

**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.6765/2019**  
**Devendra Bhushan Tiwari Vs. State of M.P. and others**

**Gwalior, Dated :08/04/2019**

Shri N.S. Kirar, Advocate for petitioner.

Shri Ankur Modi, Additional Advocate General for respondents/State.

This petition under Article 226 of the Constitution of India has been filed challenging the order dated 8/3/2019 passed by the District Education Officer, Datia, District Datia, by which the petitioner has been transferred from the office of AEO, Datia to the office of Block Education Officer, Seondha, District Datia.

2. It is submitted by the counsel for the petitioner that it is true that violation of the transfer policy would not be a good ground for this Court to interfere with the order of transfer, but this Court while directing the respondents to decide the representation can always require the respondents to take the transfer policy into consideration as well as also to consider the personal difficulties of the employees. To buttress his contentions, the counsel for the petitioner has relied upon the judgment passed by the Division Bench of this Court in the case of **R.S. Chaudhary Vs. State of M.P.** reported in **ILR [2007] MP, 1329** and thus, it is submitted that the respondents be

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directed to decide the representation.

3. *Per contra*, it is submitted by the counsel for the State that so far as the present petition is concerned, as the transfer policy is not enforceable, therefore, there is no *prima facie* case in favour of the petitioner.

4. Heard learned counsel for the parties.

5. The Division Bench of this Court in the case of **R.S.**

**Chaudhary (supra)** has held as under:-

“35. Fulcrum of the matter is whether the decision in *T.N. Bhardwaj (supra)* govern the field and would be the binding precedent or that of the decision rendered in *J.K. Bansal and others (supra)* would be binding or both can simultaneously be valid. In the case of *J.K. Bansal and others (supra)* a three-Judge Bench of the Apex Court has referred to the decisions in *Mrs. Shilpi Bose (supra)* and *National Hydroelectric Power Corporation Ltd. vs. Bhagwan (supra)*. Their Lordships have not only noticed but have quoted exhaustively the ratio laid down in the said decisions. Thus, the said decisions have been approved by the three-Judge Bench. In *T.N. Bharadwaj (supra)* what their Lordships have stated that the guidelines are binding on the Government. The binding nature of the guidelines, in our humble view, has to be understood in the context of *Mrs. Shilpi Bose (supra)*, *S.L. Abbas (supra)*, *Jagjit Singh Mehta (supra)* and *S.S. Kaurav and others (supra)*. To elaborate the instructions or the guidelines do not confer any enforceable

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right on an employee. He has no vested right to remain at one post or the other. However, while ordering a transfer the authority must keep in mind the guidelines issued by the Government whether an order of transfer is passed in violation of the guidelines or the executive instructions. The action of the State Government should not be mala fide or malicious and should be tested on the anvil and touchstone of acceptable reasonableness. In view of the aforesaid pronouncement of law by the Apex Court in several cases, which we have referred hereinabove, we are of the considered opinion that the transfer policy formulated by the State is not enforceable as the employee does have a right and the Courts have limited jurisdiction to interfere in the order of transfer. The Court can interfere if there is violation of mandatory statutory rule or if the action of the Government is capricious, malicious, cavalier and fanciful. What would constitute these components that would depend on facts of each case as the same can be neither illustratively or exhaustively stated. In fact, that is not warrantable to be stated. We proceed to hold that in case an order of transfer is assailed on the ground that there has been violation of the policy, the proper remedy is to approach the authorities by pointing out the violation and it is expected of the authorities to deal with the same keeping in mind the policy guidelines with utmost objectivity.”

6. Thus, if the employee wants to assail the order of transfer on the ground of violation of transfer policy, then the proper remedy is to approach the authorities by pointing out the

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violation.

7. At this stage, it is submitted by the counsel for the petitioner that since he has already filed a representation, therefore, the respondents be directed to decide the representation as early as possible.

8. Considered the submissions made by the counsel for the petitioner.

9. The Division Bench of this Court in the case of **Mridul Kumar Sharma Vs. State of M.P.** reported in **ILR [2015] MP, 2556** has held as under:-

“3. Notably, both the orders are passed by the Single Bench of this Court and, therefore, cannot be cited as binding precedent in this intra Court appeal before the Division Bench. More so, the legal position is no more *res integra*. The Supreme Court has consistently observed that the representation filed by the employee does not create any right in his favour to remain at the same place from where he has been transferred, until the representation is decided. The fact that representation is pending will be of no avail to the employee concerned. He must first join at the transferred place, even if he has to pursue remedy of representation. Whether the concerned employee should be permitted to remain at the same place until his representation is decided, is also the prerogative of the appropriate Authority. It is not for the Court to sit over that

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subjective satisfaction or dictate to the concerned Authority in that behalf, being purely administrative matter. Understood thus, the fact that coordinate Bench (Single Bench) had given relief to another writ petitioner on the same day cannot be the basis to grant same relief to this appellant.”

10. Thus, it is clear that if the employee wants to pursue his representation, then first of all he has to join at the transferred place. Accordingly, it is directed that in case if the petitioner after joining at his transferred place, files an application for early disposal of his representation, then the respondents shall decide the representation. It is made clear that this Court has not expressed any opinion on the merits of the case.

11. With aforesaid observations, the petition is finally **disposed of.**

**Arun\***

**(G.S. Ahluwalia)**  
**Judge**