

(2014) 06 MP CK 0013

In the Madhya Pradesh High Court

Case No : W.P. Nos. 8098, 8099, 8106 and 8109/2014

Ramlala Shukla

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Citation : (2014) 06 MP CK 0013

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Rajendra Tiwari, Learned Senior Counsel Assisted by and Shri Raj Kumar Tripathi, Learned Counsel, Advocate for the Appellant; Swapnil Ganguly, Learned Dy. Govt. Advocate for the State, Shri D.K. Dixit, and Shri Avinash Zargar, Learned Counsel for Private Respondents, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—Since the question involved in all the writ petitions and the challenge is to the order of transfer in all the matters they are heard together. However, the facts are taken from W.P. No. 8099/2014 as on receipt of the advance copy of the writ petition, a return is filed by the respondent-State in this case.

2. The petitioners, Professors in the Higher Education Department, in respective subjects, are aggrieved by the order dated 22.5.2014, by which they have been transferred from their place of posting to the other colleges. The reason for transfer mentioned in the order impugned is for filling up the vacant post, on administrative exigencies, therefore, such order of transfer has been issued.

3. The grievance of the petitioners is that they have approached this Court on earlier occasion when certain adverse orders were passed against them and since those writ petitions were considered, orders were passed, the petitioners have now become eyesore and that being so, the order of transfer has been issued. It is further contended that the petitioners cannot be transferred dehors the

guidelines issued by the University Grants Commission (hereinafter referred to as the UGC for short) and that being so, malafidely since the proposals have been made for transfer of the petitioner on alleged administrative exigency, the order of transfers is bad in law and is liable to be quashed. It is the case of the petitioners in common that if there were surplus posting of persons in the College where the petitioners were posted, only the surplus persons were required to be shifted and petitioners were not to be disturbed. Further, it is contended that the petitioners are working in an autonomous Colleges of Excellence from where they could not be transferred to any other College.

4. The respondent-State has filed the return contending inter alia in brief that since the petitioners were working on one post for a long period, the cases in common were considered for transfer of those who have remained posted in one place for a long period, to other places where the posts were lying vacant for a long time. No action has been taken with any malafide intention against the petitioners. The UGC norms are not mandatory but only are directives. It is not correct to say that because of the extension of the term of College with the potential of excellence, the transfer of the petitioners was not permissible.

5. In some of the cases where surplus persons have been impleaded as party, learned counsel for those respondents have stated that in terms of the policy made by the State Government, only the junior most person is required to be transferred and since the said respondents are senior, they have not been disturbed. This being so, the claim made in the writ petition is oppose to this extent by the learned counsel for those respondents.

6. The law is well settled that transfer is an exigency of service. Whether a particular person is required to be posted in a particular place or not has to be adjudged only and only by the employer. It is also settled that order of transfer so issued can be interfered with by the Courts in exercise of power of judicial review only if the same is made in violation of the statutory provisions or rules of transfer, or have been issued by an authority not competent to do so or actuated on malafides. Strong proof of malafides are required to be placed on record. The person concerned who has actuated the order of transfer with malafide intention is required to be impleaded as party and then only the Court can invoke its power to examine the correctness of such allegation. Merely because on certain occasion some orders of the State Government were called in question by the petitioner, and in those writ petitions certain favourable orders were issued, it cannot be said that the order of transfer is actuated on malafides. Even if certain show cause notices were issued to some of the petitioners, that would be only with respect to the allegations contained in those show cause notices, but they cannot be made a basis for making allegation that the order of transfer is actuated on malafides. Further, if large number of persons are transferred by one common order, where a specific reason is assigned that such order of transfer is issued on account of administrative exigency to fill in the vacant post in different colleges, it cannot be said that the order of transfer issued in respect of any such

person is actuated on malafides. The status of the post of the petitioner is also not going to be change as it is not in dispute that the petitioners were time bound promoted Professors and not directly recruited Professors. In such a case, it is only upgradation for the limited purposes only with an intention to give designation, as the substantive structure of the post is never changed. Therefore, in view of these facts, allegation that the petitioners have been transferred on malafide ground is also not available.

7. It has been put-forth that the mandatory requirement of the Scheme formulated by the UGC is not adhered to by the State. It has to be seen whether such a condition is mandatory in nature or not. The UGC though issued the instructions on several occasions, but all those instructions are with respect to the achievement of standard of excellence by the colleges. It is not provided in such Scheme with definite words that the teaching staff posted in the colleges are not to be touched or to be transferred. In fact, this cannot be the scope of direction by the UGC as every other thing is depending on the service conditions prescribed by the State Government by making the statutory Rules. That being so, by no stretch of imagination can it be said that any instructions issued by the UGC in respect of posting would be mandatory in nature. This particular finding has already been recorded by this Court in Writ Petition No. 2500/2014 filed by one O.P. Sharma Vs. State of M.P., decided on 13.2.2014. That being so, no case is made out to warrant any interference in the order of transfer of the petitioners.

8. The petitions fail and are hereby dismissed.