
(2019) 04 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4652 Of 2019

Hargovind Shakya

APPELLANT

Vs

State Of Madhya Pradesh & Anr

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Citation : (2019) 04 MP CK 0055

Hon'ble Judges : S.A. Dharmadhikari, J

Bench : Single Bench

Advocate : Prashant Sharma, Rajendra Jain

Final Decision : Disposed Off

Judgement

In this petition, the petitioner has assailed the legality, validity and propriety of the order dated 21/02/2019 (Annexure P/1), whereby, the petitioner, who is working as Assistant Grade-II has been transferred from office of Rural Engineering Services, Morena to Office of Executive Engineer, Rural Engineering Services, Bhind, Division Bhind.

The petitioner has assailed the order of transfer on the ground that order impugned is bad in law as the same is the mid term transfer and the place where the petitioner is being posted i.e Bhind has no vacancy. No one has been transferred in place of the petitioner. There is no administrative exigency. From perusal of Annexure P/3, it is evident that at Bhind, no post is vacant. At Morena there are two sanctioned post of Assistant Grade-II. In case, if the petitioner is transferred then both the posts of Assistant Grade-II would remain vacant at Morena. The petitioner has been directed to discharge election duties vide order dated 15/02/2019 (Annexure P/5). The petitioner has been transferred to Bhind which is a home town. The act of the respondents is illegal and arbitrary because the impugned transfer order is running contrary to Annexures P/8 & P/9. On these grounds, he prays for quashing of the impugned transfer order.

In response, learned Government Advocate submits that no interference with the

order of transfer is warranted as the same has been done owing to administrative exigency. Moreover, the transfer policy is in the nature of guidelines. There is no statutory violation of any rules and no malafide has been pleaded. With the aforesaid, he submitted that the petition being devoid of merit and substance deserves to be dismissed.

Having heard learned counsel for the parties, I am of the view that there is substantial force in the submissions advanced by learned Government Advocate. Moreover, it is well settled in law that transfer is an incidence of service. Which employee should be posted where, is a matter for the appropriate authority to decide. Until and unless the transfer is vitiated by mala fide or is made in violation of any statutory provisions, the Court cannot interfere with the order of transfer. The Supreme Court while dealing with the scope of judicial review in the matter of transfer, held that transfer is an incidence of service and normally should not be interfered with by the Court. If any administrative guidelines recalling transfer of an employee are violated, at best the same confers the right on the employee to approach the higher authorities for redressal of his grievance. [See: Union of India and Others v. S.L. Abbas, (1993) 4 SCC 357, State Bank of India v. Anjan Sanyal and others, (2001) 5 SCC 508, Public Services Tribunal Bar Association v. State of U.P. and another, (2003) 4 SCC 104, State of U.P. and Others v. Gobardhan Lal, (2004) 1 SCC 402, R.S. Chaudhary and Others v. State of M.P. and Others, ILR (2007) MP 1329, Government of Andhra Pradesh v. G. Venkata Ratnam, (2008) 9 SCC 345 and State of Haryana and Others v. Kashmir Singh and Another, (2010) 13 SCC 306]. In the instant case, the petitioner has been transferred on administrative grounds. He has not been able to make out a case of malafide or violation of statutory policy, the twin grounds available for interference. The petitioner has no statutory right to remain posted at office of Rural Engineering Services, Morena.

However, taking into consideration the fact that in the light of circular of the Election Commission, the petitioner cannot be relieved, at this stage, for joining at new place of posting, therefore, the petitioner shall be at liberty to file fresh detailed representation before the competent authority of the respondents within a period of seven (7) working days from today enumerating all the grounds raised in this petition, which if filed within the aforesaid period shall be considered and decided by the competent authority of the respondents in accordance with law as well as current policy as expeditiously as possible preferably within a period of three weeks from the date of receipt of certified copy of this order passed today.

Till then status quo as it exists today shall be maintained by both the parties.

With the aforesaid observation, the instant petition stands disposed of.