
(2020) 01 MP CK 0075

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5675, 5992, 11647, 15210 Of 2019

R.L. Sharma And Ors

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 MP CK 0075

Hon'ble Judges : Nandita Dubey, J

Bench : Single Bench

Advocate : D.K. Dixit, Shailesh Tiwari, Parag S. Chaturvedi, Sonali Paroche, Paritosh Gupta

Final Decision : Dismissed

Judgement

1. The aforesaid four writ petitions are heard and decided analogously by this common order.

2. In WP No.5992/2019, the grievance of petitioner Balakram Sirsam is that he has been transferred from Chhindwara to Katni in place of respondent no.5 R.L.Sharma vide order dated 09.03.2019 without there being any transfer order of posting in favour of R.L.Sharma.

3. In WP No.15210/2019, the transfer order dated ,25. 07.2019 is challenged on the ground that petitioner Pradeep Kumar Rajak has not completed three years in the present place of posting. The petitioner is a Sub- Divisional Officer who was earlier transferred on 23.02.2018 from Silvani (Production) to Silvani (Territorial), Raisen Division on administrative exigencies. By the impugned order, he is again transferred to Chhindwara (Territorial) Forst Division.

It is submitted by learned counsel for the petitioner that the transfer order is not in consonance with the transfer policy and amounts to frequent transfer. It is also submitted that the impugned order has been passed without due application of mind as there is no vacant post at Chhindwara as Balak Ram Sirsam, petitioner

in WP No.5992/2019, in whose place he has been transferred has already been granted stay on his transfer order by this Court.

5. In WP No.5675/2019, the grievance of the petitioner R.L.Sharma is that despite there being no order of transfer in favour of the petitioner, respondent no.2 Balak Ram Sirsam has been posted in his place which is prejudicial to his interest. Petitioner's apprehension is that in view of singular post, the petitioner would be asked to handover the charge.

6. The respondents, in reply to WP No.5675/2019, has pointed out that petitioner R.L.Sharma has been transferred from Katni to Amarkantak. It is further argued that the transfer order can only be interfered with when it is mala fide or passed in violation of statutory provisions or by an incompetent authority. It is submitted that no violation of any statutory policy or incompetence of the authority is made out in the present petitions, and prays for dismissal of the petitions.

7. Heard the parties at length and perused the record.

8. A perusal of the record shows that a chain reaction was caused when on 18.03.2019 R.L.Sharma, petitioner in WP No.5675/2019, was granted an interim stay whereby he was permitted to continue to perform his duties at his place of posting i.e. Katni. Resultantly, the order of transfer dated 09.03.2019 of Balak Ram Sirsam, petitioner in WP No.5992/2019 from Chhindwara to Katni, and of Pradeep Kumar Rajak, petitioner in WP No.15210/2019 from Silvani to Chhindwara vide order dated 25.07.2019 also came to be stayed. WP No.5675/2019 was filed on the ground that without there being any order of transfer or posting of petitioner, respondent Balak Ram Sirsam has been posted in his place.

9. It is clear from order dated 19.06.2019 that R.L.Sharma has been transferred to Amarkantak as Instructor, hence, WP No.5675/2019 has been rendered infructuous and the interim order dated 18.03.2019 does not survive.

10. The order of transfer dated 19.06.2019 passed in WP No.11647/2019 has been challenged by petitioner R.L.Sharma on the ground of mala fide. However, he has not made the person as a party against whom the mala fide is alleged.

11. In Bhagwat Singh Verma Vs. State of M.P. and others 2011(3) MPHT 479(DB) this Court has held :

"It is well settled in law that transfer is an incidence of service. Appellant admittedly holds a transferable post. Which employee should be posted where is a matter for the Appropriate Authority to decide. Until and unless the transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere with the order of transfer. It is further held that a person against whom allegations of malafides are made, has to be personally impleaded and plea of malafides has to be properly pleaded and proved. Burden of establishing malafides is very heavy on the person who alleges it. See Indian Railway Construction Co. Ltd. Vs. Ajay Kumar (2003) 4 SCC 579.)"

12. It is submitted by learned Govt. Advocate appearing for the respondents/ State that a number of complaints were received against the petitioner and in the initial enquiry prima facie the allegations were found proved against him and there was an agitation by other employees against the petitioner. Hence, due to administrative exigencies he was transferred.

13. The contention of learned counsel in WP No.15210/2019 is that petitioner has been transferred against the provisions of transfer policy has no merits.

14. Transfer is an incidence of service and can only be interfered with, if it runs contrary to any statutory provision, issued by incompetent authority or proved to be mala fide. The employee has no indefeasible right to remain at a particular place. It is the prerogative of the employer to decide as to who should be transferred where.

15. In *Rajesh Gupta Vs. Bharat Sanchar Nigam Ltd. & ors.* ILR (2009) M.P. 103, this Court has held :-

"A government servant holding a transferable post has no vested right to remain posted at one place or other. He is liable to be transferred from one place to other. Transfer orders issued by the competent authority do not violate any legal right. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead the affected party should approach the higher authority in the department."

16. In the instant petitions, I did not find breach of any statutory rule/policy or a case of mala fide. Hence no case warranting interference under Article 226 of the Constitution of India is made out.

17. All the petitions being devoid of merits are, accordingly, dismissed.

18. A photo copy of this order be also kept in the records of W.P. Nos. 5992/2019, 11647/2019 and WP No.15210/2019.