HIGH COURT OF MADHYA PRADESH : JABALPUR

Heard through Video Conferencing

Writ Petition No.17744/2020

Ved Prakash Gupta vs. State of Madhya Pradesh & others

Jabalpur, dated : 27.11.2020

Shri Rahul Deshmukh, learned counsel for the petitioner.

Shri Vikram Johri, Panel Lawyer for the respondents-State.

The petitioner seeks quashment of order dated 17.03.2020; whereby, the services of the incumbents like the petitioner, including the petitioner, have been directed to be repatriated to their parent department i.e. Madhya Pradesh Rajya Tilhan Sangh on the anvil that they stood retired or to retire on attaining the age of superannuation i.e. 60 years. Petitioner further seeks direction to allow the petitioner to continue in service beyond 60 years of age till 62 years of age. Further direction is being sought to the respondents to issue absorption order in favour of the petitioner in terms of the scheme dated 12.08.2013 formulated by the State Government. Petitioner also seeks direction to the respondents to implement the direction dated 11.07.2014 issued by the Chief Secretary of Government of Madhya Pradesh with regard to initiation of absorption proceedings.

2. Evidently, the petitioner is an employee of OILFED (Madhya Pradesh State Co-operative Oilseed Growers Federation), which has been under liquidation. The State Government came out with a scheme of absorption of surplus employees of OILFED in various departments of the State

Government vide circular No.C-3-14/2013/1/3 dated 12.8.2013. Clause 3 whereof lays down the procedure for absorption. It is further evident from cogent material documents on record that the petitioner has not been absorbed. Though it is contended that the petitioner was earmarked for absorption in the Commercial Tax Department, however, the fact remains that the petitioner was not absorbed and he has not raised the dispute qua the absorption in present writ petitions. In absence whereof, petitioner remained the surplus employee of OILFED which being a society (in liquidation) is not shown to have adopted the enhanced age of retirement as applicable to the employees of the State Government. Furthermore, being on deputation in Backward Class and Minority Welfare Department of State of Madhya Pradesh, in absence of absorption therein, the petitioner cannot seek a mandamus to be retained in the said department.

3. As regard to direction to the respondents to implement the direction dated 11.07.2014, evident it is that, the same is not an order but extract of note-sheet dated 11.07.2014. The law is trite that no right flows from a note-sheet which is only an opinion of concerned department or the Authority. Further, the effect of an office note in the note-sheet was considered by the Constitution Bench in **Bachhittar Singh vs. State of Punjab AIR 1963 SC 395**, wherein it was held :

> "9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of

the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh [Till the abolition of that office by the Amendment of the Constitution in 1956.] , is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the “order” of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh [AIR (1961) SC 493, 512] :

> "Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."
>
> Thus, it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.
>
> 11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."

4. In **State of Bihar vs Kripalu Shankar AIR 1987 SC 1554**, it is held :

> "16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It involves a complicated process. In a democratic set up, it is conducted through the agency of a large

number of officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub-section (c) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government action.

17. In the case of Bachhittar Singh v. State of Punjab AIR 1963 SC 395 a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file, which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said article and was then communicated to the party concerned. This is how this Court dealt with the effect of the noting by a Minister on the file:

"The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones."

5. In **Sethi Auto Service Station vs Delhi Development Authority (2009) 1 SCC 180**, their Lordships were pleased to hold :

> "14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.
> ...
> 17. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the recommendation of the Technical Committee of DDA fructified into an order conferring legal right upon the appellants.
> …
> 22. … Mere favourable recommendations at some level of the decision-making process, in our view, are of no consequence and shall not bind DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference."

6. In view whereof, the relief seeking implementation of opinion expressed in the note-sheet dated 11.07.2014 cannot be acceded to.

7. Though a reliance is placed on the decision in ***Daood Ahmed Khan v. State of M.P. and others [Writ Petition No. 10048/2019]*** decided on 17.10.2019; wherein, it is urged that the employees similarly placed as the petitioner, have been given the benefit of enhanced extended age. The decision turns in an earlier decision in ***Ashok Thakur and another v. State of M.P. and others [W.P. No. 7203/2019]*** which in turn was on earlier decision. All these orders, however, do not consider the fact that the State Government had enhanced the age by causing amendment in M.P. Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 which is not shown to have been considered. The decisions cited, therefore, are of no assistance to the petitioner, whose services are not governed by the Rules framed for the employees of the State Government.

8. In view whereof, petition fails and is dismissed. No costs.

(Sanjay Yadav)
Acting Chief Justice

anand

Digitally signed by
ANAND KRISHNA SEN
Date: 2020.11.27
15:37:39 +05'30'