
(2010) 09 MP CK 0041

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 453 of 2009

Suresh Singh Sikarwar

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

High Court of Madhya Pradesh Rules, 2008 — Rule 10, 8
Madhya Pradesh High Court Rules and Orders, 2008 — Rule 11
Stamp Act, 1899 — Section 57, 60

Citation : (2011) ILR (MP) 36 : (2011) 1 JLJ 196 : (2010) 5 MPHT 393 : (2010) 4 MPJR 145

Hon'ble Judges : S.K. Gangele, J;Anil Sharma, J;Abhay M. Naik, J

Bench : Full Bench

Judgement

Abhay M. Naik, J.

This matter has come up for consideration before the Full Bench in the following scenario:

(A) Petitioner/Appellant submitted Writ Petition No. 4635/09 (S) against Respondents with allegations that the Petitioner after having been promoted as Inspector on 10-7-2003 was subjected to frequent transfers within a period from the year 2005 to the year 2007, inasmuch, as he was, transferred eight times. On 27-5-07, he was transferred from District Guna to District Gwalior, which was cancelled within a short span of two months, vide order dated 31-7-07. Thereafter, vide order dated 16-1-08, Petitioner was transferred from District Guna to District Gwalior. Pursuant thereto, the Petitioner had given joining on 26-4-08 where he was posted in Police Line. Vide order dated 24-8-08, the Petitioner was ordered to be posted as Station House Officer at Police Station Kampoo. By the same order, one Mr. B.R. Dwivedi was ordered to be transferred from Police Station Kampoo to Police Line. Mr. B.R. Dwivedi challenged the said order in W.P. No. 2923/08 (S) whereupon the transfer order was quashed by this Court on 17-10-08. On account of interim stay order passed by this Court in W.P.

No. 2923/08 (S), the Petitioner was ordered to be posted as SHO, Jhansi Road vide order dated 14-9-08. Within a short span, again the Petitioner has been transferred from District Gwalior to District Balaghat vide order dated 8-7-09, issued by the Director General of Police, M.P. Bhopal. This order was challenged in W.P. No. 4635/05 (S) mainly with the allegations that the same has been issued under the teeth of arbitrariness which is also malafide and contrary to the law laid down by the Apex Court in the case of Sudhir Shantilal Mehta Vs. C.B.I., .

(B) Respondents/State placed before the learned Single Judge, the relevant papers to demonstrate that the matter relating to transfer of the Petitioner was placed before the Police Establishment Board and the Police Establishment Board in its meeting held on 30-6-09 recommended for transfer of the Petitioner from Gwalior to Balaghat. The matter was subsequently placed before the State Govt. which approved the recommendation of the Police Establishment Board. Learned Single Judge found that it is reflected from the material placed before him that the Inspector General of Police, Gwalior Zone vide letter dated 26-7-09 recommended for transfer of those Station House Officers who were found guilty of dereliction of duties or who were not competent to hold the post of Station House Officers and on the basis of such recommendations, the Police Establishment Board, took a decision in respect of the transfer of the Petitioner. Resultantly, the learned Single Judge vide order dated 20-10-09 refused to interfere in the order of transfer.

(C) Aggrieved by the aforesaid, present writ appeal was preferred which came up for hearing before the Division Bench on 30-11-09. Brother S. Samvatsar, J. found that the impugned transfer order was fully in accordance with the judgment of the Apex Court in the case of Prakash Singh (supra). However, other constituent Judge of the Division Bench observed that the hearing is required in order to hold that as to whether the decision of Prakash Singh (supra), is applicable in the case or not and, therefore, admitted the writ appeal.

(D) Since, there was difference of opinion in the matter of admission of writ appeal as expressed by the Judges constituting the Division Bench, the matter was placed before Hon'ble the Chief Justice for kind perusal and orders. Accordingly, the matter came up for consideration before this Full Bench by virtue of His Lordship's order dated 20-9-10.

Shri K.N. Gupta, Sr. Advocate and Shri D.P. Singh, learned Advocate made their submissions. Likewise, Shri M.P.S. Raghuvanshi, learned Additional Advocate General addressed this Court in the matter of reference.

Rule 5 of Chapter IV of High Court of Madhya Pradesh Rules, 2008 specifies the matters, which are heard and decided by the Full Bench. They are:

- (1) reference under Sections 57 and 60 of the Indian Stamp Act, 1899;
- (2) matters which are required by any enactment to be heard and decided by a Full Bench;

(3) any other matter as may be referred to a Full Bench.

Rules 8 and 10 of Chapter IV of the High Court of Madhya Pradesh Rules, 2008 may be relevant in this case which are reproduced below:

(1) A Single Bench or a Division Bench may refer any proceeding, pending before it, to the Chief Justice with a recommendation that it be placed before a Larger Bench where it involves a substantial question of law of general importance.

(2) In such proceeding, the referring Judge(s) may formulate question(s) and may either refer such question(s) for opinion or may request that entire proceeding be heard and decided by the Larger Bench.

(3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, an earlier decision of co-ordinate or Larger Bench of this Court needs reconsideration, he may formulate question(s) and refer the same to the Chief Justice with a recommendation that it be placed before a Larger Bench.

Where, in a civil matter heard by a Division Bench, the Judges comprising the Bench differ on any point(s) and--

(1) formulate such point(s); the proceeding shall be placed before the Chief Justice who shall nominate one or more of other Judge(s) to deliver the opinion on such point(s);

(2) do not formulate point(s); the Chief Justice may request the Division Bench to formulate point(s). After such formulation, the Chief Justice shall nominate one or more of other Judge(s) to deliver the opinion on such point(s);

(3) The referee Judge(s) may after hearing deliver his (their) opinion on the point(s) referred. Such opinion shall be placed before the Division Bench, which shall decide the case in accordance with the opinion of the majority of Judges who have heard the matter.

Thus, Sub-rules (1) and (2) of Rule 8 empower a Single Bench or a Division Bench to refer any proceeding pending before it to the Chief Justice with the recommendation that it be placed before a Larger Bench, where it involves a substantial question of law of general importance. By virtue of Sub-rule (2), the referee Judge(s) may formulate question(s) and may either refer such question(s) or opinion or may request that the entire proceeding be heard and decided by the Larger Bench.

It may be seen that in the case in hand, Division Bench did not find that the matter involves substantial question of law of general importance, nor did it refer the writ appeal to Hon"ble the Chief Justice with a recommendation for being placed before a Larger Bench. Since, the dispute pertained to the transfer of an individual and the matter was to be examined on the anvil of the law laid down by the Apex Court in Prakash Singh's case (supra), it cannot be taken to have involved substantial question of law of general importance. This being so, Rule 8, High Court of Madhya Pradesh Rules, 2008, does not get attracted.

Rule 10, High Court of Madhya Pradesh Rules, 2008, has a wider field to operate. It is not restricted to the matter involving a substantial question of law of general importance. Rule 10 may be invoked when there occurs a difference between the Judges comprising the Bench on any point/points. The word "point(s)" seems to have been inserted in Rule 10 deliberately in order to give wider scope to Rule 10 and to provide proper forum for resolving the difference of opinion between the Judges comprising the Bench on any point(s). The word "point(s)" is not synonymous to substantial question of law of general importance and may be construed as signifying the difference of opinion on any point. In Rule 8, Single Bench or Division Bench while making reference to Hon"ble the Chief Justice is not required to express its opinion except that the proceedings involve a substantial question of law of general importance. Mere involvement of substantial question of law of general importance in any proceeding is sufficient to request Hon"ble the Chief Justice for placing it before a Larger Bench. In such cases, the Judges comprising Division Bench are required to agree merely on the point of involvement of substantial question of law of general importance. This may be even at the outset without expressing their personal opinion on merits on such question. However, in the civil matter governed by Rule 10, the Judges comprising the Bench shall have to express their difference on any point. Difference on any point(s) is a condition precedent for invoking Rule 10, High Court of Madhya Pradesh Rules, 2008. If there exists a difference on any point(s) between the Judges comprising the Bench, they may formulate such point(s), so that, the proceedings may be placed before Hon"ble the Chief Justice, who shall nominate one or more of other Judge(s) to deliver the opinion on such point(s). If they do not formulate point(s), the Chief Justice may request the Division Bench to formulate point. After such formulation, the Chief Justice shall nominate one or more of other Judge(s) to deliver opinion on such point(s). (Underlined by us)

Words "after such formulation" are very significant and important. They go to demonstrate that the Chief Justice acquires jurisdiction to nominate one or more of other Judge(s) only after such formulation of point(s) of difference. Unless such formulation is made, the Chief Justice may not even acquire the power under Sub-rule (2) to nominate one or more of other Judge(s) to deliver the opinion.

Now, coming to the case in hand.

While examining the applicability of Sub-rule (2) of Rule 10, we feel it apposite to reproduce the relevant note-sheet of Writ Appeal No. 453/2009:

Note-Sheet

Writ Appeal No. 453/2009

2-12-2009

This Writ Appeal No. 453/2009 (Suresh Singh Sikarwar v. State of M.P. and Ors.)

has been filed against the order passed by Hon''ble Shri Justice S.C. Sharma in W.P. No. 4635/09. This case was listed before Hon''ble the Division Bench comprising of Hon''ble Shri Justice Subhash Samvatsar and Hon''ble Shri Justice A.K. Shrivastava wherein different orders have been passed.

In the aforesaid Writ Appeal, Hon''ble Shri Justice Subhash Samvatsar has been pleased to observe as under:

Considering all these facts, the learned Writ Court has refused to exercise its writ jurisdiction under Article 226/227 of the Constitution of India and held that the transfer order is fully in accordance with the judgment of the Apex Court in the case of Prakash Singh (supra).

Hence, we do not find any error in the impugned order to call for interference.

Writ appeal, therefore, stands dismissed.

In the aforesaid Writ Appeal, Hon''ble Shri Justice A.K. Shrivastava has been pleased to observe as under:

Admit.

Issue notice to the Respondents on payment of process fee within 3 days. Also issue notice of I.A. No. 17163/2009, which is an application for the grant of interim relief. Let the notice be made returnable within 10 days.

Since I am only admitting the petition, the contentions in detail of Appellant are not being dealt with at this juncture because on merit today the appeal is not being decided by me.

Accordingly as difference of opinion has been expressed by the D.B. of Hon''ble Shri Justice Subhash Samvatsar and Hon''ble Shri Justice A.K. Shrivastava in W.A. No. 453/2009, matter is submitted for being placed before Hon''ble the Chief Justice for kind perusal and orders.

We feel it equally appropriate to reproduce further the relevant portions of the order of Division Bench dated 30-11-2009 to examine that whether there occurred a difference between the two Judges constituting the Division Bench and that what was exact sphere of difference.

Brother Samvatsar, J. has observed:

"... From perusal of the record, it appears that Inspector General of Police, Gwalior Zone vide letter dated 26-7-2009 had recommended for transfer of the Appellant as he was found guilty of dereliction of duty.

Considering all these facts, the learned Writ Court has refused to exercise its writ jurisdiction under Article 226/227 of the Constitution of India and held that the transfer order is fully in accordance with the judgment of the Apex Court in the case of Prakash Singh (supra).

Hence, we do not find any error in the impugned order to call for interference.

Writ Appeal, therefore, stands dismissed."

Brother Shrivastava, J. has observed:

"... By placing reliance on the decision of Prakash Singh and Others Vs. Union of India (UOI) and Ors, , the Appellant has challenged his transfer order. According to me, a hearing is required in order to hold as to whether the decision of Prakash Singh and Ors. (supra), is applicable in the case or not and, therefore, I am of the view that this appeal deserves to be admitted. Admit.

It is clear from the order dated 30-11-2009 impugned in the writ appeal that the Division Bench did not formulate point of difference. One Judge observed that the impugned order of transfer was fully in accordance with the judgment of the Apex Court in the case of Prakash Singh (supra), whereas other Judge observed that hearing of the writ appeal is required in order to hold as to whether the decision of Prakash Singh (supra), is applicable in the case or not. He has nowhere found that the decision of Prakash Singh (supra), is not applicable in the case. He wanted to ascertain before taking a decision on the question of applicability of decision of Prakash Singh's case (supra), which according to him could not have been decided except by providing an opportunity to advance arguments during final hearing. Thus, the sphere of difference centered round the question of applicability of Prakash Singh's case, at the stage of admission alone, because the other Judge has nowhere given a specific observation/finding about applicability/inapplicability of the decision of Prakash Singh's case (supra).

An identical situation arose for consideration before the Full Bench of this Court in the case of Savita Devi v. Sukhvinder Kaur, 2007(1) M.P.H.T. 193 : 2007 (2) J.L.J. 4. In the case of Savita Devi (supra), two differing opinions were expressed by the learned Brother Judges. They did not choose to formulate point of difference yet the matter was placed before the Full Bench headed by Hon"ble the then Chief Justice, Mr. A.K. Patnaik (presently Judge of the Supreme Court of India). Rule 11 of Section 1 of Chapter I of High Court Rules and Orders (M.P.) was applicable at the relevant time, which is reproduced below:

When in any appeal or civil matter heard by a Bench of two Judges, the Judges composing the Bench differ on a point of law and state the point on which they differ the proceedings shall be placed before the Chief Justice for the purpose of nominating one or more of the other Judges to deal with the matter.

In the unanimous decision of the Full Bench in the case of Savita Devi (supra), it has been observed:

It will be clear from the provision of Rule 10 of Section 1, Chapter 1 of the High Court Rules quoted above that if a Judge sitting alone considers that the decision of the proceedings pending before him involves reconsideration of a decision of two or more Judges, he may refer it to the Chief Justice with a recommendation that it be placed before a Full Bench for a decision on a stated question or

questions. Hence, it is only in a case where reconsideration of decision of two or more Judges is thought necessary that a reference may be made to the Chief Justice with the recommendation that it be placed before the two or more Judges. But the said provision in Rule 10 of Section 1, Chapter 1 of the High Court Rules does not contemplate reference to a Full Bench where two Judges composing of Division Bench differ on a point of law but have not stated the point on which they differ.

Rule 11 of Section 1, Chapter 1 of the High Court Rules quoted above provides that where a Bench of two Judges differ on a point of law and state the point on which they differ, the proceedings shall be placed before the Chief Justice for the purpose of nominating one or more of the other judges to deal with the matter. The aforesaid provision, therefore, confers a discretion on the Chief Justice nominate either one Judge or more Judges to deal with the matter in case of a difference on a point of law between the two Judges composing the Division Bench. The aforesaid Rules nowhere provide that in a case where the judges composing the Division Bench do not state the point of law on which they differ, the case has to be referred to a Larger Bench for decision. In such cases also, the matter has to be placed before the Chief Justice for an appropriate order.

It was held that when the Division Bench or the Judges constituting the Bench do not state the point of law on which they differ, though there is a provision for reference of the case to a Larger Bench for decision in such cases also, the matter is required to be placed before the Chief Justice for appropriate orders. On comparison with Rule 11 with Sub-rules (1) and (2) of present Rule 10 of Chapter IV, it may be seen that Sub-rule (1) is more or less identical to earlier rule, whereas Sub-rule (2) empowers the Chief Justice to request the Division Bench to formulate the point of difference, in case, when no such formulation was made by the Division Bench while differing on any point. Power available with Hon"ble the Chief Justice by virtue of Sub-rule (2) of Rule 10 to nominate one or more of other Judge(s) to deliver the opinion on the point may be exercised only after formulation of point(s) which is clear from the language of Sub-rule (2) itself. Nominee Judge(s) would be required to deliver opinion on such point would mean the point which has been formulated. This is evident from the words "after such formulation" and "such points" employed in this sub-rule. Point on which opinion is to be delivered by the nominee Judge(s) is qualified by the word "such". Similarly, the power to nominate is made exercisable in the event of formulation by inserting the words "after such formulation" in the sub-rule. It nowhere provided that even in the absence of formulation, the matter may be referred not to one or more of other Judges but directly to Full Bench. Thus, in our considered opinion the ratio of decision by the Full Bench in case of Savita Devi (supra), squarely covers the present case.

We will be doing great injustice, if we do not deal with the labour put by the arguing Counsel for the Appellant to express that the reference to Full Bench is in accordance with the High Court of Madhya Pradesh Rules, 2008 and the same is

to be answered by the Full Bench by judicial order.

It has been contended on behalf of the Appellant that this Full Bench itself is competent to enough to formulate the point of difference and to decide thereafter the reference, in view of Sub-rule (3) of Rule 5 and Rule 7 of High Court of Madhya Pradesh Rules, 2008. Rule 7 reads as under:

Notwithstanding anything contained in these rules, the Chief Justice may direct that any case or class of cases be heard by a particular number of Judges, unless otherwise provided by any statute.

On reading of Rules 5 to 10 and Rule 11, it is clear that Rule 5 makes a provision for hearing and decision by a Division Bench whereas Rules 8 to 11 make provisions for manner of reference. Sub-rule (3) of Rule 5 makes a provision for reference to a Full Bench of any other matter which is not covered by Sub-rule (1) or Sub-rule (2). Manner of reference has been provided in Rules 8 to 11 in different situations. Rule 8 provides for a reference to a Larger Bench where any proceeding involves a substantial question of law of general importance. However, Rule 10 specifies that when there occurs a difference on any point in civil matter between the Judges comprising the Division Bench, the Bench may formulate such point of difference and may request the Chief Justice for nomination of one or more of other Judge(s) to deliver the opinion on such point. In case of absence of formulation of such point(s), the Chief Justice may request the Division Bench to formulate the point. After such formulation, the Chief Justice may nominate one or more of other Judge(s) to deliver opinion on such point. There is no provision in the High Court Rules, whereunder in case of difference of opinion between Judges comprising the Division Bench, the Chief Justice may refer the matter directly to the Full Bench. This was so observed by the Full Bench of this Court in Savita Devi's case (supra), while dealing with earlier High Court Rules when there was no such empowering provision. Presently also, Shri K.N. Gupta, learned Senior Advocate has been unable to point out any empowering provision in the High Court of Madhya Pradesh Rules, 2008, to refer the matter to Full Bench merely on difference of opinion between the Judges comprising Division Bench, merely on the question of admission that, too, without specifying the question of law involved or without formulating the point of difference.

It has been further contended that Rule 7 contains a non-obstinate clause and the matter having been referred to Full Bench is to be answered in view of this rule.

We are afraid that the said Rule has different field to operate. It empowers the Chief Justice notwithstanding anything contained in these Rules, 2008 to direct that any case or class of cases be heard by a particular number of Judges, unless otherwise provided by the said Rules. This Rule seems to have been inserted to resolve important controversy of a particular case or class of cases involving important issues. It seems to have been inserted to empower Hon'ble the Chief

Justice to direct for hearing of any case or class of cases by a particular number of Judges on consideration of nature and gravity of the case and class of cases. Rule 7 of Chapter IV reads as follows:

Notwithstanding anything contained in these rules, the Chief Justice may direct that an case or class of cases be heard by a particular number of Judges, unless otherwise provided by any statute.

Its perusal goes to show that it would apply when otherwise is not provided. Rule 10 makes a provision for reference when the Judges comprising the Division Bench differ on any point. Thus, a provision is contained in the High Court of Madhya Pradesh Rules, 2008 for resolving the controversy out of difference of opinion between the Judges comprising the Division Bench. In view of the specific provision, we have no hesitation to hold that Rule 7 cannot be invoked in the present set of facts and circumstances.

Further reliance is placed on Rule 22, which reads as under:

Notwithstanding anything hereinbefore contained in these Rules, the Chief Justice may, by a special or general order, direct a particular case(s) or a particular class(es) of cases to be listed before a particular Bench.

This is a residuary power of Chief Justice empowering him to direct for listing of a particular case or particular class of cases before a particular Bench. It nowhere provides for making a reference to Full Bench in case of difference of opinion between the Judges comprising the Division Bench.

Reference to Full Bench is supported on behalf of the Appellant in the light of the law laid down by the Full Bench in the case of *Balkishandas v. Harnarayan and Ors.*, 1979 MPLJ 644.

In the case of *Balkishandas* (supra), question referred for decision was formulated in specific whereas in the present case no such point is formulated, at all. Thus, the situation is identical to that of *Savita Devi's* case (supra), which would govern the present case.

Reliance has also been placed by the Appellant on the Full Bench decision of this Court in the case of *Ladhuram Rameshwardayal Firm v. Krishi Upaj Mandi Samiti*, 1977 MPLJ 641.

In the case of *Ladhuram Rameshwardayal Firm* (supra), the matter on account of difference of opinion between the two Judges constituting the Division Bench was referred to a third Judge and not to the Full Bench. Moreover, Rule 10 of High Court of Madhya Pradesh Rules, 2008, which described a procedure for reference, was not in existence, inasmuch as, controversy involved herein was neither dealt with nor decided in the case of *Ladhuram Rameshwardayal Firm* (supra).

Lastly, it is contended that in view of Rule 2 of Chapter VI, reference to this Full Bench is well justified.

Rule 2 of Chapter VI makes a provision for roster. Rule 2 of Chapter VI reads as follows:

A Bench comprising three or more Judges shall be notified by a special roster.

Aforesaid Rule 2 of Chapter VI merely makes a provision for special roster by issuing notification about the Bench comprising three or more Judges. We are unable to understand how the said provision may be construed as a justification for reference without formulation of point of difference between the two Judges comprising the Division Bench in contravention of Rule 10 of Chapter IV. Aforesaid provision merely lays down that the notification of a Bench comprising three or more Judges shall be by way of special roster, alone. There is no controversy in the present case that whether this Full Bench has been notified or not by the special roster. The real controversy herein is that in view of difference of opinion between the two Judges comprising the Division Bench, whether a reference could have been made to Full Bench without formulation of point of difference.

In the case of Savitri Devi (supra), there was a difference of opinion between the two Judges comprising the Division Bench. The matter was referred to Full Bench without formulation of point of difference. The Full Bench of this Court instead of answering the reference directed to place the matter before Hon"ble the Chief Justice for appropriate orders. It would not be out of place to mention that after the Full Bench decision in Savitri Devi (supra), the case was referred to the third Judge and has been ultimately decided in accordance with the opinion of the majority of the Judges.

Ex consequenti, we hold that we are bound by the Full Bench decision of this Court in the case of Savita Devi's case (supra), and accordingly, the matter deserves to be placed before Hon"ble the Chief Justice for appropriate orders as directed by the Full Bench in the aforesaid case.

Accordingly, matter may now be placed before Hon"ble the Chief Justice for appropriate orders.