
(2019) 03 MP CK 0155
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 527 Of 2019

Dr. Bhagwan Singh Jadhav	Vs	APPELLANT
Higher Education Department		RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 MP CK 0155

Hon'ble Judges : S.C.Sharma, J;Virender Singh, J

Bench : Division Bench

Advocate : L.C. Patne, A.Tugnawat

Final Decision : Dismissed

Judgement

The appellant before this Court, who has completed more than 10 years at the present place of posting as informed by Shri L.C.Patne, learned counsel arguing the matter, is raising all kind of hue and cry on account of his transfer after continuation for more than 10 years at Dewas.

It has been stated that the learned single Judge has not considered the transfer policy and has dismissed the writ petition. It has been further argued that the appellant is an office bearer of some Union and therefore, enjoys immunity against transfer.

The learned single Judge by dismissing W.P.No.5523/2019 on 20.3.2019 has held as under:-

"The issue if the order of transfer can be interfered with on the ground that the employee concerned is the office bearer of the association has been decided against the petitioner by the Gwalior Bench in the matter of Prem Narayan Raipuriya Vs. State of MP in WP No.22614/2018 vide order dated 1/10/2018 by holding as under:-

"4.2 As regards immunity from transfer because petitioner is an office bearer of employee's union, the same need not detain this court for long as this issue has

been decided by the earlier decision of this court in the case Laxmi Narayan Gupta Vs. The State Of Madhya

Pradesh [W.P.No. 6188/2014 (s)] decided on 29 April, 2015 by holding that no justiciable right to successfully assail the order of transfer is available to office bearer of the employees Union. Relevant paras of the said decision are reproduced below:-

"The submission of the petitioner of being office bearer and therefore, immune from transfer is of no avail. The said protection undoubtedly arises out of transfer policy which has been held to be not justiciable.

The decision of the Apex Court in the case of Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors. reported in (2004) 12 SCC 299 is worthy of reference whose relevant paragraph is reproduced herein below :-

4. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any prescribed norms of principles governing the transfer (see *Ambani Kanta Ray vs. State of Orissa*, 1995 (Suppl) 4 SCC 169). Unless the order of transfer is visited by malafide or is made in violation of operative guidelines, the Court cannot interfere with it. (see *Union of India vs. S.L. Abbas* (1993) 4 SCC 357. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India & Ors. Janardan Debanath & Anr. ;2004 (4) SCC 245* it was observed as follows:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan* (2001) 8 SCC 574"

4.3 The ratio laid down by the Apex Court in the case of *S.L. Abbas* (supra) has been subsequently followed in the cases of *Major General J.K.Bansal v. Union of India* reported in (2005) 7 SCC 227; *Mohd. Masood Ahmad Vs. State of M.P.* reported in (2007) 8 SCC 150 & *Syndicate Bank v. Ramchandran Pillai* reported in (2011) 15 SCC.

4.4 Subsequently in the case of Dr. Pramod Kumar Sirothia Vs. State of M.P. in Writ Petition No. 4173/2015 (s), decided on 8/7/2015 facing with the same fact situation has held as under:-

"As regards the ground of immunity for office bearer is concerned, this Court has already held that the same is not available to him in view of the fact that an office bearer being a leader should lead by example and not hide behind the members of the Association when he is faced with an order of transfer. Moreover, the immunity is based on the principles that the right to form and pursue an association is not breached,. In the present age of scientific development, where fast means of communication are available, the personal presence of an office bearer at the headquarter is not necessary. He can easily exercise the duties of office bearer even from a place away from the headquarter of the association. Thus, the said ground is of no avail to the petitioner."

4.5 It is settled principle of law in service jurisprudence that the policy of transfer is a mere guideline for the purpose of assisting employer to ensure proper and smooth administration and therefore does not give justiciable right even if a case of violation of any of the provision of the policy is made out.

5. In view of above, in the absence of any ground this court declines interference and grants liberty to the petitioner to pursue his representation before the competent authority.

No cost."

Similar ground has been rejected by the Principal seat while dismissing the WP No.17093/2016 by order dated 4/4/2018 by holding as under:-

"5. This is trite law that action of transfer is basically a managerial function. Transfer order can be interfered with if it runs contrary to any statutory provision (not policy guidelines), proved to be malafide, changes service condition of an employee to his detriment or passed by incompetent authority. The employer is the best judge to decide which employee should be transferred and whose services are suitable at a particular place. This court cannot sit and decide whether respondent No.3 should have been transferred prior to the petition er. Moreso when there exists no such rule which make it obligatory for the employer to transfer the employees on the basis of station wise seniority. The question whether the petitioner has any enforceable right to remain posted at the same place of posting being an office bearer was finally decided by this Court in WP.No.12231/17 (Ramesh Kumar Soni Vs. State of M.P) decided on 17.8.2017. In the said case, this Court opined as under :-

"A plain reading of transfer policy shows that normally immunity is granted from transfer to the office bearer so that they can pursue their association activities while remain posted at a place for which they are elected as office bearer. The petitioner is admittedly an office bearer of district level and he is transferred within the district. Therefore, by no stretch of imagination, his transfer will

adversely affect his association activities. It will not deprive the petitioner to act as treasurer. Thus, the first ground is rejected being devoid of substance. Even otherwise Clause 8.19 of the Policy dated 19.05.2017 shows that it is directory in nature. The immunity from transfer is given to the office bearers "ordinarily". No enforceable right is created by clause 8.19 to remain posted at the same place. The administrative exigency and job requirement of the department must be given preference over association activities. The government employee must realize that he is appointed to perform the duties of his post and not to act as office bearer of an association. For this reason also, the said clause of policy is of no assistance to the petitioner. "

(Emphasis supplied)

6. In the light of aforesaid, I find no substance in this petition. Petition fails and is hereby dismissed."

Having regard to the aforesaid orders, the petitioner is not entitled to the benefit of the order dated 24/6/2015 passed in WP No.3983/2015 and WP No.3984/2015 and the order dated 11/6/2015 passed in WP No.3557/2015 because the issue involved herein has not been decided in these orders.

Having regard to the aforesaid, I am of the opinion that no case for interference in the impugned order of transfer is made out.

The writ petition is accordingly dismissed."

In the considered opinion of this Court, the appellant has completed 10 years was rightly transferred by order dated 7.3.2019. The appellant cannot claim lease hold rights over a particular post in a particular District.

The petitioner has not been transferred to Sia-chin or to some remote places at Adaman and Nicobar. He has been transferred to Raisen which is approximately at about 200 Kms.

There is growing tendency amongst the employees of the State Government to stick to a particular place and they find out all kinds of loopholes in a transfer to continue for their entire service career at one place. This case is one such example, a person does not want to leave Dewas, in spite of the fact that he is holding a transferable post and he can be transferred anywhere in the State of Madhya Pradesh, such type of behaviour of Government servant, deserves to be deprecated.

This Court does not find any reason to interfere with the transfer order nor with the order passed by the learned Single Judge, the admission is declined.

The writ appeal stands dismissed.