

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION NO. 17827 OF 2024.

SHANKARLAL NAMDEO

VS.

THE STATE OF MADHYA PRADESH AND OTHERS.

Appearance:

Shri Brijesh Kumar Choubey - Advocate for the petitioner.

Shri Monu V. John – Panel Lawyer for the respondent.

Shri Sanjay Ram Tamrakar – Senior Advocate with Shri Ankit Chopra
Advocate for the intervenor.;

(O R D E R)

(03/09/2024)

The present petition has been filed challenging the transfer order Annexure P/4 dated 01.07.2024 whereby the petitioner has been transferred from VIth Battalion SAF, Jabalpur to the Office of Superintendent of Police Maihar.

2. It is the case of the petitioner that the petitioner has been transferred by way of penalty in terms of the proposal Annexure P/1 dated 07.05.2024 whereby the Deputy Commandant has recommended transfer of the petitioner. It is the case of the petitioner that the said proposal was sent on the ground that one lady Head Constable (present intervenor) and the petitioner who is working on the post of Sub Inspector (Ministerial) are making allegation against each other and thus, the petitioner should be transferred. It is the case of the petitioner

that earlier two inquiries were carried out in the matter of allegations made by the said lady Head Constable against the petitioner and in both these inquiries the petitioner has been given clean chit by Annexure P/5 and P/6 which are dated 12.03.2024 and 10.06.2024 and in fact the report Annexure P/6 is later to transfer proposal. Thus, the transfer proposal pales into insignificance.

3. This court had stayed the operation of the transfer order on 09.07.2024. Now reply has been filed by the State as well as the said lady Head Constable who has intervened in the present petition.

4. It is argued by learned senior counsel appearing for the intervener that the intervener is posted as Head Constable and was initially posted at High Court as part of the security staff but looking to her personal inconvenience as she has to attend her mentally disabled son, she has been attached to office of 6th Battalion since last two years. At the said place she is being assigned ministerial duties in the office and the petitioner is holding the charge of Head Clerk being Sub-Inspector (Ministerial). It is contended that the petitioner has been indulging in sexual/gender harassment of the intervener and the intervener has moved an application and on the said application proceeding under the **Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013** (for short “**POSH Act**”) have been initiated. It is further contended by learned counsel for the intervener that as per Section 12 of the POSH Act there is a provision to transfer the aggrieved woman or the respondent of the complaint to any other place upon recommendation of the internal committee or legal committee. Thus, it is argued that the transfer of the petitioner is

statutory in nature being ordered in terms of Section 12 of POSH Act. It is further argued by the counsel for the intervener as well as by the State that the continuation of the petitioner at the same place would not be conducive to cordial atmosphere and at work place and may also affect the enquiry being carried out under POSH Act.

5. Heard.

6. The enquiries which had been disposed of against the petitioner vide Annexure P/5, P/6 earlier evidently were not enquiries under the POSH Act. They were simplicitor enquiries disposed of at administrative side by the authorities of the Department which were approached by the intervener or by the petitioner in the matter of harassment of one by the other and vice versa. The fact remains that now the formal proceedings before internal complaints committee under the POSH Act which is constituted in terms of Section 4 of the said Act have been instituted against the petitioner and the said proceedings are pending. It has been pointed out by the petitioner that by referring to his reply to vacating stay application that the internal committee under the POSH Act has given interim report and as per the interim report, it has been mentioned that the intervener has not been cooperative in the proceedings of the committee and on account of non-cooperation of the intervener, the committee is unable to carry out the proceeding further. It is evident from perusal of the interim report of the committee placed on record at page 74 of the document No. 11014/2024 that the committee has recorded that despite the intervener appearing before the committee, she is avoiding to give any statement before the committee repeatedly.

7. From a perusal of the documents placed on record at page 64 of the same I.A. No. 11014/2024 it is seen that earlier internal committee was constituted on 18.10.2023 but has been reconstituted time and again i.e. on 13.05.2004 and again on 04.06.2024. However, the intervener by letter dated 01.07.2024 has expressed that she has no trust in the Internal Complaint Committee and in any Local Committee and the matter should be inquired by some State Level committee constituted at some Higher Level. She has also expressed in the said application placed on record at page 63 of document No. 11014/2024 that she has no trust either in the Internal Committee or in the local committee. She has made a bald assertion in the said application at page-63 of IA 11014/2024 that she has no trust in the Internal Committee or in any Local Committee. However, there is no specific contention in the said letter dated 01.7.2024 that which member of the committee is biased and in what manner. It is plainly stated that looking to her mental status, she is unable to give statement before the Committee constituted.

8. As per Section 4 of the POSH Act the employer has to constitute Internal Complaint Committee and as per Section 6 of the POSH Act the Local Committee has to be constituted by District Officer notified under Section 5 of the Act. The intervener has expressed distrust in the Internal Complaint committee as well in Local committee, without mentioning a single word of reason or apprehension for such mistrust.

9. It is the contention of the petitioner that the intervener has been creating impossible situation for the petitioner in getting the proceedings under the POSH Act pending by her non-cooperation in the proceeding of the Internal Complaint Committee as a result of which the Internal

Complaint committee is unable to finalize the proceeding and by taking benefit of pendency of the said proceedings, the intervener has sought transfer of the petitioner.

10. From a perusal of the letter dated 18.07.2024 (page 67 of IA 11014/2024) issued by the Commandant, 6th Battalion SAF Jabalpur, it is evident that the Commandant has sought guidance from the Dy. Inspector General of Police, SAF, Police Headquarter Bhopal, regarding further action to be taken as the intervener is not cooperating in the proceeding of the internal complaint committee. The same report has been given by the Committee in its interim report which has been placed on record at page-74 of IA 11014/2024.

12. As per section 12 of the POSH Act following has been provided:-

(1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—

(a) transfer the aggrieved woman or the respondent to any other workplace; or

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

13. The transfer of the petitioner was sought to be justified relying Section 12 of the POSH Act. However, for the transfer to be statutory transfer in terms of Section 12 of the POSH Act, it has to be on recommendation of the Internal Complaints committee. In the present case there is no proposal or recommendation of the Internal Complaints

Committee, but there has been a recommendation of the Commandant of 6th Battalion who has constituted Internal Complaints committee.

14. From the aforesaid facts as discussed in detail in this order, it is evident that proceedings under POSH Act are pending against the petitioner and also that the said proceedings are pending since last more than one year. It is also clear that the Internal Committee has recorded that the intervener has not been cooperating in the proceedings of the Internal Complaints Committee. Now by the letter dated 18.07.2024 place on record with documents No. 11014/2024, it is evident that the proceedings of the committee have come to stand still and at stalemate because the intervener has refused to get the matter inquired by the said committee, without assigning a single word of ground of mistrust in the said committee.

15. The intervenor has created an impossible situation of stalemate in herself bringing to the proceedings of the Internal Complaints Committee at standstill and demanding such a committee to be constituted which is not contemplated under the POSH Act. Now by relying on pendency of the said proceedings, the transfer of the petitioner has been ordered which will be for an indefinite tenure because looking to the stand taken by the intervenor before the Committee, it cannot be inferred that the proceedings will take how much time for conclusion. It appears to this Court that the intervenor has tried to take undue advantage of mere pendency of proceedings under POSH Act to get the petitioner transferred and then bringing the proceedings to an indefinite halt. Most importantly, the letter expressing

mistrust in the committee was submitted on the same date when the impugned transfer order was issued i.e. on 01.7.2024. This strategic selection of date to express mistrust in the Internal Committee indicates that after getting the petitioner transferred, the intervenor only wanted to keep the Complaint pending indefinitely.

16. The transfer of the petitioner is not on the ground of any administrative exigency like requirement of work at Maihar. The transfer is only on account of pendency of the complaint before the Internal Complaint committee. The contention of the petitioner seems to have substance in saying that the order amounts to penalizing the petitioner by transferring him to a place almost 150 Km. away just on account of pendency of the enquiry, that too which is in position of indefinite stalemate.

17. Looking to the situation as narrated above, this Court has no hesitation in holding that the transfer of the petitioner merely on account of pendency of the Internal Committee proceedings is not justified in absence of any recommendation of the committee, and the committee proceedings having been brought to an indefinite stalemate by the intervenor herself. The transfer amounts to nothing but undue victimization and harassment of the petitioner. Thus, the impugned order of transfer dated 01.7.2024 (Annexure P-4) deserves to be and is hereby **quashed**. Petition is **allowed**.

18. Looking to the allegations in the complaint made against the petitioner and looking to the counter allegations made by either of the party against other, the controlling officer and competent authority is always at liberty to make suitable arrangements to maintain cordial

atmosphere in the office. Thus, this Court grants liberty to the respondents to transfer, post or attach the petitioner to any other office or establishment within Jabalpur City only during pendency of the proceedings under POSH Act so that cordial atmosphere can be maintained in the office and it would also not cause any undue disturbance in the life of the petitioner just on account of pendency of the proceedings under the POSH Act which have come to a indefinite stand still on account of the stand taken by the complainant/intervenor before the Complaint Committee.

(VIVEK JAIN)
JUDGE

MISHRA