

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.4653 of 2006

{Arising out of order dated 5-6-2006 of the learned Chief Engineer,
Vainganga Basin, Water Resources Department, Seoni (M.P.)}

Shri Krishna Agrawal, aged about 50 years, S/o Late Shri Gopal
Dau Agrawal, Sub-Engineer, Office of Executive Engineer,
Mahanadi Project (MRP), Dhamtari, Distt. Dhamtari (C.G.)

---- Petitioner

Versus

1. State of Madhya Pradesh, Through Principal Secretary, Water
Resources Department, Govt. of Madhya Pradesh, Vallabh
Bhawan, Bhopal (M.P.)
2. Chief Engineer, Vainganga Basin, Water Resources Department,
Seoni (Madhya Pradesh)
3. State of Chhattisgarh, Through Principal Secretary, Water
Resources Department, Government of Chhattisgarh, D.K.S.
Bhawan, Raipur (C.G.)
4. Chief Engineer, Water Resources Department, Government of
Chhattisgarh, Raipur (C.G.)
5. Executive Engineer, Mahanadi Project (MRP), Dhamtari, Distt.
Dhamtari (C.G.)

---- Respondents

ANDWrit Petition (S) No.555 of 2008

{Arising out of order dated 7-11-2007 of the learned Chief Engineer,
Vainganga Basin, Water Resources Department, Seoni (M.P.) and letter
dated 2-1-2008 of the learned Enquiry Officer-cum-Superintending
Engineer, Water Resources Circle, Jabalpur (M.P.)}

Shri Krishna Agrawal, S/o Late Shri Gopal Dau Agrawal, aged
about 50 years, Sub Engineer, Office of Executive Engineer,
Mahanadi Project (MRP), Dhamtari, Distt. Dhamtari (C.G.)

---- Petitioner

Versus

1. Chief Engineer, Vainganga Basin, Water Resources Department,
Seoni (M.P.)

2. Superintending Engineer, Water Resources Circle, Pachpedi, Jabalpur (M.P.)
3. Engineer in Chief, Water Resources Department, Govt. of Chhattisgarh, Sihawa Bhawan, Near Civil Line Police Station, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. V.G. Tamaskar, Advocate.

For the State of Madhya Pradesh: -

Mr. Rajeev Shrivastava, Mr. Malay Shrivastava
and Mr. Gagan Tiwari, Advocates.

For the State of Chhattisgarh: -

Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/12/2017

1. Since both the writ petitions involve common question of law and fact, they are being disposed of by this common order.
2. The petitioner served the State of Madhya Pradesh and ultimately, in accordance with the provision contained in Section 68 (2) of the the Madhya Pradesh Reorganisation Act, 2000 (for short, 'the Act of 2000'), he was allocated to the State of Chhattisgarh by order dated 24-10-2002 and with effect from 16-9-2002 his services were finally allocated to the State of Chhattisgarh and he was relieved on 31-10-2002 as such, he joined in the State of Chhattisgarh and is continuing. Meanwhile, on 5-6-2006, the State of Madhya Pradesh through the Chief Engineer, Vainganga Basin, Water Resources Department, Seoni, taken a decision to hold departmental enquiry against the petitioner and issued charge-sheet to him which has been challenged by the petitioner in W.P.No.4653/2006. Thereafter, during the pendency of the writ petition, enquiry officer and presenting officer were appointed by order dated 7-11-2007

against which W.P.(S) No.555/2008 was filed by the petitioner questioning that once he has been allocated to the State of Chhattisgarh, the State of Madhya Pradesh has no jurisdiction and authority to initiate departmental enquiry and as such, the enquiry so initiated is without jurisdiction and without authority of law.

3. Mr. V.G. Tamaskar, learned counsel appearing for the petitioner, would submit that the impugned orders passed in both the writ petitions are without jurisdiction and without authority of law.
4. Mr. Rajeev Shrivastava, learned counsel appearing for the State of Madhya Pradesh, would support the impugned orders.
5. Mr. Ashish Surana, learned Panel Lawyer appearing for the State of Chhattisgarh, would submit the impugned orders have not been passed by the State of Chhattisgarh and no order initiating departmental enquiry against the petitioner has been passed by the State of Chhattisgarh.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. In order to decide the dispute between the parties, it would be appropriate to notice the definition of existing State of Madhya Pradesh and Successor State as defined in the M.P. Reorganisation Act, 2000.

Section 2(e) :- “existing State of Madhya Pradesh” means the State of Madhya Pradesh as existing immediately before the appointed day.

Section 2(j) :- “Successor State” in relation to the

existing State of Madhya Pradesh means the State of Madhya Pradesh or Chhattisgarh.

8. Thus, with effect from 01.11.2000 both State of Madhya Pradesh and State of Chhattisgarh are Successor States.
9. It would also be appropriate to consider Sections 68 and 69 of the Act of 2000 which read as under:-

“68. Provisions relating to services in Madhya Pradesh and Chhattisgarh.-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State of which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

69. Provisions relating to other services.-(1) Nothing in this section or Section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Madhya Pradesh or to the State of Chhattisgarh under section 68 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person –

(a) if he is deemed to have been allocated to any State under section 68, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Chhattisgarh shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of section 68, shall not apply in relation to members of any All India Service.”

10. The proviso to Section 69(1) of the M.P. Reorganisation Act, 2000 clearly mandates that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Chhattisgarh and by the proviso to Section 69(1) of the said Act, conditions of service

applicable before the appointed day allocated to the State of Chhattisgarh shall not be varied to his disadvantage except with the previous approval of the Central Government.

11. Section 69(2)(a) of the Act of 2000 is a deeming provision and by virtue of that provision service of an employee would be considered as service rendered for the allocated State.

12. In the matter of **R.R. Bhanot v. Union of India and others**¹ dealing with liability in case of reorganization of a State i.e. the Punjab Reorganisation Act, 1966, Their Lordships of the Supreme Court have held in no uncertain terms that liability of pensionary benefits is of the State to which the employee is finally allocated with retrospective effect even though he has not worked in the Government of that State and observed in paragraph 9 as under:-

“9. We are of the view that the stand taken by the Punjab Government is wholly unjustified. As stated above the order dated March 20, 1969 prematurely retiring the appellant from service was quashed by the Himachal Bench of the Delhi High Court by its judgment dated September 29, 1969. As a consequence the appellant continued in service till December 31, 1970 when he attained the age of superannuation. It is not disputed that the appellant was finally allocated to the State of Punjab with effect from November 1, 1966. The net result would be that the appellant shall be deemed to be continuously serving the State of Punjab with effect from November 1, 1966. He had joined service in the erstwhile State of Punjab on September 30, 1937. On March 20, 1969 when he was prematurely retired by the State of

¹ (1994) 2 SCC 406

Himachal he had already served the Government for about 32 years. He was undoubtedly entitled to the grant of pension and other post-retiral benefits. Simply because the appellant failed to submit joining report to the State of Punjab after the judgment of the Himachal Bench of Delhi High Court, he could not be denied his right to pension and other benefits to which he was entitled on his attaining superannuation. It was for the State of Himachal Pradesh to have reinstated the appellant in service after the High Court judgment and thereafter relieved him to join the State of Punjab. In any case the appellant, having been finally allocated to the State of Punjab, it is the State of Punjab which has to give pension and other retiral benefits to the appellant.”

13. The Supreme Court in the matter of **Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg and another**²

has held that the expression “conditions of service” is an expression of wide import and dismissal from service is a matter which falls within the conditions of service of public servants.

14. The Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 is applicable for holding departmental enquiry against a Government servant who is a member of service or holds a civil post under the State as defined in Rule 2(f) of the Rules of 1966 and Government means Government of Chhattisgarh as defined in Rule 2(e). Since the petitioner's services have been allocated to the State of Chhattisgarh on 16.09.2002 and he was relieved on 31.10.2002, his appointing authority would be State of Chhattisgarh for all practical purposes and disciplinary action can

2 AIR 1977 SC 747

be initiated only by the State of Chhattisgarh and the State of Madhya Pradesh has no jurisdiction and authority to initiate disciplinary action against the petitioner. Consequently, the order passed by the State of Madhya Pradesh instituting departmental enquiry against the petitioner and orders appointing presenting officer and enquiry officer are hereby quashed.

15. The writ petitions are allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma