
(2012) 08 MP CK 0137

In the Madhya Pradesh High Court

Case No : Writ Petition No. 884 of 2012 (S)

Girish Sharma

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2012) 08 MP CK 0137

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Vipin Yadav, for the Appellant; Prashant Singh, Learned Additional General, for the Respondent

Judgement

Hon''ble Shri. Justice Rajendra Menon

1. The petitioner, who is working as Joint Collector in Sehore has filed this writ petition challenging the order Annexure P-9 dated 09-01-2012, by which the petitioner has been transferred from Sehore to Chhatarpur. Challenge to the order of transfer is made mainly on 3 counts. First ground is that the petitioner has been transferred on about 11 occasions during his service of about 11 years and therefore, the transfer amounts to frequent transfer. Second ground canvassed is that the petitioner in his capacity as Joint Collector of Sehore had taken steps for curbing the illegal mining activities in the district. He has registered various cases with regard to illegal mining and use of explosive unauthorizedly in the district by the Mining Mafia and it is because of this action of the petitioner that on political consideration, he is transferred. The third ground canvassed is that a note sheet has been prepared by the Minister concerned with regard to the aforesaid activities and on the basis of this note sheet, the petitioner has been transferred. Shri Vipin Yadav, learned counsel for the petitioner submitted that the petitioner was appointed as Deputy Collector on 01-07-1996 and between the year 2001 to the year 2011 on more than 11 occasions the petitioner has been transferred from one place to another and in para 5.3 of the writ petition, particulars of transfers effected have been detailed.

It is therefore, contended that the petitioner is transferred intermittently on various occasions without any justification and therefore, the challenge is made on the ground of frequent transfer.

2. As far as the political consideration or the malafides for transferring the petitioner is concerned, even though no specific allegation against any individual is indicated but Shri Vipin Yadav, learned counsel for the petitioner invites my attention to the papers publication filed collectively as Annexure P-8 highlighting the action taken by the district administration in stopping the mining illegalities in the district of Sehore and some of the statements given by the petitioner to the Media to canvass his contention that as the petitioner was instrumental in taking these action, he is being punished by transferring him on extraneous consideration, political in nature. It is stated that the petitioner has registered more than 60 cases for illegal mining and similar cases under the Explosive Act and therefore, the action is taken. Accordingly, it is contended that the transfer is on such illegal consideration. Finally it was argued that according to the information of the petitioner on these grounds, a note sheet was prepared by the Revenue Minister and it is on the basis of this note sheet by the Revenue Minister that transfer has been effected. Shri Yadav, learned counsel for the petitioner argued that even though petitioner had moved an application under Right to Information Act to get this note sheet but the same has not been supplied to him, accordingly contending that the transfer is illegal and on the aforesaid reasons and grounds interference is called for.

3. Shri Prashant Singh, learned Additional Advocate General for the respondents has refuted each and every contentions and submits that the transfer is on administrative consideration, there is no malafide. The allegations of malafide are made in a vague and unspecified manner only to make a ground for challenging the transfer order. On similar grounds the petitioner was transferred on 24-09-2011 and he challenged the said transfer on 17-10-2011. In the said petition also, petitioner had alleged grounds of malafide and frequent transfer and submitted that the petitioner is being transferred on political consideration. Shri Prashant Singh, submits that initially in the said writ petition stay was granted by this court on 19-10-2011, as a result this transfer order was not given effect to and finally this petition, W.P. No. 17720/2011(S) was disposed on 13-12-2011, quashing the earlier order dated 24-09-2011 and granting liberty to the State Government to take action on administrative consideration and as the present action is taken on administrative consideration after the earlier writ petition was disposed of, Shri Prashant Singh submits that now the grounds of frequent transfer and malafides are not available to the petitioner, By producing original file pertaining to the transfer of the petitioner, Shri Prashant Singh has tried to demonstrate before this court that the transfer is on administrative consideration and the allegations of malafides are not established. That apart Shri Prashant Singh, submitted that the petitioner is a Senior Officer was under the administrative control of the Collector, the head of the Mining Department and Police Administration were involved in the action, the illegal mining activities

in the district was tried to be stopped in a collective manner by all these authorities and the petitioner alone is not the person who has taken this action. Referring to some of the news items filed by the petitioner, Shri Prashant Singh tried to emphasize that these reports do not reflect the correct position and therefore, the contentions of the petitioner cannot be accepted.

4. I have heard the learned counsel for the parties and perused the record. From the records, it is clear that the transfer in question is not challenged on any statutory rules or regulations being violated nor any breach of the terms and conditions of the contract of service is breached.

5. As far as ground of frequent transfer and extraneous consideration in the matter is concerned, records indicate that when the petitioner was transferred on 24-09-2011, he approached this court in W.P. No. 17720/2011(S) and in the said writ petition also same grounds were urged. Even the documents filed in the said writ petition from Annexures P-2 to Annexure.P-5 are the same documents which are filed in this writ petition. Earlier petition was allowed and the order of transfer was quashed and liberty was granted to the respondents to proceed afresh in the matter on due administrative consideration, then now again on the same grounds of frequent transfer and the malafides, interference into the matter is not called for. Now this court is only required to consider as to whether while transferring the petitioner on 24-09-2011 the ground of malafides as attributed is made out or not. It is seen from the record that initially one Shri Mumtak Khan was Incharge of the Mining Section in the district headquarters and due to certain negligence in the discharging of his duties with regard to submitting papers for question raised in the Vidhan Sabha, the Collector on 27-11-2011 passed an order Annexure P-8 giving charge of Mining Department to the present petitioner. It is therefore, clear that prior to 27-11-2011 the petitioner was not Incharge of Mining Department and it is only after 27-11-2011 that he can claim existence of malafides in transferring him due to his efforts to curb illegal mining, but even before 27-11-2011 the petitioner was already transferred on 24-09-2011, this transfer was challenged by him in the earlier writ petition. As far as allegations of malafides in transferring the petitioner are concerned, the petitioner has not submitted any particulars with regard to the malafides of any particular person or particular group of persons who are against him. In this writ petition and the rejoinder only vague allegations are made with regard to petitioner trying to curb illegal mining activities and the only some specific averments are made with regard to filing of certain cases under the Mines Act for illegal mining or the Explosive Act. That apart the only material is the paper cuttings collectively filed Annexure P-8. Even if Annexure P-8 is perused, it would be seen that it is a joint efforts of various departments, which had taken place in the district for curbing the illegal mining activities, the Collector, Pollution Department and the Police Department etc. have collectively participated in the process and merely because the Media had taken the statements of the petitioner in this respect, the petitioner cannot claim that fight against illegal mining activities was undertaken by the petitioner alone. On the contrary if the

paper cutting are scrutinized, it would be seen that reference in these paper cuttings are made to the efforts of the SDM Shri Gadhwal, Police Authorities and various other revenue officers alongwith the petitioner. Even the Collector has given various statements with regard to the action taken for curbing the illegal mining activities. That being so Shri Prashant Singh is right in contending that the petitioner alone is not the person responsible for stopping the illegal mining activities but it is the collective efforts of various administrative authorities of the district. Therefore, there seems to be some substance in this contention of Shri Prashant Singh. The petitioner may have been a members of the team of officers who are part of the group which initiated the action.

6. It is in the backdrop of these facts that the question of malafide is to be considered. Before taking note of the original transfer file in this regard, it would be proper to see that as to what is malice or malafide and what are the ingredients necessary to prove a malafide action. Malafide or the malice means ill-will, spite, disposition to injure others. It has different meanings and according to Black's Law Dictionary " malice is an intentional doing of a wrongful act without jut case or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent". There should be cogent factual support to establish the allegation of malafide as held by the Supreme Court in the case of Parbodh Sagar Vs. Punjab State Electricity Board and Others, . Mere vague statement with regard to malafides cannot be a ground for interfering into a matter by this court. The question of malafides in issuing an order of transfer and the legal principles to be considered is dealt by this court in the case of Pareekshit Singh(DR) Vs. State of M.P. and others, ILR (2008) M.P. 2849 and in para-25 the matter has been dealt with in the following manner:

25.....(12) THE legal meaning of malice is "ill-will" or spite towards a party and any indirect or improper motive in taking an action." This is sometimes described as "malice in fact". " Legal malice" or "malice in law" means "something done without lawful excuse". In other words, " it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite". It is a deliberate act in disregard of the rights of others.. (See words and Phrases legally defined in Third Edition. London Butterworths 1989).

(13) WHERE malice is attributed to the State, it can never be a ease of personal ill-will or spite on the part of the State. It at all, it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in its authoritative work on Administrative Law (Eighth Edition at page 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seek to "acquire land" " for a purpose not authorized by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other".

If the case in hands and the averments made by the petitioner in this writ petition are scrutinized in the backdrop of the aforesaid principles, it would be

seen that the material adduced by the petitioner in the writ petition are not sufficient enough to substantiate the contentions of the petitioner. The petitioner says that a note sheet was prepared by the Revenue Minister and therefore on the basis of this note sheet, impugned action is taken, which is malafide. However, the said note sheet is not available on record and in the original file of transfer produced by Shri Prashant Singh, learned Additional Advocate General, there is no such note sheet available written by the Revenue Minister. Even the petitioner does not show as to when he filed application under Right to Information Act, to whom the application was filed and who refused the information to him. Even the copy of the application submitted under the Right to Information Act and other material are not available. That being so, it is a case where the allegations of malafides are made in a very vague and unspecified manner without there being any supporting material or evidence to establish the allegation. That apart if the original files are scrutinized, it would be seen that after the earlier writ petition was decided by this court on 13-12-2011, the matter went to the department and the transfer file produced by the department shows that for the first time, a proposal was made by the department on 16-09-2011 for transferring the various officers in this case. The petitioner was proposed to be transferred from Sehore to Bhopal, thereafter the petitioner's posting was changed and the matter came to this court in the earlier round of litigation as already indicated hereinabove. When the earlier order was passed, the charge of Mining Department was not with the department, however this court on 13-12-2011 disposed of the earlier writ petition and when this order was placed before the competent authority on 02-01-2012, a note sheet was prepared by the competent authority namely Additional Secretary of the Department indicating that the earlier writ petition has been decided on 13-12-2011 and now administrative action can be taken for transferring the petitioner. It was indicated that there are shortage of Additional Collector in 9 places as indicated in the note sheet and therefore, administratively process can be initiated for transferring the petitioner to any of these places. The Note sheet went to the Secretary of the Department who found that in district Sehore against 9 sanctioned posts, 10 persons are working and as one person is in excess the petitioner can be transferred on administrative consideration. Now as the writ petition was disposed of, accordingly the Additional Secretary of the Department recommended for transfer of the petitioner. In the case of transfer of the petitioner the file thereafter placed before the Secretary (Personnel) in Govt. of M.P. and on 03-01-12 the Secretary stated that now in the light of the liberty granted by the High Court on 13-12-2011, the transfer can be effected and after referring to the transfer policy and the fact that against a sanctioned post in Sehore, 10 officers are working, a proposal was made for transfer of the petitioner. The file came back to the department on 04-01-2012 and after approval of the Minister on 09-01-2012 the impugned order was passed. If the note sheet in question is scrutinized, there is no material to show that the transfer of the petitioner at any point of time was either ordered by any Minister or any officer because of any extraneous consideration, on the contrary it seems

to be passed on administrative consideration and the material available on record.

7. In view of the above, this court does not find any ground to interfere into the matter, as the grounds canvassed are not established from the material available on record. The petition accordingly stands dismissed.