

(2019) 03 MP CK 0072

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5460, 5467 Of 2019

Siyaram Daheriya

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011 — Rule 6(7)

Citation : (2019) 03 MP CK 0072

Hon'ble Judges : Vijay Kumar Shukla, J

Bench : Single Bench

Advocate : Rahul Kumar Tripathi, H.K. Upadhyay

Final Decision : Dismissed

Judgement

1. In the instant petition filed under Article 226 of the Constitution of India, challenge has been made to the transfer order dated 8-03-2019 passed by the Chief Executive Officer, Jila Panchayat, Seoni District Seoni, whereby the petitioner along with 37 other panchayat secretaries have been transferred from one Gram Panchayat to another Gram Panchayat in the same district. The petitioner is holding the post of Secretary of the Gram Panchayat, Balarpur, District Seoni. Challenge is made on the ground of mala fide alleging that respondent No.4, who is working as Chief Executive Officer, Janpad Panchayat, Seoni was demanding illegal gratification from all the Panchayat Secretaries working under the Janpad Panchayat, Seoni. It is put forth by the petitioner that a complaint was made to the Collector, Seoni which was duly signed by all the Panchayat Secretaries.

2. The order of transfer is passed by the Chief Executive Officer, Jila Panchayat, Seoni with the approval of the In-charge Minister of the District Seoni, which is apparent in the impugned order itself. By the impugned order, as many as 38 panchayat secretaries have been transferred on administrative exigencies taking

into consideration the transfer policy of the year 2017-18 issued by the General Administration Department of Madhya Pradesh, Bhopal vide its letter Circular No.F 6-1/2019/Ek-9, dated 22-02-2019.

3. The services of a Gram Panchayat Secretary is governed by the rules, namely, Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011 [hereafter referred to as the "Panchayat Rules, 2011"]. After enforcement of the said Rules, Panchayat Secretaries in the Gram Panchayats were to be absorbed and the cadre of the Gram Panchayat Secretary after the enforcement of the "Panchayat Rules, 2011" has become a 'district cadre'. Sub-rule (7) of Rule 6 of the Rules, 2011 being relevant for the present purpose is extracted hereunder:

"(7). The Gram Panchayat Secretary may be transferred on administrative ground or on the basis of his application within the district in accordance with the transfer policy issued by the Commissioner, Panchayat Raj. The Gram Panchayat Secretary may be transferred, if necessary, after proper enquiry of the complaints on the recommendation of the Chief Executive Officer, Janpad Panchayat."

4. Thus, the cadre of the petitioner is a district cadre. By the impugned order he has been transferred from one Gram Panchayat to another Gram Panchayat, within the same District on administrative grounds. The petitioner is posted at the present place of posting since January, 2017. Therefore, I do not find any case for interference in the impugned order.

5. The next argument advanced by the learned counsel for the petitioner alleging malafide, that the transfer order has been issued at the instance of the respondent No.4, cannot be accepted in absence of any cogent and plausible material. The transfer order has been issued by the Chief Executive Officer, Jila Panchayat with the approval of the In-charge Minister of the District, Seoni in accordance with the transfer policy of the Government.

6. The Supreme Court in the case of State of U.P. and another vs. Siya Ram and another, (2004) 7 SCC 405 ruled 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."

7. 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 2444 and 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.

8. The petitioner has failed to make out any case warranting interference under Article 226 of the Constitution of India. In the instant petition the petitioner could not establish any breach of statutory rule or a case of mala fide. Hence the writ petition being devoid of merit is dismissed. There shall be no order as to costs.