

**HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE**
**SINGLE BENCH: HON'BLE SHRI JUSTICE
VIVEK RUSIA**

WRIT PETITION No.18190/2019

Petitioner : Devendra Kumar Soni

Versus

Respondents : State of M.P & others

Shri Manoj Manav learned counsel for the
petitioner.

Shri Romil Malpani learned Panel Advocate for the
respondents/State.

O R D E R

(Passed on 03.11.2020)

Petitioner has filed the present petition being aggrieved by the order dated 22.08.2019 (Annexure P/2) whereby the Director of Public Education has repatriated him to the parent department i.e. School Education

Facts of the case, in short, are as under:

2. Vide order dated 15.12.1988 the petitioner was appointed as Lecturer by the Director, Public Education. In the year 1996, the petitioner did Masters in Education course with the prior permission of the Department. In order to provide better education in the State of Madhya Pradesh, the State Govt. has established District Institute of Education & Training (hereinafter referred to a **DIET**) in the state . Vide order dated 07.07.2001 the

petitioner was transferred in the capacity of Lecturer to the DIET, Indore and since then he is working there.

3. On the basis of the enquiry report submitted by the Joint Director, Public Education a show-cause notice dated 05.07.2019 was issued to the petitioner alleging 5 irregularities said to have been committed by him. Petitioner submitted a detailed reply to the show cause notice and vide order dated 01.08.2019 a stoppage of increment with non-cumulative effect (minor punishment) was imposed and the enquiry was closed. Thereafter, vide **impugned order dated 22.08.2019** the petitioner has been repatriated to the parent department by the Director, Public Education Centre, Bhopal. Being aggrieved by the aforesaid order, the petitioner has filed the present petition before this Court mainly on the ground that he has been repatriated to the parent department by way of penalty that too by an incompetent authority. For the alleged misconduct he had already been punished by order dated 01.08.2019, hence now the present repatriation based on the same charges amounts to double jeopardy to the petitioner.

4. After notice respondents No.1 to 4 have filed the return by submitting that the petitioner's services were handed over to the DIET, Indore in the year 2001 under the administrative exigency. Since he has been found guilty of commission of serious irregularities and dereliction of duty assigned to him which stands proved after the departmental enquiry, the petitioner has rightly been repatriated to the parent department. The petitioner has not challenged the punishment imposed to

him, therefore, he cannot deny the charges levelled against him. Since his services are no more required in the DIET, therefore, he has rightly been sent back to the parent department. He has no enforceable right to claim continuance in the DIET.

5. By way of rejoinder the petitioner has raised an additional ground that by virtue of Rule 4(2)(a) of the M.P School Education Teacher Education and Training Academic (Gazetted) Service Recruitment and Conditions of Service Rules, 2011 (hereinafter referred to as **“the Rules of 2011”**) he is holding the substantive post of Lecturer in the DIET, hence he cannot be repatriated to the School Education Department. Rule 6(c) of the Rules of 2011 provides the mode of recruitment by way of transfer or on deputation on a substantive post in the DIET, therefore, the petitioner has become a regular employee of the DIET and he could not have been repatriated to the parent department.

6. Respondents have filed the additional return by submitting that after coming into force of Rules of 2011 a separate cadre of employees working in the DIET has been formed. The only eligible Lecturers working in the School Education Department fulfilling the criteria laid down in the aforesaid rules were included in the service and relieved by the State Govt. from their lien. The petitioner being Lecturer of the School Education Department does not find his name in the list of such cadre of Lecturers published by the DIET. The petitioner is still holding his lien in the parent department. He has already been promoted as Principal, High School in the

Education Department w.e.f 15.08.2008 on the basis of seniority as Lecturer, therefore, he is no more the employee of the DIET and since his services are required in the DIET, he has rightly been sent back to the parent department, hence the writ petition is liable to be dismissed.

Heard the arguments and perused the record.

7. Before deciding the validity of the impugned order it would be appropriate to decide the issue as to whether the petitioner's services have been absorbed in the cadre of DIET or not. According to the petitioner under Rule 4(2)(a) of the Rules of 2011 a person who at the time of commencement of these rules are holding any post as specified in Schedule-IA substantively or in officiating capacity shall be treated in service of the DIET. Rule 6(1)(c) provides the method of recruitment by way of transfer or on deputation of the persons appointed on a substantive post in such services as may be specified by the govt. in this behalf.

8. It is not in dispute that the petitioner was initially appointed on the post of Lecturer in the School Education Department by the Commissioner Public Education. Vide order dated 07.07.2001 he was transferred in the same capacity to the DIET, Indore by the order of the Governor. At the relevant point of time, the rules called the M.P School Education District Institute of Education and Training (Gazetted) Service Recruitment Rules, 1991 (hereinafter referred to as '**the Rules of 1991**') was in force. Rule 4 of the Rules of 1991 says about the constitution of the service and as per

Rule 4(1) persons, who at the commencement of these rules are holding substantively the posts specified in Schedule shall be in the service of the DIET apart from the persons recruited in service before or after the commencement of the Rules of 1991. Rule 6 provides the method of recruitment i.e. (a) by direct recruitment by competitive examination (b) by the promotion of members already in the service (c) by transfer of persons who hold in a substantive capacity. The petitioner was transferred to the DIET after the commencement of the Rules of 1991, therefore, he is not falling in either of the sub-rules (1) to (3) of Rule 4. So far the method of recruitment as provided under rule 6 is concerned after the commencement of the Rules of 1991 recruitment to the services shall be made by (a) direct recruitment (b) by promotion & (c) by transfer. The petitioner is claiming himself to be in the service of DIET by virtue of section 6(1)(c) i.e. by way of transfer. It is correct that if any person who holds a post in substantive capacity such post in such service as may be specified in this behalf as transferred to the DIET shall be treated as recruited under Rule 6. Rules 7 provides that all the appointments in service after commencement of these rules shall be made by the Government after selection by one of the methods of recruitment specified in Rule 6.

9. Schedule I appended to the Rules of 1991 provides the list of posts included in the service with pay-scale and its appointing authority. At that time 757 posts of Lecturers were sanctioned to be appointed by the Direct Council. As per **Schedule-II** (Rule 6) 100%

posts of Lecturers are to be filled by direct recruitment. Posts from 1 to 5 i.e. Principal to Senior Lecturers are to be filled by direct recruitment or by way of promotion as per the percentage mentioned in Schedule-II. Rules 6 applies to all the six services right from Principal (DIET) to Lecturer, therefore, as per Schedule-I & II the Lecturers are liable to be appointed by way of direct recruitment by competitive examination under Rule 6 (1) (a) only. The mode of direct recruitment is provided in Rule 11. The Lecturer cannot be appointed by way of promotion and by way of transfer because as per Schedule-II 100% post of Lecturer is to be filled up by way of **direct recruitment**.

10. The Rules of 1991 has been repealed by the Rules of 2011 in which Rule 4 provides constitution of service and sub-rule (2) of Rule 4 provides that the services shall consist of the following persons who are working in the DIET on such posts as specified in Schedule-IA & 1B. The persons, who at the time of commencement of these Rules, are holding any posts as specified in Schedule-IA substantively or in officiating capacity, the persons at the time of commencement of these Rules will be absorbed in the service cadre and the persons recruited to the service in accordance with the provisions of these Rules shall be treated in the service of the DIET. There is no change in Rules 6 & 7 and Rule 11 in respect of method or recruitment, appointment in service and direct recruitment through competitive examination. In Schedule-IA appended to the Rules of 2011, 407 posts of Lecturers are sanctioned and as per Schedule-IIA 100%

posts of Lecturer are to be filled by way of direct recruitment, therefore, the petitioner was neither holding the post of Lecturer at the time of commencement of the Rules of 2011 nor he was absorbed in the DIET cadre under the Rules of 1991 as discussed above nor he is a person recruited to the service under the Rules of 2011. 100% posts of Lecturer are liable to be filled up by way of **direct recruitment** for which procedure is prescribed in the Rules of 2011. The posts other than Lecturer in the cadre of DIET are liable to be filled up either by promotion or by transfer under Rule 6(a),(b) & (c) but so far the post of Lecturer is concerned no one is liable to be treated in service or appointed in the service of DIET as Lecturer by way of promotion and by way of transfer, therefore, the petitioner was neither directly recruited to the post of Lecturer under Rule 11 of the Rules of 1991 & Rules of 2011, therefore, he cannot be treated in the service of DIET after the commencement of the Rules of 1991 & 2011. Hence, the contention of Shri Manav that the petitioner has become the employee of the DIET is hereby rejected.

11. So far the repatriation of the petitioner by the impugned order is concerned it is always the prerogative of the borrowing department to retain the service of the person on deputation and at any point of time, they can be repatriated to the parent department. Since the services of the petitioner were not found satisfactory, therefore, he has been repatriated to the parent department. The respondent has only mentioned the reasons for his repatriation in the impugned order which

became the basis of his repatriation hence cannot be termed as double punishment. The impugned order is neither punitive nor casting any stigma on the petitioner because he had already been punished vide order dated 01.08.2019 and that order has attained finality.

12. In view of the foregoing discussion, I do not find any ground to interfere in the impugned order. Accordingly, the petition is dismissed.

No order as to cost.

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