

The High Court of Madhya Pradesh Bench at Indore

Case Number	WA No.382/2021
Parties Name	Radheshyam Mandloi Vs. State of M.P. & Ors.
Date of Judgment	09.06.2021
Bench	<u>Division Bench:</u> Hon'ble The Chief Justice Justice Sujoy Paul
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri.A.K.Sethi, learned Sr.counsel with Shri Rahul Sethi, learned counsel for appellant. Shri Vivek Dalal, learned A.A.G. for respondent/ State. Shri M.S.Dwivedi, learned counsel for respondent No.2.
Law laid down	Service Law – Transfer – Chief Municipal Officer was transferred from Khargone to Ratlam and in-lieu thereof, respondent No.2, a Revenue Inspector was transferred as incharge CMO within six months of previous transfer of the appellant. The transfer order was held to be a colourable exercise of power. M.P. State Municipal Service (Executive) Rules, 1973 - As per Second Schedule appended to these Rules, there are three categories of CMOs namely CMO Class A Municipality, Class B Municipality and Class C Municipality. Appellant is entitled to occupy the post of CMO Class A Municipality whereas respondent No.2 is a Revenue Inspector in Class C Municipality. He has to climb in the ladder from Class C to Class B and then to Class A to be in the feeder post for promotion as CMO. Thus, he was unsuitable to occupy the post of CMO. Transfer – Administrative exigency/interest

	<p>– A person substantively holding the post of CMO has been appointed and trained to discharge the duties of said post. He holds a sensitive and responsible post. He cannot be substituted by an unsuitable person who is not even holding the feeder post. It is incomprehensible as to how such a transfer whereby post of regular CMO is directed to be manned by a Revenue Inspector can be said to be in an “administrative exigency” or “interest”.</p> <p>“Administrative exigency” or “administrative interest” - are not magic words. Neither is carpet under which anything can be swept. In a case of this nature, the reasons for such transfer must be discernible which could not be pointed out by the government counsel. Hence, transfer order is set aside.</p>
Significant paragraph numbers	8,9, 10, 11,12 and 13

ORDER
09.06.2021

Sujoy Paul,J.

The core issue raised in this *intra* court appeal is whether the order dated 18/3/2021 (Annexure P/1) passed by the respondent No.2 is legal and justifiable whereby the appellant who was holding the substantive post of Chief Municipal Officer, Nagar Palika Parishad, Barwaha, District Khargone is transferred to the post of Dy.Commissioner, Nagar Palika Nigam, Ratlam and in-lieu thereof respondent No.2, a Revenue Inspector is transferred as Incharge Chief Municipal Officer, Nagar Palika Parishad, Barwaha.

[2] The appellant filed WP No.7114/2021 to assail the said transfer order dated 18/3/2021. The transfer order was assailed on various grounds which are reproduced by learned Single Judge in para two of the impugned order dated 24/3/2021.

[3] Shri A.K.Sethi, learned Sr.Counsel for appellant submits that although the writ court in its order mentioned the main ground of challenge i.e. the appellant a substantive CMO could not have been substituted by Revenue Sub Inspector, did not specifically decided this point. By taking this Court to the Recruitment Rules namely M.P. State Municipal Service (Executive) Rules, 1973 (for short “Recruitment Rules”) it is urged that the appellant is entitled to occupy the post of CMO Class A. The private respondent is a revenue Inspector who is not even holding the feeder post for the purpose of promotion on the said post of CMO. As per said Rules, the posts of CMOs are available in three categories. The private respondent is working in a Class C Municipal Council whereas appellant is entitled to occupy the post of CMO in Class A Municipality. The private respondent is required to travel a long upward distance in the ladder of promotion to occupy the substantive post of CMO Class A. He has to travel from Class C Municipality to Class B and then to Class A Municipality. On the strength of this factual backdrop, the learned Sr. Counsel for appellant submits that transfer order is bad in law. More so, when the appellant is victim of frequent transfer. By order dated 23/9/2020 he was transferred from Dhar to Barwaha and joined at Barwaha only on 25/9/2020. Within a short span of time of six months, the appellant is again subjected to transfer by stating it to be on “administrative exigency”.

[4] Shri Vivek Dalal, learned A.A.G supported the transfer order and the order of writ court. He also filed written submissions on behalf of the State wherein it is stated that as per *(1986) 4 SCC 131 B. Vardha Rao Vs. State of Karnataka & Ors*, the ground of frequent transfer is not available to Class I and Class II Officers of the government. It is further urged that appellant was transferred on account of administrative exigency and this transfer is strictly in terms of Schedule II of M.P. Municipal Services (Executive) Rules 1973 (as

amended on 10/4/2015). The competent authority through co-ordination granted approval for transfer of the appellant. Thus, no fault can be found in the transfer of appellant.

[5] Shri M.S.Dwivedi, learned counsel for respondent No.2 opposed the prayer by contending that respondent No.2 has already joined at the place of transfer. The respondent No.2 has been absorbed in newly created Nagar Parishad with effect from 1/4/2015 on the post of Revenue Inspector (5200-20200 + 2100 GP). Heavy reliance is placed on the order passed by division bench in WA No.1458/2019 (*Rajendra Prasad Mishra Vs. State of MP & Ors.*) by contending that CMO Class A can be transferred as a Dy. Commissioner in Municipal Corporation. It is pointed out that same view is taken by learned Single Judge. Reliance is also placed on the order dated 2/7/2019 passed in WA No.984/2019 (*Ms. Sheetal Bhalavi Vs. State of M.P*) and 2014(2) MPLJ 419(*Sanjay Soni Vs. State of M.P*). It is averred that in *Sanjay Soni* (supra), it was held that only those employees were allowed to continue on the post who are holding substantive post in the feeder cadre for regular promotion on the post of CMO.

[6] No other point is pressed by learned counsel for parties.

[7] We have bestowed our anxious consideration on rival contentions and perused the record.

[8] A careful reading of the Recruitment Rules makes it clear that the following employees are eligible for consideration for promotion to the post of Chief Municipal Officer Class A, Class B and Class C:-

“[A] Chief Municipal Officer Class A-- (i) Chief Municipal Officer Class B; (ii) **Revenue Officer of Class AA and A Municipal Council.**

The above officers should have atleast five years experience on their post.

[B] Chief Municipal Officer Class B-- (I) Chief Municipal Officer Class C; (ii) Revenue Inspector of Class AA, A and B Municipal Council.

The above officers should have atleast five years experience on their post.

[C] Chief Municipal Officer (Class C)-- (i) Superintendent of Class A Municipal Council; (ii) Revenue Inspector of Class C Municipal Council; (iii) Revenue Sub Inspector of Class C Municipal Council, (iv) Employees of the Municipal Corporation having atleast five years experience of above post.”

(emphasis supplied)

Pertinently, in a recent judgment, this view is taken by this Court in *Vijay Kumar Sharma Vs. State of MP & Ors.* reported in **2021(1) MPLJ 427**.

[9] Indisputably, the appellant is entitled to occupy the post of CMO Class A Municipality whereas respondent No.2 is a Revenue Inspector in Class C Municipal Council. The respondent No.2, by no stretch of imagination, can be said to be holding a feeder post for the promotional post of CMO Class A. A Revenue Inspector of Class B has to climb various steps in the ladder by reaching Class B and then reach to Class A. Then only, he can be said to be in the feeder post for CMO Class A.

[10] The factual backdrop of this matter shows that appellant was holding a sensitive/responsible statutory post and he has been substituted by a person who is neither in the feeder cadre nor is entitled to occupy the post of CMO as per Rules of 1973. In **(1994) 6 SCC 98 N.K. Singh Vs. Union of India & Ors.**, the Apex Court poignantly held that:-

“Transfer of a public servant from a **significant post can be prejudicial to the public interest if transfer was avoidable and the successor is not suitable for the post.** Suitability is a matter for the objective assessment by hierarchical superiors in administration. **If such transfer is avoidable and replacement officer by a unsuitable person, interference can be made.**”

[11] The learned Single Judge has recorded that the present matter is identical to WP No.5286/2019 which was decided on 19/3/2019. In the said case, it was held that a CMO can be transferred as Dy. Commissioner. The main point involved in the instant case that whether a person holding the substantive post of CMO cannot be substituted by a Revenue Inspector of Class C Municipality was neither argued nor decided. Apart from this, in WP No.5286/2019, the respondent No.3 was not transferred in place of petitioner therein in the capacity of Incharge CMO. Indeed, he was transferred in the same capacity as Health Officer. Since petitioner therein was transferred in administrative exigency and elections were due, the additional charge was thereafter given to him. Thus, we are unable to give stamp of approval to the order of learned Single Judge wherein it was held that order of WP No.5286/2019 squarely covers the instant matter.

[12] On specific query from the bench, Shri Dalal, learned A.A.G submits that he is unable to gather any reason from the perusal of original transfer file as to why appellant was transferred within six months. He merely stated that transfer order was issued in “administrative exigency”.

[13] The expression “administrative exigency” is not a magic expression or a “mantra” which can serve the purpose in every situation. *In a case of this nature*, where a substantive post holder is transferred within short span of six months and respondent No.2, an employee holding inferior post and unsuitable to hold the post of CMO was permitted to act as a striker in the carrom board of the department, the reasons for issuing such transfer order must be discernible. Putting it differently, the words “administrative exigency” are not carpet under which anything can be swept. It is a matter of common knowledge that a sensitive/responsible post of CMO cannot be manned by a Revenue Inspector. He does not have any administrative experience or knowledge to function as a CMO. It

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is incomprehensive as to how the impugned transfer order will improve “administrative exigency” or take care of “administrative interest”. Thus, in our view, the transfer order is an example of colourable exercise of power and needs to be interfered with.

[14] Resultantly, the order dated 24/3/2021 passed in WP No.7114/2021 and the transfer order dated 18/3/2021 to the extent it relates to appellant and respondent No.2 is concerned, are set aside. The writ appeal is **allowed**.

(Mohammad Rafiq)
Chief Justice

(Sujoy Paul)
Judge

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