

**A** STATE OF MADHYA PRADESH

v.

SHANKER LAL & ORS.

January 16, 1980

**B** [N. L. UNTWALIA AND O. CHINNAPPA REDDY, JJ.]

*Madhya Pradesh Municipalities Act, 1961, Section 94(7)—Scope of—State Government transferred teachers employed by Municipal Councils—Competency of.*

**C** The respondents were employed as lecturers and teachers in the various Municipal Higher Secondary Schools run and managed by a Municipal Council in the State. The State Government transferred certain lecturers and teachers serving under a particular Municipal Council to the Schools run and managed by another Municipal Council. The respondents writ petition challenging the order of their transfers was allowed by the High Court on the ground that no officer other than those mentioned in s. 94(7) namely Revenue Officer, Accounts Officer etc. could be transferred.

**D** In the State's appeal the respondents contended that they were employees of schools run and managed by Municipal Councils but not of the Councils.

**E** HELD : 1. The High Court was not right in putting a restricted interpretation on s. 94(7) of the Act. The other officers and servants who can be appointed by the Municipal Councils under sub-section (1) or sub-section (2) of Section 97 are also officers and servants mentioned in these sub-sections for the purposes of sub-section (7). Theoretically, therefore, the power does exist in the State Government to transfer them. [788 B-C]

**F** 2. The argument that the respondents are the employees of schools run and managed by the Municipal Councils but not of the councils themselves has no substance. Education department is one of the departments of a Municipal Council. Section 124 envisages the establishment and running of Higher Secondary Schools by Municipal Councils and therefore the lecturers and teachers appointed in the various schools are officers and servants of the Municipal Councils. [788 G-H, 789 A]

3. In case of employees getting small emoluments the power to transfer should be sparingly exercised under some compelling exigencies of a particular situation and not as a matter of routine. [788 C-D]

**G** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 537-539 of 1970.

Appeals by Special Leave from the Judgment and Order dated 20-8-1968 of the Madhya Pradesh High Court in Misc. Petition Nos. 282, 283 and 293 of 1968.

**H** S. K. Gambhir for the Appellant.

S. S. Khanduja for the Respondents.

The Judgment of the Court was delivered by

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UNTWALIA, J.—These three appeals by special leave are from the common judgment of the Madhya Pradesh High Court allowing the Writ Petitions filed by the six respondents and quashing the orders of their transfer made by the State Government in exercise of their power under s. 94(7) of the Madhya Pradesh Municipalities Act, 1961, hereinafter called the Act. The respondents were employees of the Municipal Council, Sagar. They were employed as lecturers and teachers in the various Municipal Higher Secondary Schools run and managed by the said Municipal Council. Three orders were issued by the State Government on various dates in June, 1968 transferring certain lecturers and teachers serving under a particular Municipal Council to the schools run and managed by another Municipal Council. The six respondents were transferred by the said orders to various places. They challenged the order of transfer in the High Court on the ground that the State Government had no power to transfer them under s. 94(7) of the Act. The High Court has accepted their contention and hence these appeals.

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We shall quote the relevant provisions of s. 94 of the Act as they stood at the relevant time from the judgment of the High Court. There have been some amendments in the year 1973 with which we are not concerned. They read as follows :—

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“94. Appointment of staff :—

(1) Every Council having an annual income of five lakhs of rupees or more shall, subject to rules framed under section 95, appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties.

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(2) Every Council not falling under sub-section (1) shall, subject to rules framed under section 95, appoint a Sanitary Inspector, an Overseer, a Revenue Inspector, and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties :

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.....  
 (7) The State Government may transfer any officer or servant of a council mentioned in sub-sections (1) & (2) and in receipt of total emoluments exceeding one hundred rupees to any other Council.”

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- A** The High Court has taken the view that the words "any officer or servant of a Council mentioned in sub-sections (1) and (2)" occurring in sub-s. (7) mean "any officer or servant as enumerated or specified in sub-ss. (1) and (2); that is to say, the officers who can be transferred under sub-s. (7) are only Revenue Officer, Accounts Officer, Sanitary Inspector and an Overseer, a Revenue Inspector or an Accountant. No other officer or servant can be transferred. We do not think that the High Court is right in putting this restricted interpretation to sub-s. (7) of s. 94. Other officers and servants who can be appointed by the Municipal Councils either under sub-s. (1) or under sub-s. (2) are also the officers and servants mentioned in these sub-sections for the purposes of sub-s. (7). Theoretically, therefore, the power does exist in the State Government to transfer them. We must, however, hasten to add that in case of employees getting small emoluments the power seems to be meant to be sparingly exercised under some compelling exigencies of a particular situation and not as a matter of routine. If it were to be liberally exercised, it will create tremendous problems and difficulties in the way of Municipal employees getting small salaries. There may be hardly an employee serving under any Municipal Council who cannot be theoretically and literally covered by sub-ss. (1) and (2) and subjected to the exercise of power of transfer under sub-s. (7).
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- E** The High Court in support of its view has referred to sub-s. (4) of s. 94 wherein only the officers enumerated in sub-ss. (1) and (2) are specified. Obviously the said sub-section does not cover the cases of other officers and servants as mentioned in sub-ss. (1) and (2). The language of sub-sec. (7) is in contrast to that of sub-s. (4) and, instead of lending support to the view of the High Court, goes against it.
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- G** It was argued for the respondents that they are employees of the Schools run and managed by the Municipal Councils but not of the Councils themselves. We do not think that this argument has got any substance. Education department is one of the departments of a Municipal Council. Duties of the Council are enumerated in sub-s. (1) of s. 123, clause (v) which provides for "establishing and maintaining primary schools". Under s. 124 "a Council may, at its discretion, provide, either wholly or partly out of the Municipal property and fund, for all or any of the following matters, namely (c) furthering educational objects." Thus establishment and running of Higher Secondary Schools by Municipal Councils are envisaged under the Act and the lecturers and teachers appointed in the various schools
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are undoubtedly the officers and servants of the Municipal Councils. **A**

For the reasons stated above we hold that the State Government had the power to transfer the respondents. But it is not clear why the power was exercised in the case of the respondents. In any event, learned counsel for the appellant assured us that the State is more anxious for the correct interpretation of the law engrafted in section 94(7) of the Act than to enforce the order of transfer against the respondents. **B** In the result while clarifying the position of law, we dismiss the appeals but make no order as to costs.

N.K.A.

*Appeals dismissed.*