
(2015) 07 MP CK 0073

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 532 of 2014

T.P.S. Bhadoriya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Corruption Act, 1988 — Section 13 (1) (a) (d), 13 (2), 13(1) (a) (d),
13(2)

Citation : (2015) 07 MP CK 0073

Hon'ble Judges : P.K. Jaiswal, J;J.K. Jain, J

Bench : Division Bench

Advocate : A.S. Kutumbale, Learned Senior Counsel and Anand Agrawal, Learned Counsel, for the Appellant; Manoj Dwivedi, Learned Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J—By this intra-court appeal the appellant - T.P.S. Bhadoriya (respondent No. 3 in writ petition) is challenging the order dated 8.5.2014, passed by the writ court in W.P. No. 2124 of 2014 whereby, the learned writ court after considering the affidavit of respondent No. 2 - Transport Commissioner and circular issued by the State of M.P. came to the conclusion that respondent No. 5 - Kishore Singh Baghel (writ petitioner) has rightly been transferred out of Sendhawa check post on completion of six months tenure, keeping in view the policy framed dated 5.7.2005. The learned writ court quashed the transfer order dated 20.2.2014 of appellant - T.P.S. Bhadoriya, with a direction to the respondent No. 1 - State of M.P. to post another Transport Inspector, strictly in consonance with the transfer policy dated 5.7.2005, read with executive instructions dated 19.12.1994, as expeditiously as possible, preferably within a period of three days from the date of order.

2. The learned writ court also directed the following which reads as under :-

"3. The State Government as well as the Transport Commissioner is directed to review all postings of various Regional Transport Inspectors/employees covered under the Policy dated 05-07-2005 and all those person, who have completed six months tenure, as provided under the policy should be transferred out to Office postings/other places provided under the policy.

4. The exercises of reviewing the transfers be concluded positively within a period of thirty days.

5. The respondents are also directed not to post a person against whom a criminal case has been registered either by Lokayukta Establishment or any other Government agencies or who is facing any departmental enquiry or who is otherwise under cloud to a field post, keeping in view the policy and circular dated 05-07-2005/19-12-1994 and the respondents shall act in accordance with the Circulars dated 05-07-2005 and 19-12-1994, while issuing fresh transfers in respect of the employees of the Transport Department.

6. The petitioner is granted a liberty to file an appropriate writ petition so far as the issue of seniority is concerned, vis-a-vis respondents No. 4 and 5."

3. Brief facts of the case are that the respondent No. 5 - Kishore Singh Baghel, (writ petitioner) was appointed as Transport Sub-Inspector in the Transport Department and he was promoted to the to the post of Transport Inspector on 31.12.2002. By order dated 31.7.2013, he was posted from check post Malthaon to Check Post Sendhawa and by order dated 20.2.2014, he has been transferred from check post Sendhawa to check post Jhabua. In his place, appellant herein, who was posted in the transport office, Bhopal, has been posted at check post - Sendhawa.

4. The respondent No. 5 challenged his transfer order on the ground that his children are studying at Satyasai School, Indore. The transfer of the appellant was challenged on the ground that a criminal case has been registered again him by the Lokayukta Establishment on 23.11.2011 at crime no. 133/2011 and therefore, he could not have been posted to the check post which is very sensitive check post, keeping in view that circular dated 19.12.1994. He also relied on the interim order dated 23.8.2013, passed by the Gwalior Bench in W.P. No. 5595/2013 (Praveen Nahar v/s. State of M.P. & Ors.), wherein, it has been observed by the writ court that appellant - T.P.S. Bhadoriya, should not have been posted to the sensitive check posts. The writ court after considering the arguments of the learned counsel for the parties and various circulars of the State Government, so also the observations made by the Gwalior Bench in W.P. No. 5595/2013, allowed the writ petition and quashed the transfer of the appellant from Bhopal to Sendhawa check post and passed the following order :-

7. The learned Single Judge, after considering the arguments and various Circulars of the State Government so also observations made by the Gwalior bench passed the following order which reads as under:-

11. The present writ petition is arising out of the order dated 20-02-2014 passed by the Respondent No. 2, Transport Commissioner, State of Madhya Pradesh. The petitioner as well as the respondent No. 3 are working on the post of Transport Inspector. It is an admitted fact that the petitioner was transferred from the Check post Malthaon to Check post Sendhawa on 31-07-2013 and by the impugned order he has been transferred out from Sendhawa to Jhabua and by the same order, which is Annexure-P-3 dated 20-02-2014. The respondent No. 3 has been posted from Bhopal to Check post Sendhawa. The Transport Department of the State Government has issued a policy dated 05-07-2005 in order to ensure transparency in the matter of posting of its employees in the office as well as at Check post, which are certainly very sensitive check posts and the policy provides that its a rotational policy. A person who is posted at a Check posts is posted for a period of six months and after expiry of the period of six months, he is posted out of the check posts to some office posting/headquarter posting and the rotation has to be done after every six months. The clause-3 provides that in case any person is having a suspicious conduct (is under cloud) he will not be posted at a sensitive posting (field posting). The policy issued by the State Government which is applicable right from 2005 as informed to this court by the learned Government Advocate reads as under :-

12. The State Government has issued another Circular dated 19-12-1994 which restrains persons of doubtful integrity to be given field postings. The Circular dated 19-12-1994 reads as under :-

13. In the present case, it is again not in dispute that a case has been registered against the respondent No. 3 by the Lokayukta Establishment. The Superintendent of Police, Special Police Force Establishment (Lokayukta) vide letter dated 28-01-2012 has categorically informed the Deputy Secretary (Transport Department) about the registration of a criminal case u/s 13(1) (a) (d) 13(2) of the Prevention of Corruption Act, 1988 against the respondent No. 3, T.P.S. Bhadoriya. Relevant paragraph of the aforesaid letter reads as under :-

14. It is an admitted fact that a criminal case under the Act of 1988 has been registered against the respondent No. 3. It is pertinent to note that the respondent No. 3 was earlier also posted against a field posting by the Transport Commissioner and against the posting a writ petition was preferred before the Gwalior Bench. The Gwalior Bench vide order dated 23-08-2013 passed in Writ Petition No. 5595/2013 (Praveen Nahar Vs. State of M.P. and others) held as under :-

"Parties are heard on the question of interim relief.

Petitioner has filed this petition seeking the writ of mandamus to the respondents to allow him to work at check post, Morena in pursuance to the order Annexure P/1. Petitioner was posted to work on the said check post of Morena from Regional Transport office, Gwalior. In obedience of this order, petitioner was relived and he admittedly joined on the transferred place of Morena. The order

dated 01-08-2013 shows that the petitioner was relieved from Regional Transport office Gwalior to join at transferred place. Thereafter, petitioner submitted his joining at Morena. Grievance of the petitioner is that after executing the said order Annexure P/1 by the order dated 03-08-2013 Annexure P/1-A he was directed to join at Bhopal and in lieu thereof by the order of same date Annexure P/1-B, respondent No. 4 is posted at Morena.

Shri D.K. Katare, learned counsel for the petitioner submits that posting of respondent No. 4 runs contrary to rotation posting policy of the department. It is further contended that shifting of petitioner from Gwalior to Morena and from Morena to Bhopal amounts to change of his headquarter, therefore, falls within the ambit of "transfer". It is further contended that as per the policy Annexure P/12 dated 19th December, 1994, respondent No. 4 should not have been posted at a sensitive place of check-post because he is under cloud of an enquiry and investigation by Lokayukt is going on against respondent No. 4. By placing reliance on the document dated 26-11-2012 Annexure P/13, it is contended that respondent No. 4 is under cloud and such person should not have been posted at a sensitive check post. To bolster his submission, reliance is also placed on Annexure P/4 dated 05-07-2005. In paragraphs 3 and 4 of this policy it is directed that employee whose conduct is under cloud, should not be posted at a sensitive place.

Per contra, Shri M.P.S. Raghuvanshi supported the orders and submits that executed order Annexure P/1 is not cancelled while separate orders Annexure P/1-A and Annexure P/1-B are passed. It is further submitted that petitioner is more energetic person and that is the reason to transfer him at Bhopal. To support his submission, photocopies of relevant pages of transfer file were shown to the court. The said photocopies are of note-sheet dated 03-08-2013. In addition, it is contended that transfer is in administrative exigency, therefore, no interference is warranted. It is further contended that petitioner was also posted contrary to the rotation policy which shows that it was only guidelines and its violation does not render the order as illegal. Shri D.S. Raghuvanshi, Advocate for respondent No. 4 borrowed the same arguments.

I have heard learned counsel for the parties Upon the stand of parties it is not clear that whether shifting of petitioner from Gwalior to Morena and from Morena to Bhopal and likewise shifting/posting of respondent No. 4 from Bhopal to Morena amounts to change in the headquarter or not. Thus, I deem it proper to direct respondent No. 2/3 to file an affidavit making it clear whether the aforesaid change of posting amounts to change of headquarter and resultantly amounts to transfer. Affidavit must be based on relevant legal provisions and must disclose the same. Let it be done within fifteen days.

Presently, it is clear that the petitioner had executed the order Annexure P/1. In the opinion of this Court, prima-facie whether order Annexure P/1 is cancelled or the petitioner is further shifted by a separate order, net result will be his movement from Morena to Bhopal within a short span of time. Considering the

aforesaid, and further considering the fact that in view of circular, prima facie it was not proper to post respondent No. 4 at a sensitive place because preliminary enquiry is going on against him in Lokayukt, I deem it proper to pass an interim order in favour of petitioner.

In view of the aforesaid, an interim measure, till next date of hearing, orders dated 03-08-2013 Annexure P/1-A and Annexure P/1-B shall remain stayed. Petitioner be permitted to work at the check post, Morena, pursuant to the order dated 31st July, 2013.

Registry is directed to list this matter immediately after filing of aforesaid affidavit by the official respondent. Respondent No. 4, if advised, may file his return in the Meanwhile.

certified copy as per rules."

15. The Gwalior Bench in light of the Criminal case registered against the respondent No. 3 has granted an interim order and has also held that in light of the circular dated 19-12-1994, prima facie the posting of T.P.S. Bhadoriya to Morena Check post was not proper. It is noteworthy to mention that during the pendency of the writ petition, the impugned posting order was issued and it was brought to the notice of the learned Single Judge that subsequent posting order has been issued and in those circumstances the Gwalior Bench has passed the following order:-

"Counsel for the petitioner submits that challenge made to the impugned transfer order passed by the respondents"/authorities" to the extent it relates to the petitioner was stayed by this court vide order dated 23-08-2013 and the petitioner is still continuing at the present place of posting. It is further submitted that respondent No. 4 who was transferred in place of the petitioner has been in fact accommodated and transferred to some other place. That being so, petitioner may be permitted to continue at the present place of posting.

State's counsel and the counsel for respondent No. 4 jointly submits that as on date, there is no administrative exigency to transfer the petitioner from the present place of posting. Under such circumstances, the impugned transfer order to the extent of petitioner may be set aside.

In view of above, noting survives for adjudication in this petition. Accordingly, the impugned transfer order vide orders dated 31-07-2013 (Annexure-P-1), dated 03-08-2013 (Annexure-P/1A) and dated 03-08-2013 (Annexure-P/1B) to the extent it relates to petitioner alone stand set aside.

The petition stands disposed of to the extent indicated hereinabove.

Certified copy as per rules."

16. This court is of the considered opinion that at the time the transfer order was passed i.e on 20-02-2014, the order passed by the Gwalior Bench dated 23-08-2013 was very much in existence and in all fairness such a transfer order

could not have been passed in light of the findings arrived at by the learned Single Judge, vide order dated 23-08-2013.

17. The present case reflects very sorry state of affairs in which contradictory affidavits have been filed by the Transport Commissioner. The first affidavit of the Transport Commissioner which is on record dated 25-03-2014 in paragraphs 3 and 4 reads as under :-

"3. That I state that a preliminary inquiry against respondent No. 3 is pending before the Lokayukta vide Case No. 133/2011.

4. That, so far as circular dated 05-07-2005 issued by the Transport Department is concerned, I state that respondent No. 3 is a RTI and he has been posted from Regional Office, Bhopal to check post Sendhawa after his completing six months" tenure at Bhopal office. The order of posting has been issued by me in the capacity of Commissioner, Transport, Sendhawa which comes within District Barwani is not a home town of respondent No. 3. There is no complaint regarding integrity or dereliction in duty or any indiscipline against respondent No. 3. There is no departmental enquiry or disciplinary proceedings pending against the respondent No. 3. "

18. The Transport Commissioner in the first affidavit has admitted that preliminary enquiry is pending against the respondent No. 3 by the Lokayukta in respect of Crime No. 133/2011 and it has been stated that the respondent No. 3 has rightly been posted. He has referred to some Circular dated 19-12-1996 and his contention is that the respondent No. 3 has rightly been posted to Sendhawa. The Transport Commissioner has filed a second affidavit. Paragraph 5 of the second affidavit reads as under :-

"5. That, as per the circular dated 19-12-1994 issued by the General Administration Department, pertains to only those employees against whom the prosecution is pending consideration or against whom the case of major penalty is pending, should not be given the positing in fields. Sensitive posts in this connection be ear-marked. The copy of the circular dated 19-12-1994 is filed alongwith the Reply filed on behalf of State.

It is submitted that no departmental enquiry or criminal case in court is pending against the respondent NO.3 at present.

It is also submitted that as per letter dated 26-11-2012 issued by the Lokayukta Police to the Deputy Secretary, Transport Department, Bhopal, the Lokayukta has sought some information regarding the respondent No. 3 and four other officers. The disciplinary proceedings or D.E. is pending against the respondent No. 3. In view of the above, the posting of the respondent No. 3 has been ordered. The copy of the Guideline dated 05-07-2005 is also filed alongwith the reply filed on behalf of State."

19. Learned Transport Commissioner has stated in his affidavit that the respondent No. 3 is an excellent worker and he has rightly been posted to

Sendhawa. It has been also stated that no criminal case in court is pending against him and no departmental enquiry is pending against him.

It appears the Transport Commissioner has not read the letter of the Lokayukta Establishment dated 26-11-2012 carefully and the Circular of the State Government dated 19-12-1994. The letter of the Lokayukta Establishment makes it very clear that a criminal case has been registered against the respondent No. 3 at Crime No. 33/2011 and, therefore, it definitely means that criminal case is under investigation registered at Crime No. 133/2011 by the Lokayukta Establishment. Rule 9 (1) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 provides for suspension of a Government servant against whom any criminal offence is under investigation, enquiry or trial. The disciplinary authority in light of Rule 9 is empowered to place the petitioner under suspension also. The learned Transport Commissioner in respect of an employee against whom the criminal case has been registered is justifying his field posting.

20. In the instant case, this court has also carefully gone through the judgment relied upon by the learned counsel for the Respondent No. 3 Mr. Varun K. Chopra in the case of Shilpi Bose (Mrs) and others (supra), the apex court in paragraphs No. 3 and 4 held as under:-

"3. After hearing learned Counsel for the parties and having considered the facts and circumstances of the case, we are of the opinion that the High Court committed serious error in interfering with the transfer Orders of primary school teachers. The High Court held that the District Education Establishment Committee had no jurisdiction to transfer the Primary School teachers on their request. We find no justification for this conclusion. There is no dispute that the District Education Establishment Committee is competent to transfer Primary School teachers from one place to the other but merely because such transfers were made on the request of teachers, the committee is divested of its jurisdiction. The Director of the Primary Education had issued directions that lady teachers posted in distant areas or rural areas may be accommodated to the place of their request to avoid hardship to them. These directions are reasonable, and the District Education Establishment Committee followed the same principles in transferring the appellants on their requests to avoid hardship with was being caused to them. The respondents challenged the validity of the transfer before the High Court on another ground also that Primary School teachers posted in the urban areas were not liable to be transferred to rural areas though the State Government had issued circular on March 30, 1984 permitting transfers from urban areas to rural areas. The High Court did not interfere with the Order of the transfer on this ground instead it held that the transfer Orders were without jurisdiction as the same had been made on the appellants' request with a view of accommodate them. We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer Orders with a view to accommodate a public servant to avoid hardship, the same cannot and should

not be interfered by the Court merely because the transfer Order were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer Orders had been issued by the competent authority which did not violate any mandatory Rule, therefore the High Court had no jurisdiction to interfere with the transfer Orders.

4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders."

21. The apex court in the aforesaid case as the transfer orders therein had been issued by the competent authority and which did not violate any mandatory rule has held that the High Court has no jurisdiction to interfere with the transfer orders. It has also been observed that the courts should not ordinarily interfere with the order instead affected party should approach the higher authorities in the department. It has been further observed that if the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration, which would not be conducive to public interest.

22. This court has also carefully gone through the judgment relied upon by the learned counsel for the Respondent No. 3 Mr. Varun K. Chopra in the case of Rajendra Singh and others (supra). The apex court has held that the employee does not have a vested right to remain posted at a place of his choice and the transfer is an incident of service.

23. The Gwalior Bench of this court in the case of Pratap Singh Mandeliya Vs. State of M.P. and Others, (2014) 1 MPJR 122 : (2014) 1 MPLJ 620 held as under :-

"13. In 2003 (11) SCC 740 (Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and others) the Apex Court held that the power of transferring an officer cannot be wielded arbitrarily, malafide or an exercise against efficient and independent officer or at the instance of politicians. For better administration, the officers concerned must have freedom from fear of being harassed by repeated transfers

or transfers ordered at the instance of someone who has nothing to do with the business of administration.

14. The Allahabad High Court in 1996 (1) Labour Law Journal 26 W.P. 1191/2013 (Pawan Kumar Shrivastava Vs. U.P. Electricity Board and others) held that where the transfer order is on political considerations and complaints and not based on administrative exigencies or public interests, it is bad in law. This Court in K.S. Verma Vs. State of M.P. and Others, (2011) ILR (MP) 1720 opined that note sheet / complaint is taken into consideration by the Minister. It is held that this kind of complaint cannot be a foundation for transferring the employee from one place to another. Except a bald complaint lodged by the district head of a political party, no other material brought on record to justify that the petitioner derelicted in his duty. The Court imposed cost also. This case has similarity with the present matter. The record shows that the entire action of transfer is based on bald complaint of Ex- MLA / Respondent No. 2.

15. In the light of aforesaid judgments, the transfer order on the basis of such complaint cannot be said to be a fair exercise of power. Such transfer cannot be said to be in administrative exigency or in public interest. Thus, it is clear that transfer order is passed for reasons which are not germane for passing the valid transfer order. On this score alone transfer order is liable to be interfered with.

16. This is settled in law that exercise of power for an extraneous or ulterior purpose amounts to "malice in law". Legal malice or malice in law means something done without lawful excuse. In other words, it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of the other (See: State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, AIR 2003 SC 1941 : (2003) 5 JT 74 : (2003) 3 SCALE 107 : (2003) 4 SCC 739 : (2003) 2 SCR 908 : (2003) AIRSCW 1430 : (2003) 2 Supreme 713 . Where government action is unreasonable or lacking in quality of public interest, though different from that of mala fides, it may in a given case furnish evidence of mala fides (See :Kasturi Lal Vs. State of J & K (1980) 4 SCC 10). Even if an order is found to be not vitiated by malice in fact, but still can be held to be invalid, if the same is passed for unauthorized purpose as it would amount to malafide in law [see: Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, AIR 2006 SC 182 : (2005) 3 CPJ 35 : (2005) 7 JT 258 : (2005) 6 SCC 776 : (2005) 2 SCR 524 Supp : (2005) AIRSCW 5676 : (2005) 5 Supreme 660]. In Somesh Tiwari Vs. Union of India (UOI) and Others, AIR 2009 SC 1399 : (2009) 1 JT 96 : (2009) 1 SCALE 63 : (2009) 2 SCC 592 : (2009) 1 SCC(L&S) 411 : (2009) 3 SLR 506 : (2009) AIRSCW 854 it is opined that transfer order will be bad in law, if it is issued not based on any W.P. 1191/2013 factors germane to the passing of an order of transfer and based on irrelevant grounds."

24. Keeping in view the aforesaid judgment, as undue favour has been extended to the respondent No. 3 against whom a criminal case has been registered, by

granting a field posting, the transfer order certainly is nothing but a colourful exercise of powers on the behalf of the respondents and such transfer order can never be said to have been issued on account of administrative exigencies or public interest, inspite of there being an observation by the Gwalior Bench. This court is of the considered opinion that the judgment relied upon by the learned counsel in the case of Shilpi Bose (Mrs) and others (supra), and in the case of Rajendra Singh and others (supra) are of no help to the respondent No. 3.

25. This court after careful consideration of the policy framed by the State Government is of the considered opinion that so far as transfer of the petitioner is concerned as he has completed six months tenure, has rightly been transferred out of Sendhawa on completion of six months tenure, keeping in view the policy framed dated 05-07-2005. Once a policy has been framed, the Department is required to follow the policy otherwise such a policy shall only be a piece of paper and shall loose its sanctity. So far as transfer order of the respondent No. 3 is concerned, the respondent No. 3 is certainly under cloud. The letter of the Lokayukta Establishment, establishes a criminal case has been registered against him and as per policy dated 05-07-2005 as well as Circular of the State Government dated 19-12-1994, by no stretch of imagination he could have been given field posting at Sendhawa, which is certainly a sensitive field posting. Resultantly, the impugned order only to the extent it relates to the respondent No. 3 posting him from Bhopal to Sendhawa is hereby quashed forthwith.

26. The petition is disposed of with the following directions :-

"1. The transfer order dated 20-02-2014, by which the respondent No. 3 has been transferred from Bhopal to Sendhawa is quashed, only to the extent it relates to the respondent No. 3

2. This court has already quashed the transfer order of the respondent No. 3 from Bhopal to Sendhawa and, therefore, the Respondent State as it has been stated that the Sendhawa is a sensitive check post is permitted to post another Transport Inspector, strictly in consonance with the transfer policy dated 05-07-2005, read with executive instructions dated 19-12-1994, as expeditiously as possible, preferably within a period of three days from today.

3. The State Government as well as the Transport Commissioner is directed to review all postings of various Regional Transport Inspectors/employees covered under the Policy dated 05-07-2005 and all those persons, who have completed six months tenure, as provided under the policy should be transferred out to Office postings/other places provided under the policy.

4. The exercise of reviewing the transfers be concluded positively within a period of thirty days.

5. The respondents are also directed not to post a person against whom a criminal case has been registered either by Lokayukta Establishment or any

other Government agencies or who is facing any departmental enquiry or who is otherwise under cloud to a field post, keeping in view the policy and circular dated 05-07-2005/ 19-12-1994 and the respondents shall act in accordance with the Circulars dated 05-07-2005 and 19-12-1994, while issuing fresh transfers in respect of the employees of the Transport Department.

6. The petitioner is granted a liberty to file an appropriate writ petition so far as the issue of seniority is concerned, vis-a-vis respondents No. 4 and 5."

Resultantly, the writ petition is partly allowed as aforesaid.

No order as to costs.

C.c. as per rules."

5. Surprisingly, the Government of M.P., instead of discharging the duty imposed on them by a policy and executive instructions issued from time to time, tried to protect the transfer order of the appellant, which has been passed in violation to the policy and circular dated 19.12.1994 and 5.7.2005 and challenged the order passed by the learned writ court by filing the Writ Appeal No. 618/2014, on the ground that no writ of mandamus can be issued to the respondent No. 1 - State of M.P. to review all postings of various Regional Transport Inspectors/employees covered under the policy dated 5.7.2005 and all those persons who have completed six months tenure as provided under the policy should be transferred out of office postings/other places provided under the policy. The Division Bench after appreciating the arguments of the learned Deputy Government Advocate dismissed the writ appeal by giving the following reasons :-

"9. It is well settled that a mandamus can be issued where the Government or a Public Authority has failed to exercise or wrongly exercised the discretion conferred upon it by a statute or rule or a policy decision. In order to compel the parties of public duty, the Court may itself pass an order/direction.

10. Here, in the present case, the State of Madhya Pradesh failed to comply its own policy/instructions issued by them from time to time and, therefore, the writ court has compelled to issue such a direction. It is not a case of the State that there is no such Policy. Thus, we are of the view that the learned Writ Court exercising their jurisdiction under Article 226 of Constitution of India have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case, a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and given directions to compel the

performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

11. It is not disputed by the learned Dy. Govt. Advocate that the case was registered by the Lokayukta Police against respondent No. 2 - T.P.S. Bhadoriya.

12. In view of the aforesaid, we are of the view that the learned writ court has not committed any legal error in issuing such direction. The State, instead of complying with the directions, is protecting such directions and filed this writ appeal which is devoid of any substance and, accordingly, dismissed with a direction to the appellant/State to comply with the aforesaid and file an affidavit of Principal Secretary, Govt. of Madhya Pradesh, Transport Department and the affidavit of the Transport Commissioner, within a period of 30 days from today and file the same in pending W.A. No. 532/2014."

6. The Division Bench while dismissing the Writ Appeal No. 618/2014 of the respondent No. 1 on 22.9.2014, vacated the interim stay granted to the appellant T.P.S. Bhadoriya, while rejecting his application for grant of stay (I.A. No. 2916/2014) on 22.9.2014 and directed the respondent No. 1 ie., Principal Secretary Transport Department of Government of M.P. and respondent No. 2 - Transport Commissioner to file detailed affidavit, within a period of 30 days from the date of order in compliance to the direction issued in W.A. No. 618/2014.

7. On 27.10.2014 and 17.11.2014, time was granted to them to file a detailed. On 1.12.2014 Shri Pramodh Agrawal, Principal Secretary, Transport Department, Vallabh Bhavan, Bhopal filed his affidavit in compliance to the order passed by the writ court which has been affirmed by the Division Bench in W.A. No. 618/2014, stating the following in the affidavit, which reads as under :-

"1. That I am Principal Secretary, Transport Department Government of Madhya Pradesh, Bhopal and well conversant with the facts of the case.

2. That this Hon"ble Court vide its order dated 22.9.2014 has directed that the order passed by the Writ Court be complied with.

3. It is humbly submitted that an affidavit to this effect as per direction of this Hon"ble Court is being sworn as under :-

I/ I say that in this regard the Transport Commissioner is an authorized officer who is authorized to pass appropriate order after scrutinizing the cases of each and every individual officer and employees.

II/ That Shri T.P.S. Bhadoriya has been transferred from Sendhawa and posted at office of Transport Commissioner, M.P., Gwalior.

III/ I say that I have perused the order passed by this Hon"ble Court and after perusal of the order I have issued directions to the transport Commissioner, M.P.

Gwalior to undertake entire process as expeditiously as possible by scrutinizing each and every individual case by taking into consideration the policy dated 5.7.2005, as per direction of this Hon"ble Court."

8. Similarly, Ravi Kant Jain, the then Transport Commissioner, M.P. Gwalior, filed his affidavit stating the following in para 3 which read as under :-

"3/ It is humbly submitted that an affidavit to this effect as per direction of this Hon"ble Court is being sworn as under :-

I/ That while quashing the transfer order of the respondent (T.P.S. Bhadoriya) this Hon"ble Court had directed that some other transport Inspector may be posted on the check post Sendhawa.

In this regard I say that Shri T.P.S. Bhadoriya has been Transferred from Sendhawa to Transport Commissioner office Gwalior (copy enclose)

II This Hon"ble Court had also directed to review all the postings of various Transport Inspectors and employees covered under the policy dated 5.7.2005 and also all those person who have completed 6 months tenure as provided under the policy.

I say that in this regard the process has been initiated, and we are collecting the information to find out to whether the posting on the Check posts are as per the policy of 2005 or there is any over stay of any enforcement staff after completion of period of 6 months on the Check posts.

III/ The Hon"ble Court had also directed not to post any person against whom any criminal case is registered by the Lokayukt or any other Government agency.

I say that in this regard the matter is being scrutinized under the circular of 1994 however, after scrutiny if it is found that any of the employee is facing any kind of criminal proceeding and against whom any kind of criminal case is registered by the Lokayukt, then action will be taken in this regard.

I say that the exercise is bound to take some time as scrutiny of individual case is to be done. Further due to imposition of model Code of Conduct at present no action can be taken in this regard, therefore, in such circumstances, it is humbly prayed that further time may kindly be extended, so that the same is dealt with appropriately and orders may be passed in this regard to give effective compliance of the order of this Hon"ble Court "

9. Shri Ravi Kant Jain, along with affidavit annexed the copy of order dated 29.11.2014 by which appellant has been relieved from check post Balsamund (Sendhawa) and posted to Office of Transport Commissioner, M.P. Gwalior. Both the affidavits of the Senior Officers of the State Government are silent in respect of para 26, direction issued by the learned writ court.

10. Shri A.S. Kutumbale, learned Senior counsel has submitted has drawn our attention to policy dated 5.7.2005 and 19.12.2014 and document filed along with

an application for taking additional document on record on 25.4.2015 and submitted that as per letter no. 8323 of office of Lokayukt, Bhopal dated 26.11.2014, the Special Police Establishment Lokayukt has decided to file closure report in the matter of pending Lokayukt enquiry against the appellant under Section 13 (1) (a) (d) and 13 (2) of Prevention of Corruption Act, 1988 and submitted that in view of the subsequent event, the impugned order passed by the writ court so far as it relates to transfer of the appellant from Jhabua to Sendhawa check post be set aside and order of transfer dated 20.2.2015 be restored.

11. Per contra, Shri Manoj Dwivedi, learned Addl. Advocate General has submitted that as per his instructions, no closure report has been filed before the Special Judge at Rewa nor Special Judge has accepted any so called closure report filed by the Lokayukt and unless and until the same is accepted then, only it can be said that no Lokayukt enquiry is pending against him and prayed for dismissal of the writ appeal.

12. We have heard the arguments of the at length.

13. A Government servant holding a transferable post has got vested right to remain posted at one place or other. He is liable to be transfer from one place to other. Transfer orders issued by the competent authority do not violate any of his legal right. Unless the order of transfer is vitiated by malafide or made in violation of statutory provision the court cannot interfere with it.

14. In the present case, at the time of passing of transfer order dated 20.2.2014, which was impugned in the writ petition or till the learned writ court allowed the writ petition and quashed the transfer of appellant from Jhabua to Sendhawa Check post no document of any kind was filed by the appellant to prove that no enquiry is pending before the office of Lokayukt, Bhopal. Only on 26.11.2014, a letter by the office of Lokayukt has been filed in the present writ appeal, but from that also he will not get any help because nothing is on record to prove that any closure report has been filed and the same has been accepted by the Special Judge. On the contrary the learned Additional Advocate General had very categorically stated that no closure report has been filed. It is also not in dispute that as per affidavit filed by the Transport Commissioner, appellant by letter no. 6186/14, Gwalior dated 29.11.2014 was relieved from Balsamund (Sendhawa) check post and posted to Transport Commissioner Office, Gwalior. This shows the lethargic attitude of the Transport Commissioner in complying our order dated 22.9.2014. As per order dated 22.9.2014, the Division Bench vacated the stay granted in favour of the appellant. When this Court directed the Principal Secretary and Transport Commissioner to remain present before this Court they under compulsion passed the order on 29.11.2014. In the affidavit, which has been quoted in here before in preceding paragraph, nothing has been stated about the compliance of direction issued in para 26 of order dated 8.5.2014. It shows that they have no respect or regard to the order passed by the Court. The writ court ultimately found that the order of transfer was passed by an authority

was contrary to the policy of the State Government. Thus, in all fairness, the respondent Nos. 1 and 2 have to immediately after 22.9.2014 pass the order of posting of the appellant to some other place. No stay of any kind was granted in the present appeal to stay the direction issued by the writ court in para 26 of the impugned judgment.

15. On due consideration of the aforesaid, we are of the view that the order passed by the writ court do not violate any of the legal rights of the appellant and once the writ appeal of the respondent Nos. 1 and 2 has been dismissed by order dated 22.9.2014, we cannot take a different view in the present writ appeal because the transfer order of the appellant was contrary to Government policy and circular issued by the State Government.

16. Nothing is no record nor in the affidavit filed by the respondent Nos. 1 and 2 on 1.12.2014, stating that they are complying the directions issued by the writ court in para 26 on 8.5.2014, which was upheld in W.A. No. 618/2014 on 22.9.2014 and, therefore, we are inclined to issue notice to the Principal Secretary and Transport Commissioner to show cause as to why proceedings be not initiated against them for disobeying the order passed in W.P. No. 2124/2014 on 8.5.2014 and W.A. No. 618/2014 on 22.9.2014 and direct them to file a detailed response by giving all the details about posting and transfer at check post on or after 8.5.2014 and any kind of efforts were made by them/action has been taken by them for complying the directions issued by this court before the Principal Registrar of this Court within 6 weeks. Registry is directed to register a separate contempt proceeding against them and fix the case immediately after service of notice to them within a period of six weeks from today.

17. For these reasons, the writ appeal filed by the appellant has no merit and is accordingly, dismissed. No costs.