

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 11th OF SEPTEMBER, 2023

WRIT APPEAL No. 1202 of 2023

BETWEEN:-

GAJENDRA KUMAR S/O RAM NARAYAN KUMAR, AGED ABOUT 57 YEARS, OCCUPATION : SERVICE R/O 494, DUTT NAGAR, NEAR RAJENDRA NAGAR, INDORE (MADHYA PRADESH)

.....APPELLANT

(SHRI ABHINAV P. DHANODKAR, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH PRINCIPAL
1. SECRETARY VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

M.P. KSHETRA VIDYUT VITRAN COMPANY LIMITED
2. THROUGH MANAGING DIRECTOR MPPKVVCL, GPH CAMPUS, POLO GROUND, INDORE (MADHYA PRADESH)

M.P. KSHETRA VIDYUT VITRAN COMPANY LIMITED
3. THROUGH CHIEF GENERAL MANAGER (HUMAN RESOURCE) MPPKVVCL, GPH CAMPUS, POLO GROUND, INDORE (MADHYA PRADESH)

4. M.P. KSHETRA VIDYUT VITRAN COMPANY LIMITED

THROUGH EXECUTIVE DIRECTOR (CORPORATE AFFAIRS) MPPKVVCL, GPH CAMSPU, POLO GROUND, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI PRASANNA PRASAD, ADVOCATE FOR RESPONDENTS NO.2 TO 4)

This appeal coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:

ORDER

Heard finally with the consent of both the parties.

2. In this writ appeal filed under Section 2(1) of of the Madhya Pradesh Ucha Nyayalaya Ki Nyayapeeth Ko Appeal Adhiniyam, 2005, the appellant has assailed the order dated 03/08/2023 passed in W.P. No.18972/2023 whereby the show-cause notice dated 24/07/2023, the transfer order dated 25/07/2023 and order of relieving order dated 25/07/2023 were challenged and vide the impugned order the said writ petition has been disposed of.

3. The brief facts of the case are that the appellant is presently posted as Superintendent Engineer in respondent No.2 establishment i.e. M.P. Paschim Kshetra Vidyut Vitran Company Limited, Indore. On 24/07/2023, a show-cause notice was issued to him alleging that he unauthorizedly entered into the Chamber of Managing Director of the Company on 24/07/2023 at around 09:25 AM without taking prior permission as important files, documents etc. are kept inside the

Chamber. Before the appellant could reply to the aforesaid show-cause notice, he was transferred vide order dated 25/07/2023 from Indore to Agar on the post of Executive Engineer. Thereafter on the same day, he was relieved for joining at new place of posting with a direction that he should hand-over the charge immediately.

4. The appellant in the writ petition had prayed for the following reliefs :-

“In view of the facts mentioned above, the petitioner pray that this petition be allowed in the nature of mandamus or any direction may kindly be issued and following relief may be granted to the petitioner.

i) *That, show-cause notice dated 24/07/2023 in letter bearing No.क्र./प्रति/पक्षे/01/स्टेनो/534 passed by respondent No.3 may kindly be quashed being arbitrary, illegal and bad in law.*

ii) *That, order dated 25/07/2023 passed in order bearing No.WZ / MD-Corporate-Office/HR/194 passed by respondent No.3 may kindly be quashed being arbitrary, illegal and bad in law.*

iii) *That, letter dated 25/07/2023 passed in letter bearing No.क्र./प्रति/पक्षे/कानि-मेटेनेंस/10815 passed by respondent No.4 may kindly be quashed being arbitrary, illegal and bad in law.*

iv) *That, the other relief which is just and proper in the facts and circumstances of the case may also be granted doing justice including cost.”*

5. The learned Single Judge while deciding the writ petition passed the following order; operative portion of the order is re-produced herein below :-

“6] From the record, it is apparent that the petitioner was posted as Superintending Engineer at the office of respondent No.2, and has entered into the chamber of respondent No.2, allegedly, without any permission. He has also been issued a

show cause notice dated 24/07/2023, and on the very next day, he has also been transferred from Indore to Agar on the post of Executive Engineer. Although, the petitioner's contention is that he has been demoted from the post of Superintending Engineer to the post of Executive Engineer, but as the respondents have submitted that he was only given the charge of the post of Superintending Engineer, thus, it cannot be said that it is a case of demotion.

7] Be that as it may, it is apparent that the petitioner has not been given the proper opportunity to file reply to the show cause notice, thus, this Court finds it expedient to dispose of this writ petition with a liberty to the petitioner to submit his representation before the respondent No.1/competent authority within a period of one week, and the respondent no.1 is also directed to decide the petitioner's representation in accordance with law by a reasoned and speaking order, within a further period of three weeks.

8] So far as the transfer of the petitioner from Indore to Agar is concerned, this Court refrains from passing any interim order on the same as this issue can also be decided by the respondent No.1/competent authority, who is also directed to pass the appropriate order with regarding to the transfer of the petitioner within a period of three weeks, however, no coercive action shall be taken against the petitioner till his representation is decided.

9] With the aforesaid directions, the writ petition is disposed of."

6. Learned counsel for the appellant submitted that the learned Single Judge heavily erred in not considering the following facts :-

“i) The transfer order is without jurisdiction since the same has been passed by Chief General Manager, who is incompetent authority. In the case of appellant, the competent authority is the Managing Director of the Company.

ii) The relieving order dated 25/07/2023 has been issued by the Executive Director without any prior approval

of Managing Director of the Company.

iii) No approval whatsoever was taken from the Managing Director before issuing show-cause notice, transfer order and relieving order.

iv) The order of transfer is the out-come of *mala fide* and is punitive in nature.”

7. Learned counsel for the appellant contended that the entire process of issuance of show-cause notice, transfer order and relieving order was completed within a period of 24 hours, which smacks of *mala fide* and colourable exercise of powers.

8. So far as contention No.1 is concerned; learned counsel for the appellant has brought into the notice of this Court the powers with regard to posting and transfer as laid down in Section 5: Posting and Transfer of the Circular. In the case of appellant, the power to transfer and post is with the Managing Director of the Company only. No other authority can transfer or post the appellant. He also contended that the Chief General Manager is neither the appointing authority nor the disciplinary authority, therefore, the orders of transfer and relieving are without jurisdiction.

9. There is no prior approval from Managing Director before issuance of show-cause notice, transfer order and relieving order, therefore, these orders deserve to be quashed/set-aside.

10. So far as order being punitive in nature is concerned, learned counsel for the appellant submitted that there is no administrative exigency shown for transfer of the appellant except for the incident which took place a day before i.e. 24/07/2023.

11. Learned counsel for the appellant has placed reliance on the order of this Court dated 31/10/2013 passed in W.P. No.1191/2013 (S) Pratap

Singh Menderiya vs. State of M.P. and others), in which this Court was pleased to order that transfer order can be passed only in administrative exigency or in public interest. In **Sarvesh Kumar Awasthi vs. U.P. Jal Nigam and others (2003) 11 SCC 740**, the Apex Court has held that power of transferring an officer cannot be wielded arbitrarily, *mala fide* or in exercise against efficient and independent officer or at the instance of politician. For better administration, the officer must have freedom from fear and being harassed by such transfer order, which has nothing to do with the business of administration. On these grounds; learned counsel for the appellant prays for setting-aside of the impugned orders.

12. Per contra, learned counsel for the respondents No.2 to 4 has opposed the prayer and submitted that show-cause notice, transfer order and relieving order have been issued on the basis of approval given by Managing Director of the Company. He further contended that Managing Director has given approval for initiation of departmental enquiry is also proposed. The conduct of the appellant is to be seen, since he had exceeded his authority by entering into the Chamber of Managing Director without any permission, where important files/documents are kept. The said act of the appellant clearly comes within the purview of misconduct. The transfer is an incident of service which cannot be interfered with unless and until it is a case of *mala fide* or violation of any statutory rules.

13. In support of his contention, learned counsel for the respondents No.2 to 4 has relied on the decision of Apex Court in **Union of India vs. S.L. Abbas (1993) 4 SCC 357** and **Union of India vs. Deepak Niranjana Nath Pandit (2020) 3 SCC 404**.

14. Learned counsel for the respondents No.2 to 4 further submitted

that the learned Single Judge has granted liberty to the appellant to submit a representation before the Competent Authority within one week, which appellant has not done so far and without availing the remedy as made available by the learned Single Judge, the appellant has approached this Court. On the basis of these grounds this writ appeal deserves to be dismissed with heavy cost.

15. Heard learned counsel for both the parties.

16. Section 5 : Posting and Transfer of the Circular clearly provides the Managing Director is the Competent Authority in respect of Class-I Officer as the appellant.

17. Learned counsel for the respondents No.2 to 4 have produced the note-sheets in respect of transfer as well as show-cause notice issued to the appellant. On perusal of the transfer note-sheet, it is seen that the appellant, who is holding the substantive post of Executive Engineer (T&D) was transferred on 19/05/2023 from West City Division, Indore to Corporate Office, Indore as Superintending Engineer (Current Charge), Indore. As per note-sheet the approval has been taken for the aforesaid transfer dated 19/05/2023, which is clearly evident from para 3 of the said note-sheet.

18. So far as show-cause notice is concerned, this Court is not inclined to interfere with the same, though the appellant has challenged the same in the writ petition.

19. Admittedly, there is approval of the Managing Director before passing the impugned transfer order and relieving order. Circumstances in which the transfer has been effected clearly goes to show that the same is an the out-come of *mala fide* and the same is punitive in nature. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer in absence

of any reply to the show-cause notice. The same has been passed in utmost hast and illegal manner. It is to one to say that the employer is entitled to pass an order of transfer in administrative exigency, but it is another thing to say that the order of transfer is passed by way of, or, in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set-aside being wholly illegal. The respondents even without waiting for the reply to show-cause notice have deliberately transferred the appellant, which amounts to colourable exercise of powers.

20. Thus, as per settled legal principles, the transfer order dated 25/07/2023 and relieving order dated 25/07/2023 are hereby **quashed**. Appeal accordingly stands **allowed**. As a consequence the order passed by learned Single Judge dated 03/08/2023 passed in W.P. No.18972/2023 is hereby **set-aside**.

21. However, the respondents shall be at liberty to proceed against the appellant in accordance with law from the stage of issuance of show-cause notice, if so advised.

No order as to cost.

(S. A. DHARMADHIKARI)
JUDGE

(HIRDESH)
JUDGE

Aiyer*