

(2011) 10 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5036 of 2011 (S)

Jai Prakash Dubey (Dr.)

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Citation : (2011) 4 MPJR 40

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : A.M. Trivedi, with Mr. S.K. Mishra, for the Appellant; R.D. Jain, Advocate General with Mr. S.S. Bisen, Govt. Advocate for State, for the Respondent

Judgement

Rajendra Menon, J.—Petitioner who is substantively holding the post of Chief Executive Officer Zila Panchayat Rewa and who has been transferred from Rewa to the post of Additional Collector Sidhi vide order Annexure P-7 dated 10.3.2011 has filed this writ petition merely on the ground that the same amounts to frequent transfer. It is the case of petitioner that he joined service as an Additional Collector at Vidisha in January, 2007 after a period of 2 years he was transferred from Vidisha to the post of Additional Collector Satna vide order Annexure P-1 dated 23.3.2009 petitioner brought his children and got admission of his children in Kendriya Vidhyalaya Satna in August, 2009 and within 4 months after joining at Satna his services were sent on deputation to the Panchayat and Rural Development Department and he was posted as Chief Executive Officer, Zila Panchayat Rewa vide Annexure P-3 dated 13.8.2009. Petitioner, therefore, shifted his family from Satna to Rewa. Thereafter within 4 months it is stated that the petitioner was sent back to the General Administrative Department and vide order Annexure P-5 dated 21.12.2009 he was posted as Additional Collector Rewa. Petitioner assailed this order by filing a writ petition before this Court being W.P. No. 14496/2009 (s), stay was granted on 8.1.2010 vide Annexure P-6 and thereafter in June, 2010 the State Government canceled the order of transfer Annexure P-5 dated 21.12.2009, now within a short period of 2 years

again by the impugned order petitioner is transferred as Additional Collector Sidhi. Accordingly, it is stated that the transfer of petitioner in the manner done amounts to frequent transfer. That apart contending that petitioner's deputation has been curtailed and petitioner is sent back to his parent department without his consent and passing appropriate orders repatriating him from the deputed post it is said that the order of transfer is illegal. That apart, petitioner has tried to emphasize by filing a rejoinder that inspite of the stay order granted by this Court petitioner has not been permitted to join duties and he is being made to suffer.

2. Respondents represented by Shri R.D. Jain, learned Advocate General have filed a detailed return and have tried to demonstrate that the petitioner before filing this writ petition on 16.3.2011 had already relieved himself vide Annexure R-3, gave charge to respondent No. 3 and by suppressing the fact of his relieving has tried to misguide this Court and obtained ex-parte stay by not disclosing the fact that he has already been relieved. That apart, so far as transfer order is concerned Shri Jain submits that it is not a frequent transfer, petitioner was transferred from Satna to Rewa in August, 2009 and since August, 2009 he has remained in Rewa and now he is transferred after more than 2 years. It is stated that the transfer order passed earlier vide Annexure P-5 dated 21.12.2009 was canceled by the State Government in June, 2010 and, therefore, the said transfer cannot be taken count of. Further contending that the petitioner is only sent back to his parent department in the general administrative department and, therefore, in view of law laid down by a Division Bench in the case of S.M.P. Sharma vs. State of M.P. 2004(2) MPJR 89, for repatriating the petitioner back to parent department obtaining of his consent is not necessary, as there is no fixed contract or agreement of deputation. Further, in view of law laid down by another judgment of this Court in the case of Mrs. Padma Singh Vs. State of M.P. and Others, Shri R.D. Jain learned Advocate General submits that as transfer of petitioner is not challenged on the ground of any statutory rules or regulations being shown to be violated nor is any malafide established from the material available on record, no case is made out for interference.

3. Having heard learned counsel for the parties at length and on perusal of record it is clear that transfer in question is not challenged on the ground of any statutory rules or regulations being violated nor is any mala fide made out from the material available on record, the only ground raised by the petitioner is that the transfer amounts to frequent transfer and his repatriation to the parent department is without his consent. Petitioner is holding a senior post of the Additional Collector/Chief Executive Officer of Zila Panchayat and he has remained in Rewa from 13.8.2009, till the impugned action of transfer, that is for about 2 years. In between even though he was transferred on 21.12.2009 vide Annexure P-5 the said transfer was infact never executed due to interlocutory order passed by this Court in W.P. No. 14496/2009(s) and the subsequent cancellation of this transfer in June, 2010. That being so, merely because petitioner is transferred now after a period of 2 years it cannot be said that

transfer of petitioner amounts to frequent transfer. That apart, in view of observation made by the Division Bench in para 5 of the judgment rendered in the case of S.M.P. Sharma (Supra) for repatriating the petitioner to his parent department no consent is required, as petitioner's deputation to the Panchayat and Rural Development Department is not on the basis of fixed term contract or agreement. In that view of the matter both the grounds raised by the petitioner for challenging his transfer are found to be unsustainable and, therefore, finding no merit in the petition, the petition is dismissed.

4. So far as the other grounds with regard to relieving and suppression of facts are concerned, once the petition is dismissed on merit, no case is made out for interference into the matter on such consideration. The petition stands disposed of with the aforesaid.