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**(2013) 09 MP CK 0142**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 8977 of 2012**

Aysha Naz

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 03-09-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 09 MP CK 0142

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** Arun Dudawat, for the Appellant; Nidhi Patankar, Govt. Advocate for Respondents No. 1, 2 and 3, Shri D.P. Singh, Advocate for Respondent No. 4 and Shri Sanjay Bahirani, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution the petitioner has challenged the order Annexure P/6 dated 05.12.2012 and consequential order Annexure P/7 of the same date. Shri Arun Dudawat, learned counsel for the petitioner submits that he is not pressing his relief against the order dated 29.09.2012 (Annexure P/2). At this stage, Shri Sanjay Bahirani submits that if Annexure P/2 is not challenged he has no grievance.

2. The main grievance of the petitioner is that by order Annexure P/2 dated 29.09.2012 she was transferred after recommendation of General Administration Standing Committee of Zila Panchayat. She executed this order and thereafter by Annexure P/6 the order Annexure P/2 is modified. By taking this Court to Annexure P/6, it is contended that the approval of General Administration Standing Committee is not obtained and order is modified at the instance and on the dictate of President of Zila Panchayat, Shivpuri. Shri Dudawat submits that same is bad in law. He relied on the judgment of Division Bench in WA No. 671/2012 (Gram Panchayat, Jhadel Vs. State of M.P. & Ors.).

3. Per Contra, Shri D.P. Singh, Advocate and Smt. Nidhi Patankar, Govt. Advocate supported the impugned order. Shri D.P. Singh submits that infact the order Annexure P/2 was not executed. He submits that as per the judgment of Supreme Court reported in State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc., it is held that executed order can also be cancelled by Administration. In this regard, he also relied on WP No. 398/2002 (Ram Prakash Singh Jadon Vs. State of M.P. and others).

4. I have heard learned counsel for the parties and perused the record.

5. In the considered opinion of this Court, the basic question is whether the cancellation/modification of transfer order by Annexure P/6 dated 05.12.2012 is in accordance with law? In my opinion, for determination of this question it is not much relevant whether petitioner has actually executed this order or not. It is apt to quote the following portion from the Division Bench's order in Gram Panchayat, Jhadel (supra) which reads as under:-

Rule 6(7) of the Rules of 2011 prescribes transfer of Gram Panchayat Secretary within the District. The aforesaid rule is as under:-

(7) The Gram Panchayat Secretary may be transferred on administrative ground or on the basis of his application within the district in accordance with transfer policy issued by the Commissioner Panchayat Raj. The Gram Panchayat Secretary may be transferred, if necessary, after proper enquiry of the complaints on the recommendation of the Chief Executive Officer, Janpad Panchayat.

From the aforesaid rule, it is clear that the Gram Panchayat Secretary can be transferred within the District in accordance with transfer policy issued by the Commissioner, Panchayat Raj. As per the transfer policy it is mandatory to receive approval from the General Administration Committee of District Panchayat in the event of transfer of Panchayat Secretary. There is no provision that General Administration Committee can delegate this power to any other person.

Hence, in our opinion, the order of transfer passed by respondent No. 2 in regard to posting of respondent No. 3 in the appellant - Gram Panchayat is contrary to law.

6. In the light of aforesaid judgment and finding by Division Bench, it is clear that the policy made under Rule 6(7) of 2011 Rules is binding and is mandatory in nature. Receiving approval from General Administration Standing Committee is a mandatory requirement. Thus, in my opinion, it may be open for the Administration to modify or cancel an executed transfer order or the transfer order which has already been issued, but for issuance of such order the authority has to follow the same procedure. In other words, as per the Rules read with policy it is mandatory to obtain approval from General Administration Standing Committee for issuance of transfer order or to cancel or modify that order.

7. In the opinion of this Court, for modification of transfer order the same

procedure has to be followed otherwise the basic provision, safeguard and mandate of the Rules can be made redundant by any other party by adopting the process to modify or cancel the order already issued. Thus, in my opinion, in the peculiar facts and circumstances, Ram Prakash Singh Jadon (supra) and judgment of Ashok Kumar Saxena (supra) can be pressed into service. In the facts and circumstances of those cases, it was held that executed transfer order can be cancelled, but said judgments are not authority on the point as to what should be the procedure for cancellation or modification of transfer order. This point is directly covered by the judgment of Division Bench in Gram Panchayat, Jhadel (supra). Resultantly, I have no hesitation to hold that Annexure P/6 and P/7 which are passed without following the requirement of the policy and without obtaining the approval of General Administration Committee is bad in law.

8. Resultantly, Annexure P/6 and P/7 are set aside. It is made clear that it is open for the respondents to pass appropriate order in accordance with law. Petition is allowed. No costs.