

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No : 6169 OF 2009

Gopal Prasad Gupta

- V/s -

State of Madhya Pradesh and others

Present : **Hon'ble Shri Justice Rajendra Menon.**
Hon'ble Shri Justice Sanjay Yadav.

Shri P.R.Bhave, learned Sr. Counsel with Shri Bhanu Pratap Yadav, learned counsel for the petitioner.

Shri S.K.Dwivedi, learned counsel for the State of M.P. representing Respondent No.1.

Shri Ajay Ojha, learned standing counsel for State of Chhatisgarh representing Respondent Nos.4 and 5.

O R D E R

(14/10/2010)

2- Petitioner herein Shri Gopal Prasad Gupta was working as a Cou-
Guard in Jashpur, Forest Division Jashpurnagar District Chatara. He was
dismissed from service vide order dated 31.5.1982 and the order of
dismissal was passed by the Divisional Forest Officer Jashpurnagar, the
Disciplinary Authority.

3- An appeal filed against the order of dismissal was dismissed by the
Conservator of Forest Bilaspur (Chhatisgarh). Being aggrieved by the
aforesaid orders, petitioner filed an original application under Section 90
of the Administrative Tribunals Act 1985 before the M.P. State



Administrative Tribunal Bench at Raipur. While the matter was so pending in the tribunal, the new State of Chhatisgarh was constituted w.e.f. 1st of November, 2000 by virtue of the M.P. Reorganization Act, 2000. Accordingly, the case was transferred from the M.P. State Administrative Tribunal Bench Raipur to the High Court of Chhatisgarh at Bilaspur.

4- On 16.3.2009, a learned single bench of the Chhatisgarh High Court found that as the petitioner's services were terminated in the year 1982 before the creation of State of Chhatisgarh and as the cause of action with regard to dispute in question arose within the territorial jurisdiction of the then existing State of M.P. in view of the provisions of Section 68 of the State Reorganization Act, the bench directed for transfer of the case to this High Court.

5- The order passed by the learned bench of the Chhatisgarh High Court on 16.3.2009 reads as under:-

“Learned counsel appearing for the petitioner submits that the petitioner was terminated on 31.5.1982 (Annexure-P6) while working as Coup Guard/ Barrier Guard in Forest Division Jashpur, District Jashpur, within the then State of Madhya Pradesh.

The State of Chhatisgarh came into existence pursuant to the provisions of Madhya Pradesh Reorganization Act, 2000 (for short “The Act, 2000) on 01.11.2000. Section 68 of the Act, 2000 provides for existing employees not the terminated employees. Since the services of the petitioner was terminated way back in the year 1982, the cause of action arose within the territorial jurisdiction of the State of Madhya Pradesh. Thus, the High Court of Madhya Pradesh has jurisdiction to entertain this petition.

Learned counsel appearing for the State/respondents submits that the petitioner cannot be treated as an employee of the State of Chhatisgarh under the provisions of the Act, 2000.

on the request of learned counsel appearing for the parties, the matter is transferred to the High Court of Madhya Pradesh at Jabalpur.

Registry is directed to send all the documents forthwith.”

6- When the case was transferred to this Court and the matter was



being heard by a bench of this Court on 9.12.2009, the learned Judge found that the order transferring the case was passed by the High Court of Chhattisgarh without taking note of the provisions of Section 83 of the M.P. Reorganization Act and accordingly, finding a question of law existing, referred the matter to Hon'ble the Chief Justice and the Hon'ble Chief Justice has constituted this bench for the purpose of deciding the question with regard to the fact as to in which court the proceedings would lie.

7- Having heard learned counsel for the parties and on consideration of the facts that have come on record, it is clear that the services of the petitioner were terminated on 31.5.1982 by the then Divisional Forest Officer Jashpur, now in the State of Chhattisgarh, the appeal was dismissed by the Conservator of Forest Bilaspur (Chhattisgarh). When the State Reorganization Act, 2000 came into force and when the new State of Chhattisgarh was created on 1st of November, 2000, the dispute in question was pending in the M.P. State Administrative Tribunal Bench at Raipur.

8- As far as Section 68 of the M.P. Reorganization Act is concerned, this provision relates to service of the employees working in the State of M.P. and Chhattisgarh. In fact, Section 68 of the Reorganization Act, 2000 as contained in Part-8 contemplate a provision with regard to allocation of service of a employee between the States of M.P. and Chhattisgarh.

9- It is provided for in Section 68 that every person who was immediately before the appointed day, serving in connection with the affairs of the existing State of M.P. shall from that day provisionally continue to serve in connection with the affairs of the State of M.P 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 Chhatisgarh.

10- A perusal of the Section indicates that it deals with the service of the employees who are in service with the State of M.P. on the appointed day i.e. 1.11.2000 and the entire Part-8 deals with the allocation of service of such employees on and from the appointed day.

11- The provision of Section 68 does not deal with matters pertaining to proceedings pending before the courts or tribunal on or before the appointed date. Section 68 only relates to matters with regard to allocation of service of the existing employees. On the contrary, the provisions with regard to transfer of proceedings and the jurisdiction of the courts to deal with legal proceedings are contained in Section 82 and 83 of the State Reorganization Act and is contained in Part-10 of the Act pertaining to legal and miscellaneous provisions.

12- As far as the present proceedings are concerned, the only relevant provision would be Section 83 of the M.P. Reorganization Act, 2000 and the same reads as under:-

83. Transfer of pending proceedings –

(1) Every proceeding pending immediately before the appointed day before a court (including High Court), tribunal, authority or officer in any area which on that day falls within the State of Madhya Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of Chhatisgarh State, stand transferred to the corresponding court, tribunal, authority or officer of the State of Chhatisgarh.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court of Madhya Pradesh and the decision of that High Court shall be final.

(3) In this Section -

(a) “proceeding” includes any suit, case or appeal ; and



(b) “corresponding” court, tribunal, authority or officer” in the State of Chhatisgarh means -

- (i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if had been instituted after the appointed day; or
- (ii) in case of doubt, such court, tribunal authority, or officer in the State of Chhatisgarh, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Madhya Pradesh to be the corresponding court, tribunal authority or officer.”

13- A perusal of the aforesaid provision clearly indicates that every proceeding pending immediately before the appointed day i.e. 1st of November, 2000 and pending before any court including a High Court, a Tribunal or authority in any area which on that day i.e. the appointed day falls within the State of M.P. shall continue to remain in the State of M.P. but if the proceedings relate exclusively to the territory which from that day falls in the territory of Chhatisgarh, the proceeding shall stand transferred to the corresponding court, tribunal or authority in the State of Chhatisgarh. It is, therefore, clear from this Section that the Court where the proceedings is to be held is to be determined with regard to the area in which the cause of the dispute arose. If the cause of the dispute arose before the appointed day in any area falling within the State of M.P., the proceedings have to be held in the State of M.P. but if the proceedings relate to a cause which falls exclusively within the State of Chhatisgarh, even prior to the appointed date then the matter stands transferred to the corresponding court in the State of Chhatisgarh.

14- In the present case, the cause of action for the present dispute arose on 31.5.1982, when the petitioner's services were terminated from Jashpur in the State of Chhatisgarh and again when his appeal was dismissed from



Bilaspur in the State of Chhatisgarh and as the cause of action relating to the present proceedings falls exclusively within the territory that came into the jurisdiction of the Chhatisgarh State after 1st of November, 2000, the matter was rightly transferred to the Chhatisgarh High Court and in transferring the proceedings to this court, learned Chhatisgarh High Court on 16.3.2009 failed to consider this aspect of the matter. Infact, the proceedings were transferred to this Court without taking note of the provisions of Section 83 and by applying the incorrect provisions of Section 68 which pertains to service of the existing employees. Further, under sub-section 2 of Section 83, it is clearly stipulated that if any question arises as to whether any proceeding should be transferred in accordance with sub-section 1 of Section 83, the matter is to be referred to the High Court of M.P. and the decision of the High Court of M.P. is held to be finally.

15- In the present case, we are of the considered view that in the light of the provision of Section 83(1), as the proceedings in question pertains to certain cause relating exclusively to the State of Chhatisgarh, transfer of this proceedings ordered by the learned High Court of Chhatisgarh was not correct. In the light of the aforesaid, the matter has to be remitted back to the Chhatisgarh High Court, as it has been transferred to this Court without taking note of the statutory provision as indicated hereinabove.

16- Accordingly, finding the case to be transferred incorrectly, registry is directed to take action for retransmitting the records of this case to the High Court of Chhatisgarh.

(Rajendra Menon)

Judge

nd

(Sanjay Yadav)

Judge

