

**(2013) 08 MP CK 0091**  
**In the Madhya Pradesh High Court**  
**Case No : W.A. No. 374 of 2013**

Mawaisaram Upadhyay

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision :** 27-08-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 08 MP CK 0091

**Hon'ble Judges :** S.K. Gangele, J;M.K. Mudgal, J

**Bench :** Division Bench

**Advocate :** Nakul Khedkar, for the Appellant; Praveen Newaskar, Dy. Govt. Advocate for State, for the Respondent

## Judgement

1. Heard. This appeal has been filed by the appellant against the order dt. 08/08/2013 passed in W.P. No. 5335/2013.

2. The Writ Court dismissed the writ petition filed by the appellant against his transfer order dt. 15.7.2013. The appellant is the Panchayat Secretary. He challenged the order of transfer that the transfer was in excess of 10% ceiling mentioned in the policy of the transfer issued by the government.

3. It is further submitted that the order of transfer is the frequent transfer. However, there is no facts on record to the effect that the order of transfer is a frequent transfer.

4. The Hon'ble the Supreme Court in State of U.P. and Others Vs. Gobardhan Lal, with regard to interference by the Court under Article 226 of the Constitution in the matter of transfer, has held as under:-

7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the

law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

5. The Hon'ble Supreme Court has further held in Mohd. Masood Ahmad Vs. State of U.P. and Others, as under:-

Since the petitioner was on a transferable post, the High court has rightly dismissed his writ petition because transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the supreme Court, transfer is an exigency of service. It should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under article 226 unless the court finds that either the order is mala fide or that the service rules prohibits such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

6. Hon'ble the Supreme Court further in Civil Appeal Nos. 8690-8701 of 2010, State of Haryana and others vs. Kashmir Singh and another etc., decided on 06th October 2010, in regard to interference in the order of transfer, has held as under:-

14. Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the concerned State authorities which are in the best position to assess the necessities of the administrative requirements of the situation. The concerned administrative authorities may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint vide Tata Cellular Vs. Union of India,

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16. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Justice Holmes of the US Supreme Court pointed out, there must be some free-play of the joints provided to the executive authorities.

Hence, in our opinion, the order of transfer is not in violation of any statutory rule or mala fide or passed by an incompetent authority as observed by the learned Single Judge. We do not find any merit in this case. It is hereby dismissed. No order as to costs.