

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.1910 of 2015

Anand Singh Rathee ... Petitioner
Versus

State of Haryana and others ... Respondents

2. CWP No.2244 of 2015

Dharambir Malik ... Petitioner
Versus

State of Haryana and others ... Respondents

Date of Decision: 05.09.2018

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pankaj Jain, Advocate,
for the petitioner.

Mr. Lokesh Sinhal, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of CWP No.1910 of 2015 titled *Anand Singh Rathee v. State of Haryana and others* & CWP No.2244 of 2015 titled *Dharambir Malik v. State of Haryana and others*.

2. The short controversy in this case is to the interpretation of Rule 2 (g) and Rule 12 of the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998. Rule 2 (g) defines service to mean the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service. Rule 12 deals with "Liability to Serve". Rule 12 (1) prescribes that 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.

Sub-Rule (2) of Rule 12 expands the scope of Rule 12 (1) and provides that a member of the 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;”

3. The petitioner was transferred from Municipal Corporation, Gurgaon to Municipal Committee, Jind by impugned order dated January 30, 2015 (P-5). Notice of motion was issued by this Court February 06, 2015 on the contention, inter alia, that transfer from Municipal Corporation, Gurgaon to Municipal Committee, Jind is not legally permissible except by consent and that may amount to change of cadre and loss of seniority. The stay order continues to operate.

4. Learned counsel for the petitioner submits that “service” has been defined to mean in Municipal Corporation and any service in a Municipal Council or Municipal Committee is not contemplated in the defining part of the rules in Rule 2 (g).

5. That may be so but the status of the petitioner as Municipal Corporation employee has not been changed by the impugned order which transfers and posts the petitioner to Municipal Committee, Jind. This is for the reason that a member of the Municipal Corporation service is liable, in addition to Municipal Corporations in the State of Haryana, to serve in Municipal Councils and Municipal Committees by virtue of Rule 12 (2) (i).

6. It has further been argued that the word “deputed” in Rule 12 (2) should be interpreted as deputation and the impugned order is an order of deputation from Corporation to Committee which is impermissible unless consent was taken from the petitioner. The word deputed may have to be read wide enough to include transfers and postings since the authority vests in the appointing authority to make such orders in public interest and in the exigencies of administration under Rule 12. As a matter of fact Rule 12 (1) itself is worded wide enough when it uses the expression “shall be liable to serve at any place, in any Municipal Corporation in the State of Haryana...”. At any place appears to be disjunctive of “place” and Municipal Corporation since there is a comma used. Otherwise the rule could have well read “shall be liable to serve in any Municipal Corporation”. Municipal Council and Municipal Committees are also places where Corporation employee may be liable to serve. The amplitude of the rule is large and a restricted meaning cannot be given to the word “serve” or the word “deputed”. To my mind, deputed here should not be read narrowly as deputation as a well recognized concept in service law.

7. For these reasons, I find no illegality committed by the appointing authority in transferring/posting or deputing the petitioner to serve temporarily in Municipal Committee, Jind.

8. The interim stay order is vacated.

9. The petition is dismissed.

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10. In this case, the transfer was from Municipal Corporation, Gurgaon to Municipal Corporation, Hisar, which transfer and posting is

within the administrative jurisdiction of the appointing authority. It has been explained by Mr. Sinhal for the State that in this case, the first posting order was stayed by Court on the grievance of transfer from Corporation to Committee, however, the respondents withdrew the order and passed a fresh order five months later posting the petitioner to another Corporation. Therefore, it is not a case of second transfer within a short time as projected in the writ petition. Accordingly, the orders in the main case (supra) will govern this case as well.

- 11. The interim stay order is vacated.
- 12. The petition is dismissed.

05.09.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No