IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 8th OF SEPTEMBER, 2023

WRIT PETITION No. 29192 of 2022

BETWEEN:-

DHIRAJ KUMAR SHARMA S/O SHRI MUKESH KUMAR SHARMA, AGED ABOUT 35 YEARS, OCCUPATION: SERVICE PRESENTLY POSTED AS MARKETING EXECUTIVE MP STATE TOURISM DEVELOPMENT CORPORATION REGIONAL OFFICE GWALIOR (MADHYA PRADESH)

.....PETITIONER

(BY MS. SMIRITI SHARMA- ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY TOURISM DEPARTMENT GOVT OF MP VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **M.P. STATE TOURISM DEVELOPMENT CORPORATION LTD THROUGH ITS MANAGING DIRECTOR, PARYATAN BHAWAN BHADBADA ROAD BHOPAL (MADHYA PRADESH)**

3. **GENERAL MANAGER (ADMINISTRATION) M.P. STATE TOURISM DEVELOPMENT CORPORATION PARYATAN BHAWAN BHADBADA ROAD, BHOPAL (MADHYA PRADESH)**

4. **REGIONAL MANAGER M.P. STATE TOURISM DEVELOPMENT CORPORATION, REGIONAL OFFICE GANDHI ROAD, GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TEJ SINGH MAHADIK- ADVOCATE FOR RESPONDENT NO.4)

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This petition coming on for hearing this day, the court passed the following:

ORDER

Present petition under Article 226 of the Constitution of India has been directed against the order dated 08.12.2022 passed by respondent No.3 whereby the petitioner who was working as Marketing Executive, M.P. State Tourism Development Corporation, Bhopal, was ordered to be transferred in the office of M.P. State Tourism Corporation, Lucknow. The said order was assailed on the ground that petitioner is a contractual employee and his transfer is not permissible under the law. The petitioner is further aggrieved by the illegal and arbitrary action on the part of the respondents in not considering his case for regularization whereas the petitioner was appointed after following due process of law and has rendered more than 11 years of satisfactory service. The petitioner is also aggrieved by arbitrary and discriminatory action of the respondents in reducing his pay and treating him differently from the similarly situated employees alleging it to be arbitrary, discriminatory and violative of Articles 14, 16, 19 and 21 of the Constitution of India.

2.Short facts leading to the present controversy are that petitioner is presently holding the post of Marketing Executive (Contract) and has been posted in Madhya Pradesh State Tourism Development Corporation Ltd., Regional Office, Gandhi Road, Gwalior. The petitioner was appointed on the aforesaid post in pursuance of his application submitted in regard to advertisement issued by respondent No.2/Corporation inviting applications for eligible candidates for certain vacant posts including the vacant post of Marketing Executive. The petitioner was invited for interview and after following due process of law vide order dated 11.02.2011 the petitioner was appointed on the aforesaid post. After his appointment, vide order dated 25.02.2011, the petitioner was directed to join at Regional Office Gwalior and in pursuance

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thereof, the petitioner joined his services at Regional Office, Gwalior, on 26.02.2011 and since then the petitioner is discharging his duties in the said office. Although in the advertisement, the respondent had fixed an honorarium of Rs.15,000/- per month for the post of Marketing Executive, but later on while issuing appointment order the honorarium was fixed at Rs.3,000/- per month. Initially the appointment of petitioner was made only for a year, however, he continued with the respondents and as on date he is working with the respondent/Corporation. Subsequently in the year 2013 the honorarium of similarly situated persons has been increased from Rs.15,000/- per month to Rs.25,000/- per month, whereas the salary of petitioner was increased to Rs.18,000/-. In such circumstances, the petitioner moved representations dated 20.1.2014 and 10.2.2014.

3.The said representations were considered and vide order dated 19.11.2015 the respondents enhanced the pay of petitioner at par with similarly situated employees extending the benefit of increased salary w.e.f 17.02.2015. However, on very next day i.e. vide order dated 20.11.2015 the respondents confined the benefits of aforesaid increase w.e.f 1.11.2015 without assigning any reason. Vide circular dated 5.6.2018 State of M.P. through General Administration Department has framed a policy extending certain benefits to the contract employees, but even though the petitioner was fulfilling the conditions of the policy, the respondents neither extended the benefits of salary nor considered case of the petitioner for regularization on equivalent post of Manager and Tourism Officer, whereas respondents have made regular appointments on the aforesaid posts.

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4.It was further contended that during period of outbreak of Covid-19 Pandemic and its lock-down the respondents paid salary of 15 days and 22

days instead of 30 days to the employees of the Corporation. However, on representations the retained salary of other employees was reimbursed, but remaining salary of the petitioner of that period has not been paid to him. Vide order dated 6.5.2022 while extending the contract period the respondents gave an increase of 10% on total emoluments. Thus, in a way the respondents have reduced the total emoluments which is totally illegal and arbitrary.

5.In the aforesaid regard, the petitioner submitted a representation for extending the benefit of GAD policy dated 5.6.2018, but respondents instead of extending the aforesaid benefit, not only reduced the pay of the petitioner, but vide impugned order Annexure P/1 transferred him from Gwalior to Lucknow. Being aggrieved with the aforesaid, present petition has been filed.

6.Learned counsel for the petitioner has vehemently argued that action on the part of the respondents in passing the impugned order Annexure P/1 and further not extending the benefits of GAD circular dated 5.6.2018 and further reducing the pay and emoluments of petitioner for no fault on his part is absolutely illegal, arbitrary and violative of Article 14 & 16 of the Constitution of India.

7. Learned counsel further contended that the petitioner is not holding any transferable post and he is only a contract employee as such his transfer is not permissible in the eyes of law, but without taking into consideration the aforesaid facts vide order Annexure P-1 the petitioner has been transferred from Gwalior to Lucknow.

8.It was further contended that as per condition No.4 of the appointment order dated 11.2.2011 the petitioner being a contract employee could not enjoy any financial or administrative powers, but vide impugned order the petitioner

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has been made in-charge of the Marketing Office Lucknow which would include the financial and administrative powers which he could not exercise, thus, the impugned order being contrary to the condition of appointment order, is not sustainable in the eyes of law.

9.It was further contended that respondents have utterly failed to extend the benefit of the policy of GAD dated 5.6.2018 though the petitioner has made several representations and apart from that, they have fixed his honorarium/salary contrary to the conditions of advertisement and subsequently has increased the salary of similarly situated persons, but the said benefit was denied to the petitioner and recently respondents have granted only 10% increase in honorarium, whereas right from beginning they were required to pay annual increase of 10% on the total emoluments, meaning thereby the respondents have reduced the salary of petitioner without assigning any reason and without providing any opportunity of hearing. Thus the said action of the respondents is arbitrary and discriminatory.

10. Lastly it was contended that even though petitioner has rendered more than 11 years of satisfactory service and his initial appointment was made after following due procedure of law, the case of the petitioner has not been considered for regularization, which is *pe rse* illegal. To bolster the submission, reliance was placed in the case of **M.P. State Tourism Development Corporation Ltd & Anr. Vs. The Municipal Corporation Gwalior & Anr.** in W.P.No.1588/2017 on 26.3.1998 and in the case of **Mahesh Chandra Dixit vs. State of M.P.** in W.P.No.27026/2019 decided on 12.01.2023. Thus it was prayed that impugned transfer order be quashed, that respondents be directed to consider his case for regularization and proper increase be made in the emoluments which are being paid to the petitioner.

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11. Per contra, learned counsel for respondent No.4 has raised a preliminarily objection with regard to maintainability of present petition on the ground that respondents No.2 and 3 against whom the writ petition has been preferred are Managing Director and General Manager of M.P. State Tourism Development Corporation Ltd. which is a Company registered under the provisions of Companies Act, therefore, present writ petition is not maintainable against a Company registered under the Companies Act and deserves to be dismissed as not maintainable. To bolster his submission, reliance was placed in the case of **The Praga Tools Corporation vs. Shri C.A. Imanual and others, (1969) 1 SCC 585.**

12. Heard counsel for the parties and perused the record.

13. The preliminary objection which has been raised by learned counsel for respondent No.4 is that a writ under Article 226 of the Constitution of India is not maintainable against a Company incorporated under the Companies Act. This Court first deems it fit to deal with the said issue.

14.It is well settled that a company registered under the Companies Act does not have any statutory duty or function to perform and it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest, though Article 226 of the Constitution of India provides that the Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc., or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose, but since the Company incorporated under the Companies Act does not perform any statutory duty or function, the

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order of transfer or grievance with regard to any other personal relief is essentially of a private character, and therefore, no such application can be maintained to secure performance of obligations owed by a company towards its employees or to resolve any private dispute. Therefore, the condition precedent for the issue of writ of mandamus is that there is one, claiming it a legal right to the performance of a legal duty by one, against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is however not necessary that the person or authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can be issued, for instance, to an official of a society to compel him to carry out the terms of the statute under which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities.

15. The respondents herein being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus nor was there in its employees any corresponding right for enforcement of any such statutory or public duty.

16. So far as the judgment cited by learned counsel for the petitioner in the matter of **M.P. State Tourism Development Corporation ltd. (supra)** is concerned, the same dealt with the issue with regard to payment of urban development and education cess by the M.P. State Tourism Development

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Corporation under the provisions of Madhya Pradesh Municipal Corporation Act, 1956 wherein the issue was altogether different and exemption from payment of the aforesaid tax was sought on the ground that land on which the building of the Corporation was situated was owned by the State Government, therefore, they are exempted from the property tax. Therein the status of M.P. State Tourism Development Corporation as a Company was not in question nor was considered. So far as reliance placed in the matter of **Mahesh Chandra Dixit (supra)** is concerned, this Court in the said matter had analyzed the age of superannuation of the employees of the Corporation under the bye-law 21 of the Company and since the said bye-law provides for implementation of the rules and regulations as framed by the State Government to the employees of the Corporation, in that context, it was held that the age of superannuation of the employees would be 62 years. In the aforesaid judgment also the question of maintainability of the writ petition under Article 226 of the Constitution of India for implementation of private rights was not under consideration. Therefore, the same is also not applicable in the present case.

17. Thus, this Court has no hesitation in holding that present petition for issuance of writ of mandamus against the respondents is not maintainable.

18. Accordingly, the petition fails and is hereby **dismissed** declining its admission. As the writ petition has been dismissed on the point of maintainability itself, the merits of the matter has not been gone into.

(MILIND RAMESH PHADKE)
JUDGE

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