
(2019) 07 MP CK 0095

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12791 Of 2019

Dr. Balbeer Singh Makkad

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 MP CK 0095

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : L.C. Patne, P.S. Kushwaha

Final Decision : Allowed

Judgement

Heard.

The petitioner has filed the present petition under Article 226 of the Constitution of India, challenging the orders dated 7.3.2019 passed by the

respondent No.1 as well as the order dated 29.5.2019 and 29.6.2019 passed by the respondent No.4 and respondent No.1 respectively.

The petitioner is working on the post of Professor in the Government Degree College, Sanwer, District-Indore. By order dated 7.3.2019, issued by the

respondent No.1, the petitioner has been transferred from Government Degree College, Sanwer, Indore to Government College, Meghnagar, District-

Jhabua on administrative ground. The said transfer order has been challenged by the petitioner on the ground that the same is contrary to the transfer

policy dated 19.5.2017 as well as the standing instructions issued by the State Government of M.P. from time to time, as the petitioner being an office

bearer of a Government recognized employees' Association viz., M.P. Prantiya Shaskiya Mahavidyalayain Pradhyapak Sangh is immune from routine

administrative transfer for 2 terms in his entire service tenure. It is further submits that the petitioner has joined at his present place of posting only on

3.10.2018 and within a period of seven months, he has again been transferred. Thereafter, a relieving order has been passed by the respondent No.4

on 29.5.2019. Against the said transfer order, the petitioner has preferred Writ Petition No.5522/2019 before this Court. The said writ petition was

disposed of, with a direction to the respondents to consider the representation submitted by the petitioner. In compliance of the order passed by this

Court, the respondent No.1 has passed an order dated 29.6.2019 and rejected the representation submitted by the petitioner. Being aggrieved with the

said order, the petitioner has filed the present petition.

Learned counsel for the petitioner argues that, the impugned order rejecting the representation of the petitioner passed by the respondent No.1 is

illegal, arbitrary and without jurisdiction. He submits that the petitioner is Vice President of a Government recognized employees' Association viz.,

M.P. Prantiya Shaskiya Mahavidyalayain Pradhyapak Sangh and he has not been afforded the immunity available to an office bearer of the

Association in terms of the standing instructions issued by the State Government from time to time. He further submits that, the petitioner is a Class-1

Officer and as per Circular dated 29.10.2005 issued by the State Government, the representation against the order transfer has to be decided by Chief

Secretary with the approval of the Chief Minister. He submits that, in the present case, the representation has been decided by the respondent No.1,

who has no authority to decide the representation of the petitioner. He relied on the judgment passed by the Single Bench of this Court at Main Seat

Jabalpur in the W.P. No.17176/2015 [Dr.Mamta Ekka vs. State of M.P.] decided on 2.5.2016. He further relied on the judgment passed by the

Division Bench of the Main Seat at Jabalpur in Writ Appeal No.894/2015 [Dr. Bhagwan Singh Jadhav vs. Higher Education Department] decided on

27.11.2015. In such circumstances, learned counsel prays that, the present petition be allowed and the impugned orders deserve to be set aside.

From perusal of the record, it appears that, the presentation submitted by the petitioner is rejected by the respondent No.1 and the petitioner being a

Class-I Officer, and therefore, as per Circular dated 29.10.2005 issued by the State Government, the representation has to be decided by the Chief

Secretary. In the instant case, the impugned orders have been passed by the respondent Nos.1 and 3.

In the case of Dr. Bhagwan Singh Jadhav (supra) the Division Bench of this Court has observed as under:-

“Keeping in view the aforesaid, we allow the writ appeal in part. The order passed by the writ Court is set aside. We also set aside the order

passed by the Commissioner, Higher Education dated 31.10.2015 and relegate the matter back to the competent authority of the State to decide the

representation of the appellant/petitioner in terms of the directions issued by the writ Court in W.P. No. 9312/2015, decided on 30.6.2015. The

competent authority of the State will decide the representation of the appellant/petitioner without being influenced by the order passed by the

Commissioner, Higher Education or by the writ Court expeditiously, preferably within a period of six weeks from the date of receipt of the

representation. Since the appellant/petitioner was granted interim protection by this Court on earlier occasion, the same interim protection shall remain

in operation. Since it is stated that the appellant/petitioner is said to have been relieved from the post, he be permitted to join back on the post from

which place he was transferred and he be allowed to continue on the said post till his representation is decided by the competent authority.”

Thus, considering the Circular issued by the State Government as well as the judgment passed by the Division Bench of this Court in the case of Dr.

Bhagwan Singh Jadhav (supra), the present petition is allowed and the impugned relieving order dated 29.5.2019 passed by the respondent No.4 and

the impugned rejection order of representation dated 29.6.2019 passed by the respondent No.1 are hereby quashed. The respondents are directed that,

the petitioner be permitted to join back on the post from which he was transferred and he be allowed to continue on the said post till his representation

is decided by the competent authority.

Certified copy, as per rules.