

(2022) 03 MP CK 0149

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15794 Of 2021

Yogendra Singh Thakur

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Citation : (2022) 03 MP CK 0149

Hon'ble Judges : Purushaindra Kumar Kaurav, J

Bench : Single Bench

Advocate : Rahul Deshmukh, Priyanka Mishra

Final Decision : Allowed

Judgement

Purushaindra Kumar Kaurav, J

1. The petitioner is aggrieved by the order dated 28.07.2021 (Annexure P/1), whereby, he has been transferred from Government Middle School, Arniyaram, Ashta, District Sehore to Government Middle School, Ganihari, District Raisen.
2. The petitioner submits that he is a Middle School Teacher in the subject of Social Science in Government Middle School, Arniyaram, Ashta, District Sehore. According to him, the post in question is a district cadre post and therefore, the seniority is maintained at a district level. By the impugned order, the petitioner has been transferred from District Sehore to District Raisen and the condition No.4 of the transfer order says that the petitioner will get seniority only from the date of joining at a transferred place, meaning thereby, the petitioner would lose his seniority from the date of his appointment till the date of joining on the transferred place.
3. Learned counsel for the petitioner submits that such recourse is not permissible and he places reliance on the Division Bench decision of this Court in case of Dhaniram Ahirwar and Another Vs. High Court of Madhya Pradesh and another 1995) 0 MPLJ 545. According to him, this Court has clearly held that the

transfer of an employee should not affect his seniority. He further submits that taking into consideration the aforesaid aspects, vide order dated 24.08.2021, this Court was pleased to stay the operation of the said order and issued notice to the respondents.

4. Learned Government Advocate on instructions submits that there is a typographical error in the impugned order dated 28.07.2021 and Clause 4 of the transfer order does not say that the seniority of the petitioner would be counted only from the date of joining at the transferred place. She further submits that that the said clause would not be attracted in the case of the petitioner for the reason that the petitioner still remains in the same division and the post in question is not a district cadre post but the same is a division cadre post. Since, the petitioner is posted in the same division, hence, no interference is called for.

2 The Hon'ble Supreme Court in the matter of Paresh Chandra Nandi vs Controller Of Stores, N.E. Railway, Pandu and Others AIR 1971 SC 359 has held that ordinarily, service condition of an employee, i.e. salary and seniority, could not be affected to their prejudice as a result of their transfer to any other department or wing. Relying on various decisions including the case of Paresh Chandra Nandi AIR 1971 SC 359

5. , the Division Bench of this Court in case of Dhaniram Ahirwar and Another¹ has held that when an employee is transferred on a permanent post from one district to another, he carries with him his seniority and right to be considered for promotion.

6. Taking into consideration the aforesaid position of law, this Court is of the view that normally on a transfer of an employee from one place to other, he/she should not loss his/her seniority which he or she is carrying on the date on which such transfer order is passed. Therefore, in view of the aforesaid, condition No.4 of the impugned transfer order which says that the seniority of the petitioner would be counted from the date of his joining on the transferred place, is illegal. The impugned transfer order dated 28.07.2021 (Annexure P/1) is hereby quashed and set aside. The respondent would be at liberty to pass appropriate transfer order in accordance with law, keeping in mind that the seniority of the petitioner should not be adversely affected on his transfer.

7. With the aforesaid observations, the petition stands allowed as indicated above.