
(2013) 05 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12807 of 2012 (S)

Sheikh Mohammed Mehboob

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 MP CK 0061

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

Bench : Single Bench

Advocate : A.M. Trivedi Assisted by Mr. Sushil Mishra, for the Appellant; A.K. Pathak, Learned Counsel, S.S. Bisen, Learned Govt. Advocate for State/ Respondents Nos. 1 to 3 and Shri A. Rajeshwar Rao, Learned Counsel for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—This petition under Article 226 of the Constitution of India is directed against the order dated 31.7.2012, by which the petitioner, a Chief Executive Officer of Janpad Panchayat, has been transferred from Panagar to Bhind, mainly on the ground that on account of malafides of respondent No. 4 against whom the action was initiated by the petitioner, untimely proposal was sent for transfer of the petitioner and only on account of such malafides since the petitioner has been transferred, therefore, he is constrained to approach this Court by way of filing the present writ petition. Brief facts giving rise to filing of this writ petition are that the petitioner, holder of a substantive post of Block Development Officer, was transferred on 2.12.2009 from Narsinghpur and was posted as Chief Executive Officer, Janpad Panchayat Panagar. The petitioner joined the duties in the month of January 2010 and started working. Without there being any rhyme or reason, in just less than a year period, an order of transfer was issued in respect of petitioner transferring him from Panagar to Barghat District Seoni on 25.8.2010. Some sort of representation was made by the petitioner which was considered by the State Government and on 1.10.2010,

the order of transfer of the petitioner to Barghat was cancelled and he was allowed to continue at Panagar. The respondent No. 4, being a member of Janpad Panchayat was also included in the Purchase Committee. For the purposes of performing the marriages of the girls of poor persons, the State Government started a Scheme and for the said purposes certain amounts were sanctioned. Certain gifts were to be given to said brides at the time of performance of marriage on behalf of the State Government. Since the marriage was to be performed at Panagar, Janpad Panchayat was required to make purchase. Being a member in the Purchase Committee, purchase order was given to the firm of the respondent No. 4. Sub-standard articles were supplied of which when the complaint was made, an enquiry was conducted. Since the petitioner was the Chief Executive Officer, he submitted the report in that respect, the respondent No. 4 threatened the petitioner to dire consequences of which immediately a FIR was registered. Action was initiated against the respondent No. 4 and out of the said malafides, since the respondent No. 4 is a member of the Ruling Party, complaint was made against the petitioner and immediately an order of transfer was issued. There was a huge objection in respect of such an order of transfer as instead of taking any action against the respondent No. 4, the petitioner was sought to be transferred, and respondent No. 4 was protected, as he was in fact visiting the house of the Minister even when a FIR was registered against him but was not arrested by police. Ultimately, when the people at large have raised the objections, the action was initiated against the respondent No. 4. He was removed from the post of member of the Janpad Panchayat, but against such order, he preferred the revision before the State Government and the interim stay was granted to the respondent No. 4. This being so, it is alleged that purely on malafides, the order of transfer was issued against the petitioner, therefore, the same was bad in law and was liable to be quashed.

2. This Court has earlier entertained the writ petition and granted a protection to the petitioner by directing that the status-quo with regard to working and posting of petitioner as was existing on the date of order be maintained till the next hearing. Such an order was passed on 23.8.2012. The petitioner made an application in the writ petition that as soon as the fact came to the notice of the respondents that the petitioner has approached this Court against the order of transfer, they issued an ex-parte relieving order on 16.8.2012, therefore, the order so issued against the petitioner was liable to be stayed. However, this Court has not passed any order in that respect. As the order was not passed by the writ Court granting any further interim relief to petitioner, a Writ Appeal No. 1110/2012 was filed by the petitioner before the Division Bench of this Court which came to be decided on 10.10.2012 and the Division Bench specifically directed that the petitioner, i.e. the appellant before the Division Bench shall be permitted to continue at Panagar where he was working as Chief Executive Officer. However, this order was made subject to the further orders or decision in the writ petition. It will not be out of place to mention here that in between the petitioner was placed under suspension because of non-compliance of the order

of transfer and again was attached at Bhind. This order of suspension of the petitioner was challenged in a writ petition being W.P. No. 17052/2012, but the same was dismissed on 8.12.2012, against which order Writ Appeal No. 1252/2012 was filed, which was decided on 21.1.2013. The suspension order of the petitioner was quashed and he was allowed to join back at Panagar. When the interim stay was granted by this Court, someone else Shri Onkar Singh Thakur was transferred and posted in place of petitioner at Panagar from Sinhawal, District Sidhi. However, when the Division Bench order was brought to the notice of the respondents, they have allowed the petitioner to continue on the post and pursuance to such order, the petitioner is still continuing on the post.

3. The respondents have filed their return and have denied the allegations made by the petitioner. It is said by them in their return that the order of transfer of the petitioner is administrative only and strictly in accordance to the provisions of the transfer policy made by the State Government. It is emphatically contended by them that the transfer of the petitioner does not suffer from malafide. However, it is contended that the respondent No. 4 was also removed from the post of member of Janpad Panchayat and, therefore, it has been said that the respondent No. 4 was not so influential to put pressure on the respondents to transfer the petitioner. It is contended that allegations have been made by the petitioner against the respondent No. 4 on account of disputes in between the petitioner and the respondent No. 4, but such allegations are baseless as the order of transfer issued against the petitioner is purely on administrative grounds. It is contended that the respondents have taken action against the respondent No. 4 in accordance to law and, therefore, such malafides are not made out. It is contended that the petition being wholly misconceived deserves to be dismissed.

4. The respondent No. 4 has independently filed a return and has contended that the entire allegations made by the petitioner against him are misconceived. No illegality was committed by the respondent No. 4 in the matter of purchase. On the other hand, the petitioner was fostering animosity against the respondent No. 4 and, therefore, on his complaint action was initiated against the respondent No. 4. Only by way of protection granted by this Court, the respondent No. 4 was enlarged on bail and that being so, allegations made by the petitioner are totally misconceived.

5. One Onkar Singh Thakur has also made an application to intervene in the writ petition to oppose the petition and his application was allowed by the Court. His only contention is that by order of the State Government, said person was transferred from Sinhawal District Sidhi to Panagar, District Jabalpur, where he has taken over the charge on relieving of the petitioner. The petitioner was placed under suspension also because of non-compliance of the order of transfer, but subsequently since a Division Bench of this Court has passed an order in a writ appeal filed by the petitioner, after revocation of suspension, the petitioner has been allowed to continue on the post of Chief Executive Officer of Janpad

Panchayat and the intervener has been attached in the Zila Panchayat, Jabalpur.

6. Learned counsel for all the parties are heard at length and as the controversy involved requires a deep consideration, therefore, this court has directed production of record of the transfer file. The record is produced and minutely perused.

7. The sole issue is whether there was any proposal initially made for transfer of the petitioner or not. The transfer file indicates that there were proposal of only 13 persons initially made and subsequently the name of the petitioner was included in the said proposal. For the 13 persons, consideration was done. As far as the petitioner is concerned, the official proposal indicates that the name of the petitioner was included subsequently. However, no proposal was made from the directorate level for transfer of the petitioner. It was categorically said that since the petitioner has remain posted for a short period, his transfer would not be in accordance to the transfer policy as is specifically provided in Clause 9.9 of the policy. As it was seen that transfers are made in excess to the recommendations made, therefore, the same was to be placed in coordination before the Chief Minister. The note sheet indicates that the Secretary of the State has also made proposal that a consolidated statement be submitted for the purposes of consideration. This indicates that there was no proposal for transfer of the petitioner at the end of the departmental authorities, but the same was generated subsequently, but reasons for making such proposal are not spelled out. This being so, the entire foundation indicated by the respondents No. 1 to 3 in their return is found to be incorrect from the official records which is now seen and examined by the Court. If this is not a malafide, then what else would amount to malice. As far as the State action is concerned, the Apex Court in the case of Nand Kumar Verma Vs. State of Jharkhand and Others, has categorically said that in respect of administrative action of the respondent State, there may not be direct evidence available, but if such acts are found to be done in contravention of certain provisions, it will amount to malice in law and such actions are still to be treated as bad in law, therefore, it has to be held that the order of transfer of the petitioner was actuated on malafides and nothing else. The departmental authorities were themselves of the opinion that the transfer of the petitioner was against the policy as he has not completed the normal tenure posting at Panagar. In all fairness, if a complaint was made against the respondent No. 4, it was necessary on the part of respondents to take action against him rather than transferring the petitioner in such a manner. Of course, the action was taken against the respondent No. 4, subsequently, but that too only because the media and the people were against such inaction on the part of the State and hue and cry was raised by the people. Keeping all this together, it will be clear that the transfer of the petitioner from Panagar was not warranted, but was actuated only on account of certain malafides.

8. The rights of petitioner to continue on his post were protected only by the interim direction of this Court passed by the Division Bench. His suspension order

was also actuated on the basis of non-compliance of transfer order which was already sub-judice before this Court and the fact was well within the knowledge of the respondents. In all fairness, the respondents should not have taken steps against the petitioner at least for placing him under suspension on account of non-compliance of order of transfer. This further indicates that the authorities of respondents were bent upon to shift the petitioner from the post on which he was working at Panagar, so that the enquiry which is to be conducted against the respondent No. 4 may become an eyewash. This is also not permissible in law and, therefore, the act of respondents cannot be sustained. Yet, another fact which is reflected from the records of transfer file is that during pendency of this litigation, one another person working at Lateri has been posted in Janpad Panchayat Bhind, where by impugned order, the petitioner was transferred and posted. The said person has already joined at Bhind, and as such, now the order of transfer issued in respect of petitioner to Bhind has become inexecutable. For this reason also, no useful purpose would be served to ask the petitioner to carry out the order of transfer.

9. Consequently, the writ petition is allowed. The order dated 31.7.2012 issued by the respondents, so far as it relates to the petitioner, transferring the petitioner from Panagar to Bhind is hereby quashed. The petitioner be allowed to continue on his post at Panagar. However, now since the petitioner has completed normal tenure posting at Panagar, it will be open to the respondents to consider transfer of the petitioner in normal course on administrative exigencies and to issue fresh order of transfer, if necessary. This order will not come in the way of respondents in passing any such orders, if required. The writ petition is allowed to the extent indicated herein above. There shall be no order as to costs.