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THE HIGH COURT OF MADHYA PRADESH
WP No.17800/2021
Balram Dhakar vs. State of M.P. & Ors.

Gwalior, Dated : 09.09.2021

Shri Yash Sharma, Counsel for the petitioner.

Shri Deepak Khot, Government Advocate for the State.

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:

7.1 That, the Impugned Order (Annexure P/1) may kindly be quashed.

7.2 Any other relief deemed fit and proper in the facts and circumstances of the case.

7.3 Costs be awarded to the petitioner.

It is submitted by the counsel for the petitioner that by impugned order the petitioner has been transferred.

It is submitted by the counsel for the petitioner that the petitioner is working on the post of Patwari and by order dated 5.4.2021 he has been nominated on the post of District President M.P. Patwari Sangh, District Shivpuri. The GAD by its letter dated 26.7.2021 has sought the list of the office bearers, so that they can be exempted from transfer in the light of clause 33 of the transfer policy. In the said letter, after reproducing the relevant clause of transfer policy, it was mentioned by the Secretary in paragraph 3 that the list of office bearers elected/nominated be forwarded prior to 30.7.2021. It is submitted that thus it is clear that the office bearers who have

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been nominated on different posts of recognized Union are also entitled for exemption from transfer as per clause 33 of the transfer policy.

Per contra, the counsel for the State has vehemently opposed the prayer of the petitioner.

Heard the learned counsel for the parties.

Clause 33 of the Transfer Policy reads as under:

“33. राज्य शासन से पत्राचार करने की मान्यता प्राप्त कर्मचारी संगठनों के प्रदेश/संभाग/जिला/तहसील/विकास खण्ड शाखा के पदाधिकारियों यथा-अध्यक्ष/सचिव/कोषाध्यक्ष को पद पर नियुक्ति उपरांत स्थानांतरण से दो पदावधि के लिये अर्थात् 4 वर्ष तक की सामान्यतः छूट प्राप्त होगी। यह सुविधा उसके पूरे सेवाकाल में निम्नानुसार दो पदावधि के लिये मिलेगी। 4 वर्ष से अधिक पदस्थापना अवधि पूर्ण होने पर प्रशासकीय आवश्यकता अनुसार ऐसे पदाधिकारियों को भी स्थानांतरित किया जा सकेगा। संगठन के पदों में नियुक्ति की पूर्व सूचना के संबंध में सक्षम प्राधिकारी की संतुष्टि का आधार मुख्य होगा। इस संबंध में शासन के पत्र क्रमांक एफ 10-6/05/1-15/क.क. दिनांक 24 अप्रैल, 2006 के प्राविधानों का अवलोकन करें, जिसमें स्पष्ट किया गया है कि मान्यता प्राप्त कर्मचारी संगठनों द्वारा निर्वाचन के पश्चात निर्वाचित पदाधिकारियों की सूची उनके कार्यकाल सहित संबंधित कलेक्टर को दी जायेगी इसके साथ-साथ संबंधित विभाग प्रमुख, जहां वे कार्यरत हों, तथा सामान्य प्रशासन विभाग (कर्मचारी कल्याण प्रकोष्ठ) को दिनांक 30 अप्रैल की स्थिति में सौंप दी गई हो, उन्ही पदाधिकारियों को स्थानांतरण से छूट का लाभ दिया जाना चाहिए।”

In the entire clause the word “nominated” has not been

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mentioned. It is specifically mentioned that only those office bearers who are elected would be entitled for exemption for a period of four years. The said transfer policy was issued on 24.6.2021. It appears that by letter dated 26.7.2021, the Secretary, GAD called the list of the elected/nominated office bearers, so that their case for exemption from transfer can be considered in the light of clause 33 of the transfer policy. By no stretch of imagination, the letter dated 26.7.2021 can be said to be an amendment in clause 33 of the transfer policy. It is really surprising that the Secretary, GAD after reproducing the entire relevant clause of transfer policy has added the word “nominated” on his own without there being any authority.

Be that whatever it may.

Unless and until the transfer policy is amended, the scope of clause 33 cannot be enlarged merely by mentioning the word “nominated” in letter dated 26.7.2021. Nothing has prevented the State to issue a separate order thereby incorporating the word “nomination” in clause 33 of the transfer policy but that has not been done, therefore, it is clear that the intention of the State Government is not to amend the clause 33 of the transfer policy and it is not the intention of the State Government to extend the benefit of exemption from transfer to those office bearers who have not been elected.

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There is a vast difference between “elected” and “nominated”.

A person is elected after he gets highest votes amongst the candidates that means he is the choice of voters whereas “nomination” is nothing but it is an order issued according to the whims and wishes of the issuing authority. The “nominated” office bearers cannot be said to be the representative of the voters in the same letter and spirit in which the elected office bearers would be. The intention of the State Government in granting exemption to the “elected” office bearers is that the representative of the voters should not be disturbed, so that they can effectively act as a bridge between the employee and employer. That is why the State Government has chosen not to include the word “nomination” in clause 33 of the transfer policy and by ignoring the material difference between the “elected” office bearers and “nominated” office bearers, the Secretary, GAD on his own added the word “nominated” in letter dated 26.7.2021. By no stretch of imagination, this letter can be said to have amended the clause 33 of the transfer policy.

Under these circumstances, this Court is of the considered opinion that the word “nominated” mentioned in letter dated 26.7.2021 has no sanctity in law and cannot be read contrary to clause 33 of the transfer policy and the word “nomination” in letter dated

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26.7.2021 does not create any right in favour of the office bearers who have not been elected but have been nominated.

No other argument is advanced by the counsel for the parties.

For the reasons mentioned above, the petition fails and is hereby **dismissed**.

(alok)

(G.S. Ahluwalia)
Judge