
(2019) 07 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12984 Of 2019

Kumari Jyoti Shivhare

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 MP CK 0037

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : K.C. Ghildiyal, Praveen Dubey

Final Decision : Dismissed

Judgement

By the instant petition, the petitioner is questioning the validity of the order dated 04.07.2019 (Annexure-P/3) whereby the petitioner has been directed

to be transferred from Nagar Parishad Rahli District Sagar to the office of Assistant Commissioner, Nagar Palika Nigam, Gwalior.

A reply has been filed by the respondents taking stand therein that the transfer of the petitioner for the reason that a charge-sheet has been issued to

her containing allegations of various financial irregularities.

The learned counsel for the petitioner submits that from a perusal of the charge-sheet, it is clear that the petitioner is unnecessarily victimized as from

the charges it transpires that the allegations levelled against the petitioner relate to the period when she was not posted in Nagar Parishad Rahli. He

submits that if the allegations contained in charge-sheet are seen, it would make clear that the respondents are basically punishing the petitioner and by

way of punishment, she has been directed to be transferred. He also submits that the charge-sheet at a glance can be considered to be vague and with

full of false and incorrect allegations. He further submits that the petitioner has come in the present place of posting only in the month of January, 2017

and has also not completed her normal tenure of three years, whereas the transfer policy clearly provides that the officers holding Class-I and Class-II

posts would be allowed to continue at one place for a period of three years and thereafter they can be transferred. It is also contended by the

petitioner that she has unblemished service record and no complaint has ever been made against her. In support of his contentions, the learned counsel

has relied upon the decisions of the Supreme Court in the case of Dr. Nagorao Shivaji Chavan v. Dr. Sunil Purushottam Bhamre and others AIR 2019

SC 189 and T.S.R. Subramanian and Others v. Union of India and Others (2013) 15 SCC 732.

Per contra, Shri Dubey appearing for the respondents opposes the contention of the petitioner and submits that the petition can be dismissed on the

ground that the petitioner has not approached this Court with clean hand and clean heart inasmuch as she has stated in the petition that there is no

complaint against her and as such she has suppressed the material information regarding issuance of charge-sheet that too relating to financial

irregularities. He submits that since the charge-sheet is not in question, therefore, the merits or de-merits of the same cannot be scrutinized in the

present case. However, he submits that from a perusal of imputation of the charges it can be easily gathered that the allegations against the petitioner

have been made even for the period when she had joined at Nagar Parishad Rahli. He submits that under the circumstances, when the petitioner is

facing the charges of financial irregularities and departmental enquiry is initiated against her, decision has been taken by the respondents to transfer

her from the present place of posting intending smooth and fair departmental proceeding pending against the petitioner.

Considering the arguments advanced and perusal of the documents available on record, it is clear that the petitioner has completed almost 2½ years

at the present place of posting. It is also not fair on the part of the petitioner to aver in the petition that there is no complaint against her whereas on

the date of filing this petition, she was facing departmental enquiry. Looking to the allegations made in the charge-sheet prima facie it cannot be said

that everything which has been alleged against the petitioner took place prior to her joining at present place of posting. The policy provides a Clause

i.e. 11.4 that the Officers of Class-II cadre should be transferred after completing three years of period does not mean that the said officers

mandatorily have to complete three years at one place but on the contrary it indicates that after completion of three years they should not be retained

at one place.

As far as the judgments relied upon by the petitioner are concerned, the same are not applicable in the present case for the reason that here in this

case the administrative exigency compelled the respondents to transfer the petitioner and such a transfer in any manner cannot be considered to be a

punishment or adverse to the future service career of the petitioner for the reason that the order of transfer does not contain that because of the

disciplinary proceeding, the petitioner has been shunted out. On the contrary, law is very specific in respect of the transfer of the government servant

and the scope of interference under Article 226 of the Constitution of India is very limited that too in the circumstance when the order suffers from

the mala fide or violates any statutory provisions of law. In the present case, I do not find any such eventuality which allows this Court to interfere in

such administrative exigency under which the petitioner has been transferred.

Accordingly, the petition being without any substance, is hereby dismissed.