
(2019) 04 MP CK 0084
Madhya Pradesh High Court
Case No: Writ Petition No. 5297 Of 2019

Rakesh Bihari Khare

APPELLANT

Vs

State Of Mp And Others

RESPONDENT

Date of Decision: April 9, 2019

Acts Referred:

- Representation Of the People Act, 1951 - Section 20A, 20B, 21, 22, 26, 28A
- Constitution Of India, 1950 - Article 226, 227

Hon'ble Judges: S.K. Seth, CJ; Vijay Kumar Shukla, J

Bench: Division Bench

Advocate: D. K. Tripathi, Pratyush Tripathi, Sanjay K. Agrawal

Final Decision: Dismissed

Judgement

Vijay Kumar Shukla, J

1. The petitioner is challenging the legality and validity of the transfer order dated 8.3.2019 whereby he has been transferred from the post of Range

Officer, Shahnagar, South Forest Division (Territorial), Panna to Range Officer, Simariya, Forest Division, Rewa on administrative grounds. By

amendment he has also challenged the order dated 15.3.2019 passed by the Chief Conservator of Forest, Forest Circle, Chhatarpur, by which

intervenor Smt. Janki Yadav has been posted as Range Officer, Shahnagar, South Forest Division (Territorial), Panna.

2. The challenge is mainly on the ground that the transfer order has been issued without approval of the Election Commission in violation of the

instructions and Model Code of Conduct. He also submits that his relieving on 16th March, 2019 is also in violation of instruction of Election

Commission. It is further submitted that the posting of the intervenor by the Chief Conservator of Forest, Forest Circle, Chhatarpur by order dated

15.3.2019 is contrary to the policy of the State Government as District Panna is home district of the intervenor.

3. Combating the aforesaid submissions, the counsel for the State and the proposed intervenor submitted that there is no illegality in the order of

transfer of the petitioner as the petitioner was transferred on 8.3.2019 whereas the Model Code of Conduct was brought into force w.e.f. 10.3.2019,

thus his transfer is prior to the issuance of Model Code of Conduct. The counsel for the State produced the copy of the communication dated 5.4.2019

issued by the office of Chief Election Officer, M.P. Forest, addressed to the Collector and District Election Officer, Panna, whereby the transfer and

relieving of the petitioner and the intervenor have been approved by the Commission.

4. By order dated 8.3.2019 passed by the respondent No.1/State, as many as 69 Range Officers were transferred. In the said order, the name of the

petitioner is at Srl. No.23 whereby he has been transferred from the post of Range Officer, Shahnagar, South Forest Division (T), Panna to Range

Officer, Simariya, Forest Division Rewa on administrative ground. By the same order the intervenor Smt. Janki Yadav was transferred from the post

of Range Officer, Shahnagar, North Forest Division (Territorial), Sagar to Circle Chhatarpur, on administrative ground. The petitioner was transferred

at present place of posting by order dated 10.7.2017 from the post of Range Officer, Badwara, Forest Division (T), Katni to the post of Range

Officer, Shahnagar, South Forest Division (T), Panna on administrative grounds on a vacant post.

5. As per the transfer policy issued by the General Administration Department, a Range Officer is posted in a Forest Circle and the concerned

Conservator of Forest is competent to issue the posting order within his circle. Counsel for the intervenor submitted that after transfer of the writ

petitioner the post at Shahnagar had fallen vacant therefore, the competent authority has posted the intervenor on the post of Range Officer,

Shahnagar, South Forest Division (T), Panna. Copy of the said order has been placed on record as I.A.-1 on record. Thereafter, the intervenor has

submitted her joining on the said post on 16th March, 2019 and the petitioner has been directed to handover the charge of the said post.

6. After having heard learned counsel for the parties, we do not find any merit in the present petition. The transfer order was issued on 8.3.2019

whereas, the Model Code of Conduct was issued on 10.3.2019. In support of the contention that the petitioner was assigned election duty, the

petitioner has filed copy of the order dated 2nd March, 2019 passed by the Upper Collector/ Deputy Election Officer, District Panna.

7. Upon perusal of the said order, we do not find that the petitioner was assigned any election duty but he was assigned duty to carry out the demo

version C-VIGIL App. The counsel for the petitioner vehemently argued that the same would amount to 'election duty' and therefore, he could not

have been transferred as per the guide lines issued by the Election Commission.

8. We do not find any merit in the aforesaid submission as the conduct of the elections to the House of Parliament and to the House of Legislature of

the State and all the matters in connection with such elections are governed by the provisions of ""The Representation of the People Act, 1951"" (Act

43/ 1951) (hereinafter referred to as ""Act of 1951""). Part IV of the Act of 1951 deals with administrative machinery for the conduct of elections.

Under the superintendence, directions and control of the Election Commission, the Chief Electoral Officer of the State supervise the conduct of all

elections in the State under the Act of 1951. The general duties of District Election Officer are prescribed under Section 20-A. Section 20-B provides

for nomination of observers. The returning officers, Assistant Returning Officers are appointed by the Election Commission under Section 21 and 22.

The Presiding Officers for Polling stations are appointed by District Election Officers under Section 26. Section 28A provides that Returning Officer,

Presiding Officer, etc. deemed to be on deputation to the Election Commission. The said provision reads as under :-

28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission. - The returning officer, assistant returning officer,

presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State

Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

9. Petitioner has failed to substantiate his contention that he has been appointed under Part III of the Act of 1951 for the conduct of election. Since the petitioner does not fall in the category of the officers who are mentioned under Section 28A of the Act of 1951, therefore, there is no merit in the submission of the counsel for the petitioner that the petitioner has been assigned election duty, and therefore, he shall be deemed to be on deputation to the Election Commission and therefore, he could not be transferred by the State Government. Even otherwise, in the present case the respondents have produced copy of the order dated 5.4.2019 issued by the Deputy Chief Election Officer of Madhya Pradesh, approved by Chief Election Officer, whereby the relieving of the petitioner and joining of the intervenor has been approved.

10. The other contention of the petitioner that he has been transferred to accommodate the intervenor, the same cannot be appreciated as the petitioner has not impleaded the intervenor as party in the present petition and further there is no material on record to show that the order of posting of the intervenor on the post of the petitioner has been passed in violation of any statutory rules. The petitioner has placed on record an interim order passed by the learned Single Bench in W.P. No.5129/2019 claiming parity. The said writ petition has already been dismissed by the Division Bench by order dated 3.4.2019.

11. The 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 *Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani*, (1989) 2 SCC 602; *Union of India and others vs. S.L. Abbas*, AIR 1993 SC 244 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 malafide exercise of power.

12. In the case of State of U.P. and another vs. Siya Ram and another, (2004) 7 SCC 405 it has been held 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."€

13. In the instant petition the petitioner could not establish any breach of statutory rule or a case of mala fide. Thus, the petitioner has failed to make

out any case warranting interference under Article 226 of the Constitution of India. Hence the writ petition being devoid of merit is dismissed. There

shall be no order as to costs.