
(2012) 12 MP CK 0091
In the Madhya Pradesh High Court
Case No : W. P. NO: 17062 of 2011

Dr. Anand Govind Vinchurkar

APPELLANT

Vs

State of MP and others

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 201, 304A

Citation : (2012) 12 MP CK 0091

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : R.P. Agrawal, with Mr. Sanjay Agrawal, for the Appellant; B.P. Pandey, Deputy Government Advocate, for respondents 1 and 2 and Shri Ajay S. Raizada, for the Respondent

Judgement

Rajendra Menon, Judge

1. Challenging the order-dated 9.9.2011-Annexure P/5 passed by the Commissioner, Department of Public Health and Family Welfare, Government of MP, giving charge of Civil Surgeon of District Hospital, Panna to respondent No. 4 Dr. Rajesh Shrivastava; and, challenging the order-dated 3.5.2010, by which petitioner has been transferred from District Panna to Bitarwar, in District Gwalior, petitioner has filed this writ petition. Petitioner is working as a Specialist Medical Officer (Anaesthetist) in District Hospital Panna. Vide order-dated 3.5.2010 Annexure P/1, he was transferred from Panna to Community Health Centre Bitarwar, District Gwalior. However, as there was only one Specialist (Anaesthetist) in District Hospital at Panna, it is seen that the Collector requested for permitting the petitioner to work at Panna and, therefore, petitioner was not relieved and he was continued at Panna and for more than one year upto 9.9.2011, the order of transfer dated 3.5.2010-Annexure P/1, was not given effect to. However, while the petitioner was so working as the charge of Civil Surgeon of the Hospital is given to respondent No. 4 vide order-dated 9.9.2011-Annexure P/5, petitioner filed this writ petition. Stay was granted by this Court

on 12.10.2011, as a result petitioner continued in Panna.

2. Challenge to the order of transfer and the order giving charge of Civil Surgeon to respondent No. 4 is made in this writ petition and it is pointed out that the order of transfer has been stayed by the Collector and as the order has not been given effect to for more than one year, it could not be now enforced particularly when no person has been posted in place of the petitioner and the post of Specialist is still lying vacant.

3. As far as the second order-dated 9.9.2011, granting the charge of Civil Surgeon to respondent No. 4 is concerned, it is pointed out that in accordance to a Circular, issued by the State Government on 13.11.1981, it is clearly stipulated that only a senior person should be made Incharge or given additional charge and a junior person cannot be granted the charge of Civil Surgeon when a senior incumbent is available. It is stated that in the Gradation List, for the post in question, petitioner's name appears at Serial No. 494 and that of respondent No. 4 at Serial No. 597, and as the petitioner is senior to respondent No. 4, it is submitted that giving him the charge of Civil Surgeon is contrary to the Circular dated 13.11.1981 and, therefore, the said action is illegal.

4. Accordingly, Shri R.P. Agrawal, learned Senior Advocate, submitted that the action of the respondents in transferring the petitioner and giving the charge to a junior person-respondent No. 4, ignoring the mandate of the circular dated 13.11.1981 is unsustainable. Learned Senior Advocate further points out that taking note of these factors, this writ petition was allowed on 28.2.2011, but on a review application filed by respondent No. 4 being R.P. No. 231/2012 vide order-dated 16.5.2011, the petition has been restored to its file.

5. Learned Senior Advocate submits that the review was allowed by this Court only because the Circular dated 13.11.1981 was modified by another Circular dated 13.12.2003, wherein it was indicated that if against the senior person a criminal case is registered, he cannot be given charge. It is pointed out that even though at the relevant time when the impugned action was taken a criminal case was pending against the petitioner, but now no case is pending, the First Information Report on the basis of which the said criminal case was registered has been quashed by this Court vide order-dated 18.9.2012 passed in M.Cr.C. No. 10289/2007, in a proceeding u/s 482 CrPC and, therefore, the disqualification from holding the charge is also not available as on date. Accordingly, Learned Senior Advocate submits that now the petitioner cannot be denied grant of charge of Civil Surgeon and the petition be allowed.

6. Shri B.P. Pandey, learned counsel for the State, refuted the aforesaid and submitted that the petitioner had continued in District Panna for more than 10 years and, therefore, he was ordered to be transferred, but as the Collector initially expressed certain difficulties in relieving the petitioner, the petitioner was permitted and as of now the situation has changed, it is stated that in the absence of any statutory rule being shown to be violated in transferring the

petitioner, the transfer be upheld and action be taken.

7. That apart, as far as grant of charge of Civil Surgeon to the petitioner is concerned, learned counsel for the State submits that when the impugned action was taken in September, 2011, the petitioner was facing a criminal case for offence u/s 304A read with section 201 of the Indian Penal Code and, therefore, in view of the circular dated 13.12.2003, he was not given the charge and in doing so, at the relevant time the State Government has not committed any error.

8. Shri A.S. Raizada, learned counsel for respondent No. 4, also submitted on similar lines and argued that no relief can be granted to the petitioner now.

9. I have heard learned counsel for the parties and perused the records.

10. Two questions warrant consideration in this writ petition. The first question is with regard to transfer of the petitioner from Panna to Bitarwar, in District Gwalior, which was ordered more than 21/2 years back on 3.5.2010 and for about a year at the instance of the Collector the impugned transfer was not given effect to and thereafter now another 11/2 years have passed, as a result for a period of more than 21/2 years the transfer of the petitioner from Panna to Bitarwar in District Gwalior has not been given effect to. Now, during this period of 21/2 years, the entire administrative requirement and other considerations would have changed and, therefore, it is not proper for implement the order of transfer dated 3.5.2010, which was passed more than 21/2 years back.

11. Instead, the State Government is granted liberty to take fresh action in the matter of transfer after evaluating the current administrative requirement and other factors. Therefore, directing the State Government not to implement the order-dated 3.5.2010, the same is quashed and liberty is granted to the competent authority to pass fresh orders in case administrative requirement warrants transfer of the petitioner.

12. That apart, in the matter of giving charge of Civil Surgeon to the petitioner, now action be taken strictly in accordance to the requirement of the policy applicable, as per the administrative requirement, and charge be given to the most suitable person, who is to discharge the duties of Civil Surgeon.

13. With the aforesaid liberty to the State Government, for the present finding no necessity to issue any directions, this writ petition stands disposed of. Certified copy as per rules.