ Matters of Police dealt within the Department” and admittedly thus the petitioners Administration Department is the Department of Urban Administration and not of the Director General of Police and thus the orders of transfer were bad in law.

08. Counsel also heavily relied on minutes of the meeting headed by Chief Secretary with respondents No.1 & 2, dated 24/10/2011, regarding transfer issue for Fire Prevention employees to be dealt by respondent No.2 from respondent No.1 and the fact that there is a separate Directorate of Fire Brigade Services which was working under the Urban Administration & Development Department. Hence, Counsel urged that the orders are apparently against the provisions of law; without jurisdiction, malafide and there is no administrative exigency to pass such orders. Besides the sanction has also not been granted in accordance with the Section Ex.P/14.

09. **Per contra** Counsel for the respondent/State by filing the reply has submitted that the notification dated 07/06/2010, by which the services of the petitioners were transferred to the Urban Administration & Development Department has been stayed in Writ Petition No.17000/2010 by the Principal Bench at Jabalpur and the

order issued in pursuance to the notification dated 10/11/2010 have also been stayed. There was clear cut direction in Writ Petition No.17000/2010 thus:

“Challenging the order Annexure-P3 dated 10.11.2010 and Annexure-P6 dated 19.11.2010 transferring the petitioner from Police Department to the Urban Administration and Development Department, petitioner has filed this writ petition.

Records indicate that while issuing notice on 26.11.2010, the order in **question has been stayed and has not been given effect to till date.**

Keeping in view the aforesaid, respondents are directed **not to implement the same** and after considering the representation and grievance of the petitioner, take fresh action in the matter in accordance with law.”

10. Counsel urged that keeping in view the aforesaid direction for fresh action in the matter in accordance with the provision of law that the petitioners are being treated as the employees of the Fire Fighting Department and it is in consequence of the order in the Writ Petition No.17000/2010 passed on 06/05/2011 that in the year 2012 a decision was taken that a Directorate shall be formed, which shall be under the control of the Urban Administration & Development Department and the employees will be treated to be working under the Police Department. Annexure R/3 dated 05/04/2014, clearly indicated that *Avar Sachiv* of M.P. Government Urban Administration & Development Department has categorically stated that employees of the Fire Fighting Services would be employees under the Police Department

and therefore, their services are controlled by the Director General of Police and Counsel submitted that hence the order has been passed by the respondent No.1 and there is no infirmity as is being alleged in the impugned order as passed by Additional Director General of Police.

11. Besides on facts in each and every case, there was some reason why the employees have been transferred. In the present case, the petitioner has been working on post of constable since 15 years. Besides, all the conditions of services like the insurance of the employees, the appointment, promotions are carried out by the respondent Police Department.

12. At this **juncture** Counsel for the petitioner intervened to state that in the matter of **Ajay Kumar Das Vs. State of Orissa and Others (2011) 11 Supreme Court Cases 136**, held that Government circulars can not override statutory provision u/S 74 contained in the Act (Orissa Code) and the sanctity of statutory rules can not be over-riden by executive orders or circulars. It will be contrary to the mandate of Article 309, Constitution of India, rules can be amended, only by the rule or notification duly made under Article 309 and not under circulars/instructions of the State Government. Counsel submitted that the reliance on Annexure R/3, a letter from the Urban Administration Development Authority would over-ride the provisions as

per statutory amendment in the M.P. Business Allocation Rules by Gazetted notification dated 07/06/2010.

13. **Whereas**, Counsel for the respondent/State has vehemently urged the fact that decision has been taken to form a Directorate in pursuance to the Writ Petition No.17000/2010 and the services of all the transferred employees are no longer with the Urban Development Department as is being alleged and the impugned order has been rightly passed by the respondent No.4 in accordance with the provisions of law and it does not call for any interference. In view of the matter, there is no infirmity as is being alleged. Hence, Counsel prayed that petition is without merit and the same be dismissed.

14. On considering the above **rival submissions**, I find that the sole question that arises for consideration in these petitions is, whether the impugned transfer orders have been passed by the Competent Authority? since there is a dispute whether the employees are working under the Home Department i.e. Director of Fire Brigade Services under the Director General of Police, Ministry of Home Department, or whether, they are employees working under the Commissioner, Ministry of Urban Administration and Development Department.

15. Now considering the fact that respondent/State Government by its reply has admitted that the services of

the petitioners were initially transferred to Urban Administration and Development Department. However, the same could not be effected because of several petitions filed in various Courts and Annexure P/3 filed by the petitioner, which was order passed under the G.A.D. Circular, indicating that *vide* notification dated 07/06/2010 the Government of M.P., according to the Allotment Rules transferred the services of the employees of the Fire Fighting Department to the Urban Administration and Development Department. But the same being matter of challenge, as already stated before the several Writ Courts of M.P., the actual transfer of all such employees has never taken place and the employees continued to be the employees of Fire Fighting Department under the Home Ministry. However, there is no notification/order or amendment in the gazetted notification dated 07/06/2010, produced by the respondent/State Government and I find that it has obtained finality. Whereas *Annexure R/3* produced before this Court is merely a letter from the *Avar Sachiv*, M.P. Government, Urban Administration and Development Department dated 05/04/2014 and it declared that employees of the Fire Fighting Services, would be employees under the Police Department. But it is merely a letter and placing reliance on **Ajay Kumar Das (supra)**, I find that Apex Court has categorically held that the

responsibility by the Urban Administration and Development Department can not be exonerated since the transfer of the petitioners services have not been made by any statutory amendment and in the present case as already stated by the petitioner, the amendment in the M.P. Business Allocation Rules, serial No.29, the transfer had already taken place on 07/06/2010 and nothing has been done pursuant there to.

16. Consequently I find that, the stand of the respondent/State Government is contrary to the provisions of law and the impugned orders of transfer are contrary to the facts and circumstances of the case. The respondent/State has been unable to place on record any decision of this Court regarding the fact that the services have not been transferred to the Urban Administration and Development Department. The outcome of Writ Petition No.17000/2010 has also not been placed on record. Merely formation of a Directorate to work under the Urban Administration and Development Department would not absolve its duties. Counsel for the petitioner has also placed on record a notification dated 20/09/2011 Annexure P/4 to indicate that all the post retirement benefits and other service benefits would be paid by Urban Administration and Development Department.

17. Similarly, Annexure P/5, even the property belonging

to the Fire Fighting Department has been directed to be handed over to the Urban Administration and Development Department. In these brief circumstances, I find that impugned orders are not passed by the Competent Authority under the Urban Administration and Development Department and prior consent is also not sought from the State Government. In view of these facts, the impugned orders are set-aside. The petitioners are directed to file fresh representations before the Competent Authority of Urban Administration and Development Department **within 15 days** from this order and **within 45 days** therefrom the Competent Authority shall decide their cases in accordance with the provisions of law. Needless to say that the Competent Authority shall pass an order in writing, giving the reasons. A copy of the order shall be handed-over to the petitioners also and the Competent Authority shall keep in mind the provisions regarding the transfer of the employees, whether, services are actually been transferred in pursuance to the amendment in the serial No.29 of the M.P. Business Allocation Rules or whether any fresh order has been passed by the State Government, which the Government Advocate has been unable to place on record.

18. With the aforesaid, the petitions are allowed to the extent herein above indicated.

No costs.

The original order be retained in W.P. No.3457/2015 and a copy thereof be kept in the connected petitions bearing W.P. Nos.3458/2015, 3459/2015, 3460/2015, 3461/2015, 3462/2015, & 4563/2015.

CC as per rules.

(Mrs. S.R. Waghmare)
Judge

Adarsh