

State Cf Madhya Pradesh & Ors vs Ashok Deshmukh & Anr on 11 May, 1988

Equivalent citations: 1988 AIR 1240, 1988 SCR SUPL. (1) 302, AIR 1988 SUPREME COURT 1240, 1988 (3) SCC 503, 1989 LAB IC 244, (1988) 3 SERVLR 336, (1988) 2 SCJ 538, (1988) 2 CURLR 55, (1988) 7 ATC 783, (1988) 2 LAB LN 552, 1988 SCC 809, (1988) JAB LJ 515, (1988) 57 FACLR 293, (1988) 2 JT 593 (SC), 1988 UJ(SC) 2 228, 1988 SCC (L&S) 809

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, N.D. Ojha

PETITIONER:

STATE CF MADHYA PRADESH & ORS.

Vs.

RESPONDENT:

ASHOK DESHMUKH & ANR.

DATE OF JUDGMENT 11/05/1988

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

OJHA, N.D. (J)

CITATION:

1988 AIR 1240

1988 SCR Supl. (1) 302

1988 SCC (3) 503

JT 1988 (2) 593

1988 SCALE (1) 1099

ACT:

Madhya Pradesh Civil Services Rules: Rule 14-Does not apply to a case of deputation from one department to another-Mere allegations of bias and mala fides-Not sufficient to quash administrative orders made in exigencies of administration.

HEADNOTE:

Respondent Ashok Deshmukh, was a Panchayat and Social Education Organiser in the Social Welfare Department, Government of Madhya Pradesh, when he was temporarily posted

as an officiating Block Development Officer in the Panchayat and Rural Development Department of the Government of Madhya Pradesh on 11th March, 1983. His services were returned back to his parent department on 29th June, 1984.

Aggrieved by the order of repatriation, the respondent filed a suit in the Court of Civil Judge, Udaipura, and obtained a temporary injunction. The temporary injunction having been vacated, he filed a writ petition in the High Court. After the writ petition was admitted and stay order issued, the respondent withdrew the civil suit.

Two principal contentions were urged before the High Court were; (1) that the order of repatriation was contrary to Rule 14 of the M.P. Civil Services Rules, and (2) that the order of repatriation was the result of bias and mala fide attitude on the part of the Secretary, Panchayat and Rural Development Department.

The High Court held (1) that the order of repatriation had been passed in violation of Rule 14 of the Rules, and (2) that although there was no material on record to support the allegation of any bias and mala fide on the part of the Secretary, the order of repatriation was the result of certain 'wrong complaints' made against him.

The High Court quashed the order of repatriation and directed the State Government to retain the respondent as officiating Block Development Officer so long as persons junior to him were retained.

303

Allowing the appeal, it was,

^

HELD:(1) Rule 14 dealt with the question of reversion of a permanent Government servant from the officiating higher grade to the lower grade, and did not apply to a case of deputation from one department to another. The High Court was, therefore, in error in holding that the impugned order of repatriation had been passed in violation of rule 14 of the Rules. [307D-F]

(2) The allegations of bias and mala fides made against the Secretary have remained unsubstantiated. Unless the Court is sure that the impugned order is really based upon allegations of bias and mala fides it should not proceed to quash administrative orders which are made in exigencies of the administration. [310F-G; C-D]

(3) If mere existence of some allegations against an officer, which on enquiry had been found to be untrue, were to be treated as the basis for quashing any order of transfer or repatriation made in respect of any officer then almost every such order of transfer or repatriation would have to be quashed because there would always be some complaint by some party or other against every officer. [310C-D]

(4) The impugned order of repatriation did not on the face of it show that there was any stigma attached to the respondent by reason of the said order. [310F]

(5) On the material placed before it, the Court did not find that the order of repatriation was arbitrary and violative of Article 14 of the Constitution. [310G]

C. Thiraviam Pillai v. State of Kerala, [1976] 2 S.L.R. 395, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2756 of 1987.

From the Judgment and Order dated 2.9.1986 of the Madhya Pradesh High Court in C.M.P. No. 742 of 1985.

S.N. Khare and T.C. Sharma for the Appellants. S.K. Gambhir for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The Ist respondent Ashok Deshmukh was appointed as a Panchayat and Social Education Organizer in the Social Welfare Department, Government of Madhya Pradesh, Bhopal on 16.8.1976. By an order dated 11th March, 1983 he along with 13 others was posted on deputation as an officiating Block Development Officer in the Panchayat and Rural Development Department of the Government of Madhya Pradesh. The relevant portion of the said order, posting the Ist respondent on deputation, read as follows:

"GOVERNMENT OF MADHYA PRADESH PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT (DEVELOPMENT) Bhopal, dated 11th March, 1983
O R D E R Serial Number 1719/1463/22V-2/82. The following Panchayat and Social Education Organisers are appointed on the post of officiating Block Development Officer, temporarily and on deputation, from the date of taking charge in the pay scale of Rs.350-25-400-25-500 E.B.-30- 650 until further orders and they are posted in Development Block shown against their names. This posting on deputation would be entirely temporary and they would not be entitled to become semi- permanent or permanent on this post. If required their services may be transferred back to their parental department at any time, after notice.

_____ S. Name of
Panchayat Name of Development No.and Social Educational block where posted
Organiser 1 2 3 _____ 1

.....

7. Shri Ashok Deshmukh Kurwai (Vidisha)

In the name and according to the order of Governor of Madhya Pradesh.

Sd/- A.K.Chandra Secretary, Govt. of M.P. Rural Development Department"

The Ist respondent was transferred from the post of Block Development Officer, Kurwai, in Vidisha district which he was holding on deputation as aforesaid to the Development Block of Udaipura. District Raisen by an order dated August 1, 1983. On 29th June, 1984 the services of the Ist respondent were placed at the disposal of his parent department by an order made by the Secretary to the Government, Panchayat and Rural Development Department, Madhya Pradesh. The said order read thus:

GOVERNMENT OF MADHYA PRADESH PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT (DEVELOPMENT) BHOPAL, DATED 29TH JUNE, 1984 ORDER No. 6297/1031/22/V-2/Est. 84. The services of Shri Ashok Deshmukh appointed temporarily on deputation as officiating Block Development Officer, Development Block-Udaipura, Distt. Raisen, are returned back to his parental department Social Welfare Department because the same are not required in this department.

In the name and according to the orders of Governor of Madhya Pradesh.

sd/- Illegible Secretary Panchayat and Rural Development Department (Development)"

Aggrieved by the said order of the State Government sending him back to his parent department, where he held his lien, the Ist respondent filed a suit in Civil Suit No. 16A of 1984 in the Court of Civil Judge, Udaipura for permanent injunction restraining the Government of Madhya Pradesh from repatriating him to his parent department and he obtained an order of temporary injunction in that suit on 15.11.1984 restraining the State Government from relieving him from the post of Block Development Officer at Udaipura and directing the State Government to allow him to continue as the Block Development Officer. After the State Government entered appearance in the suit and filed its objections to the order of temporary injunction, the Civil Judge vacated the order of temporary injunction by his order dated 15.3.1985. Thereafter the Ist respondent filed a writ petition on the file of the High Court of Madhya Pradesh at Jabalpur requesting the High Court to quash the order of repatriation in Miscellaneous Petition No. 742 of 1985. After the writ petition was admitted and a stay order was issued the Ist respondent withdrew the suit filed by him before the Civil Judge, Udaipura. Thereafter the High Court heard all the parties and passed an order dated 2.9.1986 quashing the order of repatriation dated 29.6.1984 sending back the Ist respondent to his parent department and directed the State Government to retain him as officiating Block Development Officer on deputation in the Panchayat and Rural Development Department so long as persons junior to the Ist respondent were retained as Block Development Officers and there existed a vacancy. The High Court also quashed the order of the State Government dated 20.5.1985 directing the Ist respondent to vacate the Government quarter which had been occupied by him and also the order of suspension which had been passed in the meanwhile. The High Court also directed the State Government to pay all the

salary due to the Ist respondent as Block Development Officer. Aggrieved by the order of the High Court the State Government along with its officers against whom orders were made by the High Court has filed this appeal by special leave.

In the writ petition two principal contentions were urged on behalf of the Ist respondent (i) that the order of repatriation was contrary to rule 14 of the Madhya Pradesh Civil Services Rules, (hereinafter referred to as 'the Rules'), and (ii) the order of repatriation was arbitrary and was the result of bias and mala fide attitude on the part of Smt. Nirmala Buch, Secretary, Panchayat and Rural Development Department. The High Court held that the order of repatriation had been passed in violation of rule 14 of the Rules and that although there was no material on record to support the allegation of any bias and mala fides on the part of Smt. Nirmala Buch the order of repatriation was the result of certain "wrong complaints" made by one Panbai who was a Member of the Legislative Assembly of the state of Madhya Pradesh.

Rule 14 of the Rules is as follows:

"14. Reversion and re-appointment: Permanent Government servants officiating in a higher grade of service may be reverted to the lower grade of service from which they were promoted if there are no vacancies in the former grade of service, and such reversion shall not be construed to be a reduction in rank:

Provided that the order in which such reversion shall be made will be the reverse of the order in which officiating promotion was made except when administrative convenience renders it necessary to revert an officiating Government servant otherwise than in accordance with this proviso:

Provided further that on the occurrence of a fresh vacancy the re-appointment to the higher grade of service shall ordinarily be in order of relative seniority of the reverted Government servant."

The above rule deals with the question of reversion of a permanent Government servant from an officiating higher grade of service to the lower grade of service from which he had been promoted. This rule in terms does not apply to a case of deputation from one department to another department. Admittedly the Ist respondent had not been promoted from the post of Panchayat and Social Education Organiser which he held in the parent department to a higher post in the said department. He had been, in fact, posted on deputation as officiating Block Development Officer in the Panchayat and Rural Development Department. The High Court was, therefore, in error in holding that the impugned order of repatriation had been passed in violation of rule 14 of the Rules.

It is, however, argued that even in the case of an officer who is deputed on a temporary basis to a post in another department the same procedure prescribed in rule 14 of the Rules should be followed. It is also submitted that there is no specific rule as to the procedure to be followed in the

case of repatriation of an officer deputed from one department to another in force in the State of Madhya Pradesh. Reliance is, however, placed in this connection on the decision of this Court in K.H. Phadnis v. State of Maharashtra, [1971] Suppl. S.C.R. 118 which was also a case in which the question of repatriation of an officer, who had been posted on deputation in another department, to his parent department was under consideration. This Court has observed thus at page 123:

"The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of 'accident of service' in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not 'a pure accident of service' but an order in the nature of punishment, Article 311 be attracted."

In the above case this Court came to the conclusion that the impugned order of repatriation was in fact in the nature of punishment and therefore this Court quashed it.

C. Thiraviam Pillai v. State of Kerala and others, [1976] 2 S.L.R. 395 was a case relating to repatriation of an officer who was reverted to his parent department from the post which he held on deputation. The High Court of Kerala quashed the order of repatriation since in the counter affidavit filed on behalf of the State Government it had been admitted that the order impugned therein had been passed since there were local complaints about the work in the block and instances where the officer in question had misused his powers and acted irregularly had been cited. The Block Development Officer had to maintain very close contact with the public. The post required persons of broad outlook and service-mindedness. The State Government felt that the continuance of such an officer would bring down the name of the Development Department in the eyes of the public and so in the interests of service and the department, Government considered that he should be reverted back to his parent department. It is thus seen that the above averment clearly established that the order of repatriation had been passed on account of allegations made against the officer concerned and it carried a stigma. Moreover in the above case the relevant rule provided that persons selected for the post of Block Development Officers would be treated on deputation to the Development department for a period of five years, the Development Commissioner having the right to revert any of them to his parent department, if his work proved to be unsatisfactory and to extend the period of deputation beyond five years in exceptional cases.

In the case before us no specific period had been mentioned as the period during which the Ist respondent would be on deputation either in the order sending him on deputation or in any relevant rule or Government order. The only question which remains to be considered is whether the impugned order is one which attached a stigma to the Ist respondent. The allegations made in this behalf are that one Panbai, MLA referred to above had when the petitioner was at Kurwai made complaint against the Ist respondent in connection with certain local elections. The said complaint was after enquiry found to be wrong. On the date on which the Ist respondent was repatriated he was not working in Kurwai block which was the block in which Smt. Panbai was interested. He was working at Udaipura block in a different district altogether. The respondents had filed counter-affidavit denying that Smt. Nirmala Buch, the Secretary to the Government of Madhya Pradesh had any ill-will against the Ist respondent. The High Court also came to the conclusion that there was no material on record to show that there was any bias or mala fide on the part of Smt. Nirmala Buch. Yet it proceeded to observe as follows:

"Although there is no material on record to support the allegations of any bias and mala fide on the part of Smt. Nirmala Buch, the Secretary, Panchayat and Rural Development Department, but the wrong complaints of the said M.L.A. appear to be the only basis for passing the impugned order of reversion as well as the order of transfer of the petitioner who had incurred the displeasure of his superiors because of the said reports which were found to be incorrect."

With respect to the High Court it has to be stated that having observed that there was no material to support the allegation of any bias and mala fide on the part of the Secretary to the Government it committed an error in assuming that the basis of impugned order of repatriation could only be the displeasure of his superiors which the Ist respondent had incurred by reason of the wrong complaints of a Member of the Legislative Assembly. It is significant that the order is silent about the names of those superiors who were displeased on account of the allegations said to have been made by the Member of the Legislative Assembly. This part of the order of the High Court is based on mere surmise. The High Court overlooked that the allegations of bias and mala fides are easily made but when it comes to the question of proof of such allegations, very often there will be no material in support of them. This is one such case. If mere existence of some allegations against an officer which on inquiry had been found to be untrue is to be treated as the basis for quashing any order of transfer or repatriation made in respect of any officer then almost every such order of transfer or repatriation would have to be quashed because there would always be some complaint by some party or other against every officer. Unless the court is sure that the impugned order is really based upon such allegations it should not proceed to quash administrative orders which are made in the exigencies of the administration.

The counter-affidavit filed on behalf of the State Government before the High Court also shows that some other officers who had been posted on deputation like the Ist respondent also had been reverted to their parent department and again some of them had been posted back as Block Development Officers. Perhaps even in the case of the Ist respondent a similar order posting him back as Block Development Officer would have been passed by the State Government had he not filed the suit and then the writ petition making it difficult for the State Government to take a

decision on the question of again posting him as a Block Development Officer during the pendency of the proceedings. The impugned order of repatriation passed in respect of the Ist respondent does not on the face of it show that there is any stigma attached to the Ist respondent by reason of the said order. We are clearly of the opinion that the allegations of bias and mala fides made against Smt. Nirmala Buch have remained unsubstantiated. The Ist respondent had no vested right to continue on deputation as Block Development Officer. On the material placed before us we do not find that the order of repatriation is arbitrary and violative of Article 14 of the Constitution. We, therefore, find it difficult to agree with the High Court. The order passed by the High Court is therefore liable to be set aside. It is quite possible that the Ist respondent may again be sent on deputation as Block Development Officer. That, however, is within the discretion of the State Government.

In view of what we have stated above we have not considered it A necessary to decide the question whether the Ist respondent could proceed with the writ petition after having withdrawn the suit which he had filed earlier in the Court of Civil Judge, Udaipura.

In the result we set aside the judgment and order of the High Court and dismiss the writ petition filed by the Ist respondent. In the circumstances there will be no order as to costs.

R.S.S.

Appeal allowed.