
(2010) 10 MP CK 0067
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1149 of 2010

Sadanand Verma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2011) 2 MPHT 37 : (2011) 2 MPLJ 198

Hon'ble Judges : S.R. Alam, C.J;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Heard on the question of admission.

This intra-Court appeal arises from the order dated 14-10-2010 passed by learned Single Judge in W.P. No. 7599/2010 (S) by which writ petition preferred by the Appellant has been dismissed.

Facts giving rise to filing of appeal briefly stated are that Appellant holds the substantive post of Block Development Officer. While the Appellant was working as Block Development Officer in Janpad Panchayat, Lakhnadaun, Distt. Seoni, one V.K. Sharma, who was posted as Chief Executive Officer was placed under suspension. The Appellant being the senior most Block Development Officer by order dated 5-8-2008, was given the charge of the post of Chief Executive Officer, Janpad Panchayat, Lakhnadaun, Distt. Seoni. Vide order dated 14-6-2010, Appellant was repatriated to his substantive post of Block Development Officer, and was posted at Nainpur, Distt. Mandla and Respondent No. 3 was posted in place of the Appellant at his own request. Appellant challenged the validity of the said order before the learned Single Judge. Learned Single Judge held that no statutory Rule or Regulation is violated on the basis of which it could be held that Appellant's repatriation to substantive post of Block Development Officer and his posting is illegal. It was further held that allegations of malafides made against the Appellant are vague and without any specific

details, therefore, the same cannot be accepted. Accordingly, the writ petition preferred by the Appellant was dismissed.

Learned Counsel for the Appellant vehemently contended that Appellant is a senior most Block Development Officer. By circular dated 5-11-1992 issued by Government of M.P., it has been directed that charge of higher post should be given to those officers who are within the zone of consideration or to those who are found prima facie eligible for promotion on the said post. However, in violation of the aforesaid circular, by the impugned order, the charge of the post of Chief Executive Officer, Janpad Panchayat, Lakhnadaun has been taken away from the Appellant. It is further contended that Respondent No. 3 is junior to the Appellant and, therefore, he ought not to have been given the charge of the post of Chief Executive Officer. While drawing our attention to Clause 9.11 of the transfer policy, it is contended by learned Counsel for the Appellant that the policy prescribes that in case any request for transfer is made by the employee, such request should be submitted by the concerned employee through head of the office to the head of the department. It was further contended that in the instant case, Respondent No. 3 directly submitted an application to the concerned Minister and the Minister thereupon directed the head of the department to issue an order posting the Respondent No. 3 in place of the Appellant. Thus, the impugned order of repatriation as well as the order posting Respondent No. 3 in place of the Appellant has been passed in violation of the provisions of the transfer policy. It was further submitted that the order of transfer suffers from the vice of malafides.

We have considered the submissions made by learned Counsel for the Appellant.

Admittedly, the Appellant holds a transferable post and the order posting the Appellant on his substantive post has neither been passed in violation of any statutory Rules or Regulations, nor the same suffers from the vice of malafide. It is well settled in law that transfer is an incidence of service. 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. [See: Union of India and Others Vs. S.L. Abbas,

Similarly, in Public Services Tribunal Bar Association Vs. State of U.P. and Another, , once again dealing with the scope of judicial review in the matter of transfer, Supreme Court reiterated that transfer is an incidence of service and normally should not be interfered with by the Court. If any administrative guidelines recalling transfer of an employee are violated, at best the same confers the right on the employee to approach the higher authorities for redressal of their grievance. Transfer made contrary to policy can also not be interfered with.

It is equally well settled in law that a person against whom allegations of malafides are made, has to be personally impleaded as party. The burden of

establishing malafides is very heavy on the person who alleges it. In this connection, reference may be made to the decisions of the Apex Court in Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, and Purushottam Kumar Jha Vs. State of Jharkhand and Others,

In the backdrop of the aforesaid well settled legal principles, the facts of the case may be adverted to.

Admittedly, neither circular dated 5-11-1992 nor the policy of transfer dated 20-4-2010 has any statutory force. It is also an admitted fact that Appellant holds the substantive post of Block Development Officer. If any order has been passed in violation of transfer policy or the circular dated 5-11-1992, the same at best gives a right to the Appellant to submit a representation. The Appellant has no legally enforceable right to continue on the post of In-charge, Chief Executive Officer, Janpad Panchayat, Lakhnadaun. The order repatriating the Appellant to his substantive post has neither been passed in violation of statutory provision, nor any statutory Rule. The allegations of malafides made by the Appellant cannot be examined in the writ appeal for the simple reason that the Appellant had not impleaded the concerned Minister by name either in the writ petition or in the writ appeal.

For the aforementioned reasons, we do not find any ground to differ with the view taken by the learned Single Judge. However, we have no manner of doubt that if the Appellant submits a representation to the Competent Authority, the same shall be considered and decided expeditiously in accordance with law.

We accordingly affirm the order passed by the learned Single Judge and dismiss the writ appeal.