
(2014) 01 MP CK 0097
In the Madhya Pradesh High Court
Case No : W.P. No. 7497 of 2013

Sunil Kumar Johari

APPELLANT

Vs

M.P. Housing Board and Others

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) LabIC 1557 : (2014) 3 LLN 419 : (2014) LLR 640

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : D.S. Raghuwanshi, Advocate for the Appellant; Vivek Khedkar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—This petition under Article 227 of the Constitution of India assails the order of transfer dated 01/10/2013 contained in Annexure P/1 issued by the Commissioner, M.P. Housing Board transferring the petitioner as Assistant Engineer from Sub-Division, Guna to Technical Section Headquarters, Bhopal. By the impugned order, respondent No. 4/N.K. Manhar, who was posted in Division No. 6, Bhopal, has been posted in place of the petitioner at Guna.

2. Learned counsel for petitioner is heard on the question of admission.

3. Learned counsel for petitioner contends that the impugned order of transfer is vitiated by the vice of frequent transfers as the petitioner had been posted at Guna in August 2012 and is being disturbed within a span of about one year and two months by passing of the impugned order. It is further urged that the impugned transfer is mala fide in nature having been passed to accommodate respondent No. 4/N.K. Manhar. Lastly, it is contended that the order entails serious adverse consequences upon academic career of children of the petitioner, who are pursuing their academic career in Classes-X and XII at Guna.

4. Reliance is placed on the decision of the Apex Court in the case of Director of

School Education v. O. Karuppa Thevan to contend that mid-academic session transfers should be avoided.

5. Learned counsel for respondents contend by referring to reply that as early as in 2004, the petitioner was transferred from Indore Circle to Guna Division by order dated 16.07.2004. Since 2004, the petitioner is discharging his duties within Guna Division and, therefore is working within Division of Guna since last 9 years, which belies the ground of a frequent transfer. It is further submitted by respondents that due to infirm physical condition of the petitioner on account of having suffered a stroke of paralysis in the month of November, 2010 and prior to that having met with an accident, the petitioner is unable to work to his full capacity. It is thus contended that the petitioner is unable to work in the field due to physical infirmity. Letters dated 03.02.2012 (Annexure R/1) and dated 03.03.2011 (Annexure R/2) have been written by the petitioner mentioning about his ailment and also letter dated 28.03.2013 (Annexure R/3) of the Executive Engineer of the Board is written to the Commissioner for making administrative arrangement for looking after the work of Assistant Engineer in the field, which is not being properly discharged by the petitioner on account of his ailment. In response to the abovesaid letter dated 28.03.2013, the Deputy Commissioner of the Board, Gwalior Circle has written to the Chief Administrative Officer of the Board, Headquarters at Bhopal on 16.04.2013 seeking posting of another Assistant Engineer at Guna Sub-Division. A similar opinion of keeping the petitioner away from field job was given by the Executive Engineer of the Division at Guna by letter dated 12.09.2013 (Page 17 of the reply).

6. In this factual background, it is contended by the learned counsel for respondents that the petitioner has been transferred by the impugned order not only in public interest to ensure that field work in Sub-Division Guna is not adversely affected but also in personal interest of the petitioner since he will be able to get better medical treatment at Bhopal.

7. Petitioner has filed rejoinder controverting the abovesaid contentions of the respondents, which is also perused.

8. The ground raised of frequent transfers does not appear to be correct as the petitioner has been posted within the Division of Guna since almost 9-10 years and it appears that he was posted within the Division of Guna at one or two places due to administrative reasons.

9. Moreover, the ground of frequent transfers does not help the petitioner as he has completed more than one year at the present place of posting and also that it is quite possible that while being posted elsewhere in the last 9 years within the Division of Guna, the petitioner was commuting to his work place by keeping his residence at Guna.

10. However, the ground of frequent transfers is not of much relevance in view of the administrative reason demonstrated by the respondents. Due to ailment and physical infirmity faced by the petitioner, the field work of Guna Sub-Division was

adversely affected, which fact is evident from various letters read over by the learned counsel for respondents.

11. In view of the above, the decision of transferring the petitioner out of Sub-Division Guna is based on public interest and administrative exigency, which cannot be found fault with merely because it ostensibly appears to be vitiated by frequent transfers or the ground of accommodation of respondent No. 4.

12. At this juncture, it is pertinent to mention that the impugned order of transfer of the petitioner does not appear to be mala fide for reason of accommodating respondent No. 4 but is based on administrative reasons of problems being faced by the respondents of field work of Sub-Division, Guna being adversely affected due to physical infirmity of the petitioner.

13. Administrative exigency and public interest, which appear to be predominant, outweigh the ancillary ground of frequent transfers and mala fide.

14. Moreover, the scope of interference in matters of this nature is extremely limited. The incompetence of the authority issuing the transfer order, violation of any statutory provision or mala fide are the only three grounds for successful challenge to an order of transfer.

15. None of the abovesaid three grounds are made in this case and, therefore this Court is of the considered view that no case for interference is made out. Resultantly, the petition having no merit fails. No orders as to cost.