
(2010) 09 MP CK 0064
In the Madhya Pradesh High Court
Case No : W.A. No. 971 of 2010

Bhagwati Singh Verma

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Citation : (2010) ILR (MP) 2466 : (2011) 3 MPHT 479

Hon'ble Judges : S.R. Alam, C.J;Alok Aradhe, J

Bench : Division Bench

Judgement

Alok Aradhe, J.—Heard on the question of admission.

2. This intra-Court appeal arises from the order dated 15.9.2010 passed by learned Single Judge in W.P. No. 12497/2010 by which writ petition preferred by the Appellant has been dismissed.

3. Facts giving rise to filing of the instant writ appeal briefly stated are that Appellant is posted as Patwari in Halka No. 16, Tahsil Udaipura, District Raisen. Vide order dated 15.6.2010, Appellant has been transferred to Begumganj in the same district. Appellant challenged the order of his transfer on the ground that if the Appellant is required to carry out the order of transfer, he would suffer personal inconvenience. Learned Single Judge vide order dated 15.9.2010 dismissed the writ petition preferred by the Appellant and held that order of transfer was not passed in violation of any Rule or Regulation, therefore, no interference is called for.

4. Learned Counsel for the Appellant submitted that from perusal of the impugned order, it is evident that Appellant has been shown to be transferred at his request. However, it was asserted that Appellant has never made request for his transfer. It was further contended that impugned order of transfer has been passed malafide by the Collector.

5. We have considered the submissions made by the learned Counsel for the

Appellant.

6. It is well settled in law that transfer is an incidence of service. Appellant admittedly holds a transferable post. Which employee should be posted where is a matter for the appropriate authority to decide. Until and unless the transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere with the order of transfer. See: Union of India and Others Vs. S.L. Abbas, . Similarly, in Public Services Tribunal Bar Association Vs. State of U.P. and Another, , once again dealing with the scope of judicial review in the matter of transfer, Supreme Court reiterated that transfer is an incidence of service and normally should not be interfered with by the Court.

7. In case in hand, though the order of transfer has been challenged on the ground of malafides yet. the Appellant has not chosen to implead the Collector by name against whom allegations of malafides have been made. Apart from this, there is no pleading with regard to the malafides. It is trite law that a person against whom allegations of malafides are made, has to be personally impleaded and plea of malafides has to be properly pleaded and proved. See: Purushottam Kumar Jha Vs. State of Jharkhand and Others, Burden of establishing malafides is very heavy on the person who alleges it. See: Indian Railway Construction Co. Ltd. Vs. Ajay Kumar,

8. In the facts and circumstances of the case, we deem it appropriate to dispose of the instant writ petition with a direction that if the Appellant submits a representation to the Collector for cancellation of his order of transfer, the Collector shall consider and decide the representation submitted by the Appellant within a period of 10 days from filing of such representation.

9. With the aforesaid direction, the writ appeal stands disposed of.

C.C. as per rules.