

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	WP No.10950/2020
2	Parties Name	Arun Kumar Mehta Vs. State of MP
3	Date of Judgment	19/10/2020
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri L.C. Patne, learned counsel for petitioner. Shri Pourush Ranka, learned counsel for respondent.
8	Law laid down	In terms of the M.P. State Urban Engineering Service (Recruitment and Conditions of Service) Rules, 2015, for posting the Executive Engineer of the Department of Urban Administration and Environment on the deputation post of Executive Engineer/Superintending Engineer in the Municipal Corporation provided in Schedule I of the Rules, the consent is implicit and no separate consent is required.
9	Significant paragraph numbers	Paragraphs 5 & 6

(PRAKASH SHRIVASTAVA)
J u d g e

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

WRIT PETITION No.10950/2020

Arun Kumar Mehta

Vs.

State of M.P.

Shri L.C. Patne, learned counsel for petitioner.

Shri Pourush Ranka, learned counsel for respondent.

Whether approved for reporting :

ORDER

(Passed on 19th October 2020)

The petitioner is aggrieved by the order dated 29th July, 2020 whereby he has been transferred from Department of Urban Administration and Development, Indore Division to Municipal Corporation, Dewas as Incharge Superintending Engineer.

[3] The petitioner is working as Executive Engineer and the case of the petitioner is that he is an employee of the Urban Administration Department, therefore, he cannot be sent on deputation to Municipal Corporation, Dewas without his consent.

[3] The submission of learned counsel for petitioner is that the petitioner has not given his consent, therefore, he cannot be sent on deputation to Municipal Corporation and that he is not an employee of the Municipal Corporation and earlier also

he had approached this Court and similar orders of deputation were set aside.

[4] As against this, learned counsel for respondent has submitted that the transfer/deputation of the petitioner is in accordance with the Rules and no consent of the petitioner is required and earlier the correct position was not brought to this Court and the coordinate bench has dismissed the writ petition of the identically placed person who was also transferred by the same impugned order.

[5] Having heard the learned counsel for parties and on perusal of the record, it is noticed that undisputedly the petitioner is an employee of the Department of Urban Administration and Environment. His substantive post is Assistant Engineer and his services are governed by the M.P. State Urban Engineering Service (Recruitment and Conditions of Service) Rules, 2015 (for short "The Rules of 2015"). The Schedule I of the Rules deals with classification, pay scale, number of posts, and the place of posting etc. in respect of the employees covered by the Rules. The relevant extract of the Schedule I is as under:-

S. No.	Name of the Post included	Number Of posts	Classification	Scale Of Pay	Postings	Disciplinary Authority	Appointing Authority
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Engineering In Chief	1	Class I	37400-67000 + 10000 Grade Pay	In Directorate - 01	Commissioner	Government
2	Chief Engineer	5	Class I	37400-67000 + 8700 Grade Pay	In Directorate – 01. In Municipal Corporation on deputation – 04	Commissioner	Government
3	Superintendent Engineer	24	Class I	15600-39100 + 7600 Grade Pay	In Directorate-03. In Divisional Office- 10. Municipal Corporation on deputation-11	Commissioner	Government
4	Executive Engineer	50	Class I	15600-39100 + 6600 Grade Pay	In Directorate-06. In Divisional Office-20. Municipal Corporation on deputation & Reserve-05. Municipal	Commissioner	Government

					Council-19.		
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[6] The aforesaid Schedule in clear terms provides that out of total 50 posts of Executive Engineers five posts are reserved for deputation in Municipal Corporation and 19 for deputation in Municipal Council. Similarly out of total 24 posts of Superintending Engineer, 11 posts are reserved for deputation in Municipal Corporation, meaning thereby posting of these many Superintending Engineers and Executive Engineers on deputation to Municipal Corporation and Municipal Council is already provided in the Rules. When an officer is promoted as Executive Engineer or Superintending Engineer under the Rules of 2015, then he is aware of his deputation posting, hence his consent for posting on deputation in terms of the Rules is implicit. The Rule do not provide for any separate consent. If the plea of obtaining separate consent in such posting/deputation is accepted, then the very purpose of the Rules providing for reserve post for deputation posting, will be defeated.

[7] Supreme Court also in the matter of **Kavi Raj Vs. State of UP (2013) 3 SCC 526** in this regard has held that:-

“24-Before concluding, it is essential to deal with certain inferences drawn by the learned Single Judge of the High Court. According to the learned Single Judge, prior consent of an employee is imperative, binding, peremptory and mandatory, before he is posted on deputation outside his parent department. No statutory rule has been brought to our notice, requiring prior consent of an employee, before his deployment against a post beyond his parent cadre. The mere fact, that the appellants consent was not sought before their posting at the Government Medical College, Jammu (and/or at the hospitals associated therewith) would not, in our view have any determinative effect on the present controversy. Broadly, an employee can only be posted

(or transferred) to a post against which he is selected. This would ensure his stationing, within the cadre of posts, under his principal employer. His posting may, however, be regulated differently, by statutory rules, governing his conditions of service. In the absence of any such rules, an employee cannot be posted (or transferred) beyond the cadre to which he is selected, without his willingness/readiness. Therefore, an employee's posting (or transfer), to a department other than the one to which he is appointed, against his will, would be impermissible. But willingness of posting beyond the cadre (and/or parent department) need not be expressly sought. It can be implied. It need not be in the nature of a written consent. Consent of posting (or transfer) beyond the cadre (or parent department) is inferable from the conduct of the employee, who does not protest or contest such posting/transfer. In the present controversy, the appellants were issued posting orders by the Principal, Government Medical College, Jammu, dated 30.12.1997. They accepted the same, and assumed charge as Senior/Junior House Officers at the Government Medical College, Jammu, despite their selection and appointment as Assistant Surgeons. Even now, they wish to continue to serve against posts, in the Directorate of Medical Education. There cannot be any doubt, about their willingness/readiness to serve with the borrowing Directorate. The consent of the appellants is tacit and unquestionable. We are therefore of the view, that the learned Single Judge of the High Court, clearly erred on the instant aspect of the matter."

[8] Having regard to the aforesaid, I am of the opinion that the plea of the petitioner that he cannot be posted in the Municipal Corporation without consent cannot be accepted.

[9] The record further reflects that by the impugned transfer order other such officers of Urban Administration Department have been transferred/posted in the Municipal Corporation. One such person namely Kailash Choudhary at Serial Number 11 in the impugned transfer order had filed the Writ Petition No.11456/2020 raising the ground of consent and the co-

ordinate bench by order dated 18/8/2020 has dismissed the writ petition.

[10] Learned counsel for petitioner has placed reliance upon the orders dated 11/5/2017 passed in WP No.7898/2014 and order dated 11/5/2017 passed in WP No.751/2016 passed by the co-ordinate bench setting aside the earlier orders in respect of the petitioner but at that time the position as reflected in the Rules of 2015 was not brought to the notice of the Court, therefore, these orders are of no help to the petitioner at this stage.

[11] Having regard to the aforesaid, I am of the opinion that the impugned order does not suffer from any infirmity and no case for interference is made out. The petition is accordingly **dismissed**.

(Prakash Shrivastava)
Judge

vm