



**IN THE HIGH COURT OF MADHYA PRADESH**

**AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 8<sup>th</sup> OF JANUARY, 2025**

**WRIT PETITION No. 28 of 2025**

***RIYAZ MOHAMMAD***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Ms. Smrati Sharma- Advocate for petitioner.*

*Shri Ravindra Dixit- Government Advocate for respondents/State.*

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**ORDER**

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

- (1) That, the impugned order Annexure – P/1 may kindly be quashed with all consequential effects, in the interest of justice.
- (2) Cost of the petition be awarded to the petitioner.
- (3) Any other order or directions deemed fit in the circumstances of the case be issued in favour of the petitioner.

2. It is submitted by counsel for petitioner that petitioner is working on the post of Gram Rozgar Sahayak. He was appointed on the said post for village Gulpura, Tahsil Kailaras, District Morena by order dated 14.12.2012. Now, by order dated 31.12.2024, he has been transferred to Ramgarh, Tahsil Sabalgarh,



District Morena whereas respondent No.6 who was working as Gram Rozgar Sahayak in Ramgarh has been transferred to Gulpura. It is submitted by counsel for petitioner that petitioner was appointed for a particular place and therefore he was holding a non-transferable post. Petitioner has been transferred to accommodate respondent No.6.

3. *Per contra*, it is submitted by counsel for State that in case of contractual employee, he can be transferred in exceptional circumstances and the only requirement is that a fresh agreement at the transferred place will be executed. It is submitted that in the impugned order itself it is mentioned that petitioner shall execute a fresh agreement with Gram Panchayat Ramgarh.

4. Heard learned counsel for the parties.

5. Whether the post of contractual employee is transferable or not was considered in detail by this Court in the case of **Shabana Begum Vs. State of M.P. and others** by order **05.02.2021** passed in **W.P. No.1027/2021** and it was held as under:-

“Heard the learned counsel for the parties.

Clause 3.3 of Circular dated 24/3/2020 (Annexure P-5) reads as under :-

“मिशन अंतर्गत जिला परियोजना प्रबंधक को छोड़कर जिले के समस्त संविदा अमले के साथ वार्षिक संविदा अनुबंध तथा स्थान परिवर्तन होने की स्थिति में नवीन स्थान हेतु नवीन संविदा अनुबंध का निष्पादन संबंधित जिला कलेक्टर (जिला मिशन संचालक) द्वारा किया जावेगा। जिले के भीतर स्थान परिवर्तन होने की स्थिति में पुनः नया अनुबंध आवश्यक नहीं होगा।”

Clause 9.1 of Circular dated 24/3/2020 reads as under:-

“संविदा अमले की नियुक्ति स्थान विशेष एवं कार्य विशेष के लिये होने के कारण स्थानांतरण का प्रावधान नहीं है। प्रशासनिक व्यवस्थाओं को देखते हुए विशेष परिस्थितियों में स्थानांतरण किया जा सकेगा। संविदा अनुबंध समाप्त कर स्थान परिवर्तन करते हुए समान कार्य व परिवर्तन स्थान हेतु नवीन अनुबंध किये जाने की स्वीकृति दी जा सकती है। नवीन अनुबंध की अवधि कार्य पर उपस्थित दिनांक से उस वित्तीय वर्ष की 31 मार्च तक ही होगी।”



The impugned order has been issued under Clause 9.1 of the circular. From plain reading of Clause 3.3 of the circular, it is clear that in case of change of place, a fresh agreement shall be executed at the changed place.

Clause 9.1 is in two parts. The first part of this Clause provides that the contractual employee shall be appointed for a particular place and for discharging particular duties and there is no provision for transfer. However, the second part of this clause provides that in view of administrative exigencies, under special circumstances a contractual employee can be transferred and in that situation after changing the place of posting, permission for execution of new agreement at the changed place can be granted and the tenure of the contractual employee at the changed place would be from the date of his posting till 31st March of the financial year.

Thus, it is clear that there is no absolute bar to the effect that a contractual employee appointed for a particular place cannot be shifted/transferred under any circumstances. The only requirement is that since the agreement is always executed for a particular place, then in case of shifting/transfer, a fresh agreement is required to be executed. Since the employees are working on contract basis, therefore, execution of new contract would not in any manner effect their any right or seniority. Under these circumstances, this Court is unable to accept the contention of counsel for the petitioner that the post, which the petitioner is holding, is a non-transferable post and under no circumstances, she cannot be transferred from Katni.”

6. It is true that a contractual employee can be transferred in exceptional circumstances but petitioner has already completed 12 long years of his posting at Gulpura. The transfer of an employee on administrative ground by itself is sufficient to hold that transfer was under special circumstances. If employer assigns any reason pointing out inefficiency of employee then it would be a stigmatic order. It may take the shape of punishment, requiring pre-audience and departmental enquiry and if employer appreciates the work of employee



then it would become a good ground to stay back. Transfer is an exigency of service. It is not a punishment order. No-one can claim that he/she cannot be transferred or he/she should be posted at a particular place. No *mala fides* have been alleged.

7. So far as the accommodation of respondent No.6 is concerned, merely because respondent No.6 has been transferred in place of petitioner, it is not sufficient to draw an inference to that effect. If a person is transferred and the post falls vacant then it is to be filled up by some other employee. If the word “accommodation” is interpreted in a very lenient manner then it would never be possible for the employer to transfer anyone. The State being a model employer, if considers the difficulty of an employee and decides to post him at a particular place so that he may overcome his personal difficulty, then it cannot be said that it was out of *mala fide*. Once petitioner has already spent 12 long years of his posting at Gulpura, in the considered opinion of this Court, no case is made out warranting interference.

8. Petition fails and is hereby *dismissed*.

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