
(2019) 05 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 704 Of 2019

S.B. Siddiqui

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 04-05-2019

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyamn, 2005 — Section 2(1)

Citation : (2019) 05 MP CK 0027

Hon'ble Judges : S.K. Seth, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Ashish Kumar Pathak, Saurabh Sunder, Gajendra Singh Gaharwar, Tapan Bathre

Final Decision : Dismissed

Judgement

1. Heard on admission.

2. The present intra-court appeal is filed under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyamn, 2005 being

aggrieved by the order dated 26-3-2019 passed by the learned Single Judge in W.P. No.5355/2019 whereby challenge to the transfer order remained

unsuccessful.

3. The facts of the case lie in a narrow compass. The appellant-petitioner who is working as In-Charge Chief Municipal Officer, Municipal Council,

Teonthar District Rewa by impugned order dated 8-3-2019 has been posted to his substantive post of Revenue Sub-Inspector in the same Municipal

Council and by the same order the respondent No.4 has been transferred from Municipal Council, New Ramnagar, District Satna in the place of the

appellant. The said order is mainly challenged on the ground of mala fide stating

that it has been issued at the behest of the respondent No.5 who is working as Chairman of the Municipal Council, Teonthar District Rewa to accommodate the respondent No.4. In support of the said contention, heavy reliance has been placed on a letter dated 7-01-2019 alleged to have been written by the respondent No.5, Chairman Municipal Council, Teonthar, District Rewa, addressed to the Minister of Urban Administration.

4. The said letter was disputed. The respondent No.5 filed a reply with an affidavit and original record of the Municipal Council, Teonthar was also produced before the learned Single Judge. The respondent No.5 also appeared in person before the Court and denied the aforesaid letter on affidavit.

No such letter was to be found written and despatched from the record by the learned Single Judge. Considering the conduct of the petitioner the writ petition was dismissed with a cost of Rs.10000/-.

5. Learned counsel appearing for the appellant while assailing the findings ascribed by the learned Single Judge placed reliance on the letter dated 11-

4-2019 filed as Annexure-P/4 along with writ appeal which is received under the Right to Information Act, 2005 stating that the aforesaid

complaint/communication alleged to be written by the respondent No.5 was forwarded for further action to the office of the Commissioner, Urban

Administration and Development vide order dated 8-02-2019. Upon perusal of the said communication, this fact is not established that the alleged

letter, Annexure-P/4, was written and signed by the respondent No.5 when the same has been denied and disputed by him.

6. Even otherwise, the grievance of the appellant is in respect of order dated 8-03-2019 by which the appellant has been asked to work on his

substantive post of Revenue Sub-Inspector. He has no right to continue on the post of Chief Municipal Officer. Since there is no change of

Headquarter of the petitioner, the impugned order in respect of the petitioner cannot be termed as "transfer" in view of definition of

"transfer" in the Fundamental Rule 9(17), which is extracted hereunder:

"F.R.9(17). "Transfer" means the movement of a Government servant from one headquarter station in which he is employed to another such

station either (a) to take up the duties of a new post, or (b) in consequence of a change of his headquarter."

7. Even otherwise, in administrative matters this Court would not exercise

jurisdiction to pass an order for extensive probe in respect of the alleged communication, Annexure-P/4. The appellant has failed to make out any case for interference with the impugned order dated 8-3-2019 by which he has been asked to work in the same Municipal Council, Teonthar District Rewa on the substantive post of Revenue Sub-Inspector.

8. The law relating to scope of interference in the transfer matter is no longer res integra , as held by the Supreme Court in the cases of Gujrat

Electricity Board and another vs. Atmaram Sungomal Poshani, (1989) 2 SCC 602; Union of India and others vs. S.L. Abbas, AIR 1993 SC 244 4and

the judgment passed by a Division Bench of this Court in the case of R.S. Choudhary vs. State of M.P. and others, 2007 (2) ILR MP Series 1329, the

transfer is an incidence of service and the transfer order can only be interfered by the Courts of law if the transfer is issued in violation of the

statutory rules or the order suffers from mala fide exercise of power.

9. In the case of State of U.P. and another vs. Siya Ram and another, (2004) 7 SCC 405 it has been held that an employee should be posted where, it

has to be decided by the employer and an employee has no right to claim posting at a particular place. The relevant extract reads as under:-

5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the

transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and

circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one

particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place

to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of

transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or

the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision

for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position

was highlighted by this Court in National Hydroelectric Power Corpn.Ltd. v. Shri

Bhagwan, (2001) 8 SCC 574.?

10. In the instant appeal the appellant could not establish any breach of statutory rule or a case of mala fide. Thus, the appellant has failed to make out any case warranting interference in this intra-court appeal.

11. Accordingly, the writ appeal being sans merit, stands dismissed.