

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 5th OF AUGUST, 2022**

**WRIT PETITION NO. 18010 OF 2022**

**Between:-**

**SHIVKUMAR SHARMA, AGE ABOUT  
42 YEARS, S/O SHRI RAMPRAKASH  
SHARMA, OCCUPATION UCHCH  
MADHYAMIK SHIKSHAK (PURV  
PADSTHAPNA GOVT. HIGHER  
SECONDARY SCHOOL BEHAT,  
BLOCK MURAR, GWALIOR, SANKUL  
KENDRA, GOVERNMENT HIGHER  
SECONDARY SCHOOL, BEHAT  
BLOCK MORAR, GWALIOR, D.D.O.,  
B.E.O. MURAR JILA GWALIOR,  
PRESENT POSTING GOVT. HIGHER  
SECONDARY SCHOOL KULETH,  
BLOCK GHATIGAON JILA GWALIOR,  
SANKUL KENDRA GOVT. HIGHER  
SECONDARY SCHOOL, KULETH  
BLOCK GHATIGAON, DISTRICT  
GWALIOR, DDO, , BEO., GHATIGAON  
DISTRICT GWALIOR R/O GRAM  
KULETH, DISTRICT GWALIOR  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI NIRAJ SHRIVASTAVA - ADVOCATE)***

**AND**

**1. STATE OF MADHYA PRADESH**

THROUGH PRINCIPAL SECRETARY,  
DEPARTMENT OF SCHOOL  
EDUCATION, MADHYA PRADESH  
SHASAN, VALLABH BHAWAN,  
MANTRALAYA, BHOPAL (MADHYA  
PRADESH)

2. STATE OF MADHYA PRADESH  
THROUGH UP-SACHIV,  
DEPARTMENT OF SCHOOL  
EDUCATION, MADHYA PRADESH  
SHASAN, VALLABH BHAWAN,  
MANTRALAYA, BHOPAL (MADHYA  
PRADESH)
3. AYUKT, LOK SHIKSHAN  
SANCHALNALAY, MADHYA PRADESH  
GOUTAM NAGAR, BHOPAL (MADHYA  
PRADESH)
4. DISTRICT EDUCATION OFFICER,  
GWALIOR, FOOTY COLONY, SIROL  
ROAD, DISTRICT GWALIOR  
(MADHYA PRADESH)

.....RESPONDENTS

(SHRI A.K. NIRANKARI – GOVERNMENT ADVOCATE FOR  
STATE)

*This petition coming on for hearing this day, the Court passed the  
following:*

### **ORDER**

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

(7.1) पिटीशनर द्वारा प्रस्तुत रिट-पिटशन को स्वीकार  
करते हुए मध्यप्रदेश शासन स्कूल शिक्षा विभाग भोपाल के आदेश  
क्र. एफ 01-24 / 2022 / 20-1 / 875-876 भोपाल, दिनांक 26.05.

2022 को पिटीशनर के संदर्भ में निरस्त किया जाकर पिटीशनर को मध्यप्रदेश शासन स्कूल शिक्षा विभाग भोपाल रिस्पो. क्र. 1 के समसंख्यक समान आदेशों दिनांक 05.07.2022 (अनेकजर पी-3 सीरीज) एवं माननीय उच्च न्यायालय खण्डपीठ ग्वालियर के प्रकरण रिट पिटीशन नं. 14036/2022 राकेश कुमार श्रीवास्तव विरुद्ध मध्यप्रदेश राज्य व अन्य में पारित समान आदेश दिनांक 27.06.2022 (अनेकजर पी-4) के आवश्यक पालन के क्रम में समानता से ही पिटीशनर को उसकी पूर्व की पदस्थापना शासकीय उच्चतर माध्यमिक विद्यालय बेहट, ब्लॉक मुरार, ग्वालियर में ही पदस्थापना प्रदान किये जाने के आदेश-निर्देश, रिस्पोन्डेन्ट्स-प्राधिकारियों को 30 दिवस में प्रदान करने की कृपा करें।

(7.2) अन्य उचित रिट, आदेश अथवा निर्देश न्याय हित में पिटीशनर के पक्ष में जारी करने की कृपा करें, प्रकरण व्यय रिस्पोन्डेन्ट्स से दिलाये जाने की कृपा करें।

2. It is submitted by the counsel for the petitioner that an advertisement was issued by the State Government inviting the applications from the teachers working in Government Schools, for their posting in C.M. Rise School. Examinations were conducted and choices of posting were sought from the successful candidates. The petitioner had submitted his choice, however, he was not posted in the school of his choice and has been posted in Government Higher Secondary School, Kuleth, Block Ghatigaon, District Gwalior. The petitioner made a representation that neither he had opted for the said school nor he wants to work in the said school and, accordingly, on 15.06.2022 he sent a representation by registered post, thereby expressing his willingness to waive his right which has accrued to him on account of passing the examination. However, the said representation is still pending and has not been decided so far. Being an obedient employee, the petitioner has joined at his transferred place, but he wants to waive his right of getting posted in C.M. Rise School and he wants to go back to his original place

of posting.

3. Per contra, the prayer made by the counsel for the petitioner is vehemently opposed by the counsel for the State. It is submitted that it is clear from the representation made by the petitioner that he has not expressly waived his right of being posted in C.M. Rise School, therefore, it is submitted that the submission made by the counsel for the petitioner that the petitioner wants to waive his right of getting posted in C.M. Rise School was never agitated by the petitioner before the authorities. It is further submitted that so far as the filling choice is concerned, it is merely a facility which was extended to the candidates and such facility would never create any vested right in favour of the petitioner to get posted in a particular school only. It is the prerogative of the employer. No one can claim that he should be posted a particular place. The facility of choice was given so that they can be posted in the school of their choice as far as possible.

4. Heard the learned counsel for the parties.

5. The petitioner has filed the copies of the representation dated 14.07.2022 and 15.06.2022. From the representation, it is clear that the petitioner has already submitted his joining at the transferred place. In the representation dated 14.07.2022, the petitioner has given following undertaking:-

प्रार्थी वर्तमान निवेदन अभ्यावेदन के माध्यम से अपनी सीएम राइज स्कूल में पदस्थापना किये जाने के क्लेम को स्वेच्छा से स्वतः वापिस लेता है तथा प्रार्थी की ओर से यह भी आश्वस्त किया जाता है कि प्रार्थी भविष्य में सीएम राइज विद्यालयों में पदस्थापना हेतु कभी भी क्लेम भी नहीं करेगा। इसलिए भी प्रार्थी अपनी नवीन वर्तमान पदस्थापना स्थान शासकीय उच्चतर माध्यमिक विद्यालय कुलैथ, ब्लॉक घाटीगांव जिला ग्वालियर, से

कार्यमुक्त किया जाकर प्रार्थी को उसकी पूर्व की पदस्थापना शासकीय उच्चतर माध्यमिक विद्यालय बेहट, ब्लॉक मुरार, ग्वालियर में ही पदस्थापना किये जाने के आदेश उपरोक्त संदर्भित संलग्न आदेशों के क्रम में प्रदान करने की कृपा करें।

6. Since the petitioner has given an undertaking to waive his right of getting posted in C.M. Rise School, therefore, the respondents are directed to decide the said representation after considering as to whether such waiver of right of getting posted in C.M. Rise School is permissible or not. The representation be decided by passing a speaking order within a period of three months from the date of receipt of certified copy of this order.

7. Needless to mention here that the direction to decide the representation should not be construed as a direction to allow the representation. The representation shall be decided strictly in accordance with law without getting influenced or prejudiced by the order passed by this Court.

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

**(G.S. AHLUWALIA)**  
**JUDGE**

Abhi