

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

Mamta
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CWP No.16012 of 2016 (O&M)
Date of decision: 09th August, 2016

Vivek Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Lokesh K. Malik, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The petitioner was once an employee of the Municipal Council, Sonipat, the status of which local body was upgraded to Municipal Corporation. The services of the Municipal Council employees, like the petitioner, were merged with the Municipal Corporation, Sonipat. Thereby, the services of the petitioner came to be governed by the Municipal Corporation (Recruitment & Conditions of Service) Rules, 1998. Rule 12 (1) of these rules with which we are concerned reads as under:-

“Liability to serve – [(1) “ a member of the service shall be liable to serve at any place in any Municipal Corporation in the State of Haryana, on being ordered so to do by the appointing authority or the State Government [or the State Government].”

(2) A member of Service may also be deputed to serve as under:-

(i) A company, an association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the State Government, a Municipal Corporation or Municipal Council or Municipal Committee or a local authority or University [or any other

*department of the State Government] within the
State of Haryana;*

*(ii)the Central Government or a company, an
association or a body of individuals, whether
incorporated or not, which is wholly or
substantially owned a controlled by the Central
Government; or*

*(iii)any other State Government, an international
organisation, an autonomous body not controlled
by the Government or a private body.”*

(underlined for emphasis)

2. The grievance of the petitioner is that he has been transferred/posted to Municipal Council, Narwana which action is canvassed to be illegal and arbitrary being a transfer from Corporation to Council and demotion of status. Learned counsel for the petitioner submits that the petitioner could only be transferred to another Municipal Corporation but not to a Municipal Council or a Municipal Committee. The order impugned in this petition is a transfer/posting order dated 02.08.2016 and the name of the petitioner is at Sr. No.24 amongst 33 Executive Officer/Secretary/Municipal Engineer of Urban Local Bodies, Haryana, who have been transferred to different places. Rule 12 empowers the appointing authority of the State Government to depute a member of service to serve in Municipal Councils and Municipal Committees as well. The petitioner is a member of service of Municipal Corporation and, therefore, he cannot run away from the fact that the very Rules which governs his service, empower the State Government to depute him to a Municipal Council and, therefore, nothing appears exceptionable in the impugned order.

3. An interesting distinction has been sought to be drawn contending that though the authority is empowered to depute and employee

but is not possessed to transfer and post the petitioner elsewhere than in a Municipal Corporation. The question is whether the words 'transfer' and 'posting' can be replaced by the words "deputed to serve", the expression used in the rules. Since the impugned order follows standard form in using the words "transfer/posting" it appears to this court that not much weight can be attached to them so long as they cause physical relocation in offices from one to the other.

4. But one thing appears certain and that is the power to 'depute' the petitioner to the Municipal Councils exists in the rules enabling respondents to place his services with the Municipal Council, Narwana whether called by way of transfer, posting, deployment or whatever name called. In service law it appears that a deputation is also a transfer but employee comes under the control of the borrowing department while retaining his rights in the lending department. Transfers may be effected from office to office by way of posting in the same department across State or different departments of Government and it is only in cases where employees are sent to foreign service that their consent has to be obtained. So long as the petitioner's seniority in parent department is not disturbed by virtue of deputing/transferring/posting him in Municipal Council, Narwana he can apparently have no complaint except for the hardship all transfer inevitable entail because he continues to draw his rights to seniority and promotion in the Municipal Corporation, Sonipat, transfer being an incidence of service. The petitioner cannot be said to have been prejudiced by the impugned order. The impugned order does not take away the accrued rights of the petitioner in Municipal Council, Sonapat by virtue of it merging/absorption from Municipal Corporation, Sonipat in the year 2015 when the merger took

place.

5. However, without expressing final opinion on the moot **point**, since there is some ambiguity in the play of words and expressions in Rule 12 (1) & (2) whether power exists in deputing the petitioner to a Municipal Council, Narwana then it the respondents who obliged to interpret Rule 12 in the first instance by reconciling the underlined words (supra) and inform the petitioner of his status whether being sent to Municipal Council, Narwana is by way of deputation, transfer, posting etc. Nevertheless, it is not for the Court at this stage to interpret Rule 12 without first knowing the view point of the competent authority on the working of the Rule of which it is the author and administrator. As a result of the foregoing discussion, this petition is disposed of with directions to the competent authority to decide the issue and inform the petitioner of his rights and status in writing under the rules, and if a request for personal hearing is made, the same shall be granted to him. The legal position be made known to the petitioner within a month of receipt of this order with liberty to challenge the same, in case the need arises and if advised.

09th August, 2016
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(RAJIV NARAIN RAINA)
JUDGE