
(2014) 07 MP CK 0197
In the Madhya Pradesh High Court
Case No : Writ Petition No. 21400/2013

Shiv Kumar Dixit

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Citation : (2014) 07 MP CK 0197

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Ashish Rawat, Learned Counsel, Advocate for the Appellant; S. Dubey, Learned Government Advocate, Advocate for the Respondent

Judgement

Sanjay Yadav, J.—Heard on admission.

2. Claiming himself to be a President of Madhya Pradesh Adhikari Karmachari Sanyukta Sangharsh Samiti, petitioner vide this petition seeks direction to respondent No.1 & 2 to decide the representation Annexure P/1 and P/2; whereby, petitioner seeks transfer of respondent No.3 on the ground that various complaints have been received against him of harassment to woman employees. Additional documents have been filed vide I.A.No.35/2014 which mostly includes the complaint by Smt. Rosily George, Assistant Grade-III and Smt. Pushpa Kusham Assistant Grade-II to substantiate the submission.

3. Learned Government Advocate at the outset has raised objection as to petitioner's locus standi in seeking mandamus to the respondents to decide representation. Taking cue from the additional documents, it is contended by learned Government Advocate that the complaints by two ladies, viz. Mrs. Rosily George and Mrs. Pushpa Kusham filed alongwith I.A.No.35/2014 has already been examined in writ petition No.8293/2011(s) and writ petition No.17679/2011.

4. These petitions, it is contended, were filed by Smt. Rosily George; wherein, the complaint against the respondent No.3 was examined in detail and no iota of

truth were found thereon. It is urged that it is at the instance these two lady employees the petitioner has filed this petition.

5. Learned Government Advocate has brought the orders passed in writ petition No.8293/2011(s) and writ petition No.17679/2011 on record wherein it has been observed -

In writ petition No.8293/2011(s) it has been observed :

"Having heard learned counsel for the parties and on a perusal of the records, it is seen that petitioner has challenged the transfer on one ground alone. The ground is that respondent No.3 the Additional Director, Higher Education Department, Jabalpur has misbehaved with the petitioner and has acted in a manner which is unbecoming of a superior office and because of the conduct of the said respondent, petitioner has submitted the complaint Annexure P-2. It is because of this complaint that respondent No.3 has been instrumental in getting the petitioner transferred. It is further stated that respondent No.3 is in the habit of indulging such activities with other lady employees. One employee Smt. Pushpa Kusham who has also filed complaint vide Annexure P-5, petitioner has tried to emphasize that the entire action against the petitioner for transferring her stands vitiated on account of illegal activities of respondent No.3 against which petitioner has filed a complaint.

From the return filed by the respondents, it is seen that respondents have denied all these averments. As far as the complaint against respondent No.3 by Smt. Pushpa Kusham is concerned, the documents Annexures R-1 and R-3 and the report of the police authorities Annexure R-4 indicates that petitioner and other employees have made serious allegations against Smt. Pushpa Kusham and it is submitted that Smt. Pushpa Kusham has made a false complaint and on the enquiry and vide report Annexure R-5, the complaint is found to be false. That being so, as far as the activities of respondent No.3 being highlighted by the petitioner with reference to complaint of Smt. Pushpa Kusham is concerned, the documents Annexures R-2 to R-5 clearly indicates that these complaints are not correct and even the petitioner is a subscriber to the fact that the complaint made by Smt. Pushpa Kusham is incorrect.

With regard to the complaint of the petitioner also, respondents have conducted the enquiry into the matter and on such complaints after due enquiry under the Jan Sunwai Yojana by the Additional Collector and the authorities of the lady police station, Gorakhpur, documents Annexure R-14, R-15 and R-16 have been filed to show that these complaints are found to be false. On the contrary, it seems that when the petitioner was working in the office of Additional Director, one Shri S.C.Das was given the charge of Accountant Category-I. Shri S.C.Das was transferred and after transfer of Shri S.C.Das, the charge of Accountant was given to the petitioner. However, Shri Das retransferred on 26/05/2010 to Jabalpur and when the petitioner was not giving charge to Shri Das, complaints were made against the petitioner and the Additional Director respondent No.3 is

shown to have made a report against the petitioner. That apart, various employees have also submitted complaints against working of the petitioner and all these are forwarded to the State Govt. and the State Govt. has taken action on the basis of the aforesaid complaints but the fact remains that the complaints made by the petitioner against the respondent No.3 has been inquired into under the Jan Sunwai Yojana and police authorities and they have been found to be perverse and in this report particularly Annexures R-14, R-15 and R-16, certain adverse communication with regard to working of the petitioner are indicated."

In writ petition No.17679/2011 it has been observed :

"It is alleged that the respondent authorities have filed a return in that petition on 20.05.2011 and pointed out that all the allegations made by the petitioner against the respondent No.3 are false and motivated and in fact have also been inquired into by the Mahila Police Station, Jabalpur and Gorakhpur Police Station who have found the same to be false. Copies of the report of the police authorities finding no substance in the complaint of the petitioner have been brought on record by the respondents in W.P.No.82983/2011. It is stated that inspite of the fact that the petition has full knowledge about all these aspects, she has suppressed all these material facts and has filed the present petition seeking a direction against the authorities for registering a case against the respondent No.3 and prosecute him on the same allegations. The said return filed by the respondents in W.P.No.8293/2011 has been produced before this Court which is taken on record.

Having heard the learned counsel appearing for the parties and perusing the record, it is clear that the petitioner has not mentioned any thing in the petition filed by her regarding filing of W.P.No.8293/2011 by her wherein while assailing the order of her transfer, she has also made similar allegations against the respondent No.3 which have been found to be false in the enquiry conducted by the police which has been brought on record by way of the return filed by the petitioner along with the petition, it is even otherwise apparent that the petitioner has alleged that certain unknown persons are approaching her and at the same time has sought an action against respondent No.3 which indicates the fact that there is no substance in the allegation.

In view of the aforesaid, it is clearly established that the petitioner has approached this Court with unclean hands and has suppressed several material facts which amounts to abuse and misuse of the process of this Court and, therefore, the petition filed by the petitioner deserves to be and is hereby dismissed with costs of Rs.2,000/-."

6. These findings indicate that respondent has been subjected to unestablished allegation. Even the petitioner has not filed any cogent material to establish the allegation. In absence whereof, no mandamus can be issued.

7. Consequently, petition fails and is dismissed. No costs.