

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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 21<sup>st</sup> OF NOVEMBER, 2023**

**WRIT PETITION No. 16689 of 2023**

**BETWEEN:-**

**RAMESH BHABAR S/O LATE SHRI BUDIYA,  
AGED ABOUT 48 YEARS, OCCUPATION:  
SERVICE PANCHAYAT SECRETARY IN GRAM  
PANCHAYAT RANGWASA R/O M 286 VIGYAN  
NAGAR ANNAPURNA ROAD INDORE (MADHYA  
PRADESH)**

**....PETITIONER**

***(BY SHRI L.C. PATNE, ADVOCATE)***

**AND**

- THE STATE OF MADHYA PRADESH**
- 1. SECRETARY VALLABH BHAWAN BHOPAL  
(MADHYA PRADESH)**
  - 2. THE CHIEF EXECUTIVE OFFICER JILA  
PANCHAYAT, INDORE (MADHYA PRADESH)**
  - 3. THE CHIEF EXECUTIVE OFFICER JANPAD  
PANCHAYAT, INDORE (MADHYA PRADESH)**
  - 4. SHRI NARESH DUBEY PANCHAYAT  
SECRETARY, GRAM PANCHAYAT CAMPEL  
JANPAD PANCHAYAT INDORE (MADHYA  
PRADESH)**

**....RESPONDENTS**

***(SHRI MUKESH PARWAL, GOVERNMENT ADVOCATE FOR THE STATE AND  
SHRI SAMANWAY SHARMA, ADVOCATE FOR RESPONDENT No.4)***

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***Reserved on* : *05.10.2023***  
***Pronounced on* : *21.11.2023***

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*This petition coming on for admission this day, the court passed the following:*

**ORDER**

1] This writ petition has been filed by the petitioner/ a Panchayat Secretary under Article 226 of the Constitution of India against the transfer order dated 07/07/2023, passed by respondent No.2 Chief Executive Officer, Jija Panchayat, Indore (M.P.) whereby the petitioner has been transferred from Gram Panchayat, Rangwasa, Janpad Panchayat, Indore to Gram Panchayat, Jafarabad, Janpad Panchayat, Mhow.

2] The order has been assailed by the petitioner on the ground that it does not comply with the mandatory provisions as prescribed under Rule 15(j) of **M.P. Jila Panchayat (Business) Rules, 1998** (hereinafter referred to as 'Rules of 1998'), which clearly provides that all the cases including transfers etc. shall be brought for decision before the General Administrative Committee as prescribed under the aforesaid rules. In support of his submissions, learned counsel for the petitioner has also relied upon a decision rendered in the case of ***Rakesh Kumar Shakya vs. State of M.P. and another reported as 2010 (1) MPLJ 656*** in which, the issue of transfer of Secretary of Gram Panchayat has been specifically dealt with, and in which the Court has relied upon the transfer policy dated 26/03/2018 which is framed in line with the provisions of Rules of 1998.

3] Shri L.C. Patne, learned counsel for the petitioner has also submitted that the powers of transfer vests with the Chief Executive Officer of Jila Panchayat as provided under **M.P. Panchayat Services (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011** (hereinafter referred to as 'Rules of 2011'), and attention of this court is also drawn to Rule 3(b) and 3(d) of Rules of 1994, which provides for appointment of Gram Panchayat Secretary by Chief Executive Officer of Zila Panchayat in Gram Panchayats coming under its control. It is also submitted that even according to Sub Rule (7) of Rule 6 of Rules of 2011, Gram Panchayat Secretary may be transferred on administrative exigency by the Chief Executive Officer, however, it is also submitted that while transferring such Secretary, adherence of Rules of 1998 is mandatory which is apparent from Rules of 1998 itself. Thus, it is submitted that the impugned being contrary to law is liable to be set aside.

4] On the other hand, Shri Samanway Sharma, learned counsel for respondents No.4 has opposed the prayer and it is submitted that no illegality has been committed by respondent No.2 in passing the impugned order whereby the petitioner has been transferred, and in his place, respondent No.4 has been posted from Gram Panchayat, Kampel to Gram Panchayat, Rangwasa. It is submitted that after Rules 2011 came into force, the Rules of 1998 shall have no applicability as the only requirement under Sub Rule (7) of Rule 6 of Rules of 2011 is that there has to be some administrative ground or

an inquiry may also be conducted on this behalf on recommendation of Chief Executive Officer, Janpad Panchayat for the purposes of transfer of Panchayat Secretary. Shri Sharma has also submitted that the decision relied upon by the counsel for the petitioner has already been taken into account by the subsequent decision rendered by the coordinate Bench of this Court at Principal Seat Jabalpur in the case of *Krishna Nagwanshi vs. State of M.P. reported as 2022(1) MPLJ 41* as also the decision rendered by the coordinate Bench of this Court at Jabalpur in WP No.17551/2021 dated 13/09/2021 in the case of *Vijay Pawar and others vs. State of M.P. and others* which has also been affirmed by the Division Bench of this Court in the case of *Vijay Pawar and others vs. State of M.P. and others* passed in W.A. No.869 and 873/2021, dated 26/10/2021, wherein, the decision rendered by the Single Bench in the case of *Krishna Nagwanshi (supra)* and *Rakesh Kumar Urmaliya (supra)* have also been affirmed. Counsel has also submitted that even according to Rule 3 of Rules 1998, only those cases can be brought before the General Administrative Committee which fall under the aforesaid Rules and as per the direction of Zila Panchayat or referred to by the other Standing Committee or as per the directions of the Central Government or State Government or Prescribed Authority. Thus, it is submitted that the petition is liable to be dismissed.

5] Learned counsel for the State has also opposed the prayer on the similar grounds, and it is submitted that no case for interference is made out as the Rules of 2011 are complete in themselves, and for

the purposes of transfer of Secretary of Gram Panchayat, no permission is required under Rules of 1998.

6] In rebuttal, learned counsel for the petitioner has submitted that in all the decisions relied upon by the counsel for respondents, there is no reference at all of Rule 15(j) of Rules of 1998. So far as contention of respondent No.4 regarding non applicability of these Rules on the basis of Rule 3 of the Rules of 2011 is concerned, it is submitted that the aforesaid Rules have been framed by the State Government itself and are still in force, and the case of the petitioner would fall under III of Rule 3 of Rules of 1998. In support of his submission that the case is distinguishable on account of non-reference of Rule 15(j), counsel for the petitioner has relied upon the decision rendered by the Supreme Court in the case of *Roger Shashoua and others vs. Mukesh Sharma and others reported as (2017) 14 SCC 722 (para 42, 55, 56)* which has also been followed by the coordinate Bench of this Court in the case of *Malkhan Singh vs. State of M.P. and others reported as 2015(2) MPLJ 339*.

7] Heard learned counsel for the parties and perused the record.

8] The controversy involved in the case revolves around Rules 3 and 15(j) of the Rules of 1998 and Rules **Rule 3(b), (d) and 6(7)** of the Rules of 2011, hence it would be apt to refer to the aforesaid provisions, before entering into the factual aspect of the matter. The relevant rules of M.P. Zila Panchayat (Business) Rules, 1998 reads as under:-

**“3. Cases to be brought before the General Administration**

**Committee.** - The following cases shall be brought before the General Administration Committee :

- (i) *as per direction of the Zila Panchayat*; or
- (ii) referred by the other Standing Committees; or
- (iii) as per directions of the Central Government or State Government or Prescribed Authority.

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**“Part IV**

**Cases to be Brought before The General Administration Committee**

**15.** The following cases shall be brought for decision before the General Administration Committee in accordance with the procedure laid down in the Act or the rules made thereunder :-

“ .....

- (j) All cases including transfers and positing of the employees under the control and jurisdiction of Zila Panchayat;.....”

9] The relevant rules of M.P. Panchayat Services (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011 read as under:-

“(b) “Appointing Authority” with respect to Gram panchayat Secretary means the Chief Executive Officer, Zila Panchayat.

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(d) “Gram Panchayat Secretary” means such person appointed by Chief Executive Officer, Zila Panchayat in the Gram Panchayats coming under its control.

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6(d) The Gram Panchayat Secretary may be transferred on administrative ground or on the basis of his application within the district in accordance with the transfer policy issued by the Commissioner Panchayat Raj. The Gram Panchayat Secretary may be transferred, if necessary, after proper enquiry of the complainants on the recommendation of the Chief Executive Officer, Janpad Panchayat.”

10] In the considered opinion of this court the provisions of Rule 3 and Rule 15 of the Rules of 1994 are mandatory in nature and cannot be by passed by the Zila Panchayat. In the Rules of 2011, Rule 3(b) defines that appointing authority of a Gram Panchayat Secretary shall

be the Chief Executive Officer of the Zila Panchayat, and as per Rule 3(d), a Gram Panchayat Secretary is such person appointed by Chief Executive Officer, Zila Panchayat in the Gram Panchayats coming under its control. Whereas, Rule 6(7) provides one of the service conditions of a Gram Panchayat Secretary, under which circumstances he or she can be transferred, but what procedure the Chief Executive Officer of a Gram Panchayat is required to be adopted is only provided in the Zila Panchayat (Business) Rules, 1994 and Rule 15(j) of the same provides that, '*All cases including transfers and positing of the employees under the control and jurisdiction of Zila Panchayat shall be brought for decision before the General Administration Committee in accordance with the procedure laid down in the Act or the rules made thereunder*'.

11] Since counsel for the respondent no.4 has also relied on the decision rendered by the co-ordinate bench of this court in the case of **Rakesh Kumar Urmaliya (supra)**, to submit that the grounds raised by the petitioner have already been dealt with in the said decision, hence it would also be necessary to refer to the same, which reads as under:-

“The petitioner has filed this petition calling in question the transfer order dated 6.8.2021 contained in Annexure P/1 which is passed by the Chief Executive Officer, Zila Panchayat Shahdol. By the impugned transfer order, petitioner has been transferred from Gram Panchayat Kundatoloa, Block Jaisinghnagar to Gram Panchayat Arjhula, Block Sohagpur.

Counsel for the petitioner has relied upon Rule 6(7) of the Madhya Pradesh Panchayat Services (Gram Panchayat Secretary Recruitment

and Conditions of Service) Rules 2011 (hereinafter referred to as Rules of 2011). Rule 6(7) of the said rules is quoted below:

“The Gram Panchayat Secretary may be transferred on administrative ground or on the basis of his application within the district in accordance with the transfer policy issued by the Commissioner Panchayat Raj. The Gram Panchayat Secretary may be transferred, if necessary, after proper enquiry of the complainants on the recommendations of the Chief Executive Officer, Janpad Panchayat.”

The Commissioner, Panchayat Raj has not framed transfer policy of Panchayat Secretaries and transfer of the petitioner is made in accordance with transfer policy dated 24.06.2021. It is submitted that said transfer policy is not applicable in case of the petitioner who is Panchayat Secretary. Rule provides transfer of Panchayat Secretary in accordance with transfer policy issued by Commissioner, Panchayat Raj. Since transfer policy has not been framed and is contrary to Rules 6(7) of the Rules of 2011, petitioner cannot be transferred taking aid of policy dated 24.06.2021. It is submitted that the approval of General Administrative Committee has not been taken in respect of transfer order of the petitioner. The impugned transfer order is bad in law.

Shri Vivek Sharma, Dy.A.G., Shri Piyush Dharmadhikari, learned G.A. and Shri Manoj Kushwaha, learned Panel Lawyer appearing for the respondent/ State submitted that transfer is an incidence of service, therefore, transfer order can be passed even in absence of policy. Rule 6(7) of the Rules of 2011 is discretionary and not mandatory, therefore, respondent cannot say that if transfer policy has not been framed by Commissioner therefore petitioner cannot be transferred.

In view of the same, counsel for the State made a prayer for dismissal of prayer for grant of interim relief and prays for four weeks' time to file reply in the writ petition.

Heard the learned counsel for the petitioner as well as State.

The questions before this Court are the following :



“(1) Whether transfer order of petitioner is contrary to Rule 6(7) of Madhya Pradesh Panchayat Services (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules 2011 ?

(2) Whether approval of General Administrative Committee is required for transfer of Panchayat Secretary ?

It is settled law that government servant is liable to be transferred to a similar post in the same cadre. Transfer of Government Servant is incidence of service and normal feature. Framing of policy of transfer is not essential for transferring of employee. Even if there is no transfer policy framed by competent authority then also an employee can be transferred. Employee can be transferred unless he is appointed on a non-transferrable post. As per the Rules of 2011, post of Panchayat Secretary is not a non-transferrable post and Rule 6(7) of the Rules of 2011 provides that Panchayat Secretary may be transferred on existence of three exigencies i.e. (1) Administrative ground (2) If Panchayat Secretary has filed an application for his transfer within district and (3) In case where complaint is made against Panchayat Secretary or enquiry is pending against him. In this case, petitioner has been transferred on administrative ground which is one of the three exigencies available for transfer of Panchayat Secretary. In view of the same, impugned order dated 6.8.2021 is not contrary to the Rule 6(7) of the Rules of 2011.

The second consideration before this Court is whether in absence of transfer policy, Panchayat Secretary can be transferred. Rule 6(7) of the Rules of 2011 provides that Panchayat Secretary may be transferred on administrative ground or on his application within district in accordance with the transfer policy issued by the Commissioner, Panchayat Raj.

The aforesaid rule clearly shows that services of Gram Panchayat Secretary is transferable and petitioner is not appointed on a non-transferable post. As transfer is normal feature of service, therefore, even if there is no transfer policy, the competent authority can pass order of transfer in respect of Panchayat Secretary within district. Transfer policy dated 24.06.2021 is also circulated to CEO, Zila Panchayat, therefore, this can be used as guidelines to competent authority to issue transfer order in absence of transfer policy framed

by Commissioner. In view of the aforesaid, first issue is answered in negative.

Petitioner has also argued that approval of General Administrative Committee is not taken, therefore, transfer order is bad in law. Section 46 of the Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 is quoted as under :

“46. Standing Committees of Gram Panchayat. - (1) A Gram Panchayat may for discharging its functions and duties, constitute standing committees not exceeding three and such committees shall exercise such powers as may be assigned to them by the Gram Panchayat. The committee shall be under the general control of the Gram Panchayat. (2) No person shall be a member of more than two committees at a time. (3) The term of office of the members of standing committee and the procedure for the conduct of business of the standing committee shall be such as may be prescribed.”

Considering Section 46, Sanding Committee (General Administrative Committee) of Gram Panchayat shall exercise such power as may be assigned to it by Gram Panchayat.

The State Government in exercise of power conferred under Section 46 of the Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 has framed Gram Panchayat (Terms of Office of Members of Standing Committee and procedure for the Conduct of Business) Rules, 1994. As per Rules 3 of the aforesaid Business Rules, 1994, General Administrative Committee is one of the three Standing Committees of every Gram Panchayat and it also looks into the matter relating to establishment and service of Gram Panchayat. As per Rule 11 of the Rules of 1994, Standing Committee shall primarily take decision only in regard to matter entrusted to it. The petitioner has failed to show that any power is assigned to Standing Committee of Gram Panchayat to give approval of transfer order of Panchayat Secretary. In view of the same, there is no force in submission made by the counsel for the petitioner. The second issue is answered in negative as petitioner has failed to show that approval of General Administrative Committee is required in case of transfer of petitioner.

Since transfer order is passed in administrative exigency and no fundamental rights of petitioner has been violated nor rules and

conditions of service of service of Panchayat Secretary has been violated by such transfer order, therefore, I do not deem it fit to interfere in the transfer order of the petitioner. The petitioner is at liberty to approach competent authority and file his representation/ appeal for consideration of grievance arising out of transfer. If such representation/ appeal is filed within seven days from the date of receipt of certified copy of the order passed today, the competent authority shall consider and decide the same within a further period of forty five days.

With aforesaid direction, the writ petition is disposed off.”

(emphasis supplied)

12] A perusal of the aforesaid decision clearly reveals that attention of this court was not drawn to Rule 15(j) of the Rules of 1998 which provides that ‘All cases including transfers and positing of the employees under the control and jurisdiction of Zila Panchayat shall be brought for decision before the General Administration Committee in accordance with the procedure laid down in the Act or the rules made thereunder’. And, in para 12 of this order, this court has also observed that, ‘ the petitioner has failed to show that any power is assigned to Standing Committee of Gram Panchayat to give approval of transfer order of Panchayat Secretary.’

13] In other decisions cited by the respondent no.4 in *Vijay Pawar and others (supra)* and the other decisions also there is no reference of Rule 15(j) of the Rules of 1998.

14] So far as the non-reference or non-mentioning of the aforesaid legal provision i.e., Rule 15(j) in any cited judgments is concerned, this court, in the case of *Malkhan Singh* (supra), while dealing with an issue of sending an employee on deputation without obtaining his

consent, has distinguished the earlier decisions on this point, and has held as under:-

10. So far the judgments in *K.P. Bhalse and Rajaram* (supra) are concerned, it is noteworthy that these judgments were passed on the basis of certain judgments of Supreme Court. However, a careful reading of the judgment of Supreme Court, reported in (1997) 8 SCC 372, *State of Punjab v. Inder Singh* and the judgment in *Umapati Choudhar* (supra), makes it clear that the Apex Court dealt with cases where there was no statutory

provision like FR 110. This Court in *Rajaram* and *K.P. Bhalse* (supra) has not considered and dealt with the statutory provision, which governs the field of deputation. Thus, the said judgments are clearly distinguishable. This is settled in law that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in fact or additional fact may make a lot of difference in the precedential value of a decision. See, (2003) 2 SCC 111, *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*

11. At the cost of repetition, it is seen that in *K.P. Bhalse and Rajaram* (supra), the statutory provision of Fundamental Rule was not brought to the notice of this Court. If the aspect of deputation is covered by a statutory provision, it is a relevant factor for the purpose of deciding the matter. Since Fundamental Rule was not considered in the judgements cited by Shri Sharma, the judgements are clearly distinguishable. It cannot be forgotten that the court should not place reliance on a decision without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The judgements cannot be read as Euclid's Theorems or a provision of a Statute and that too taken out of their context. They must be read in the context of relevant Statute Sec, (2011) 7 SCC 397. *Union of India vs. Aruhnozhi Iniarasn and others* and (2003) 11 SCC 584. *Ashwani Kumar Singh vs. U.P. Public Service Commission and others.*

12. In a recent judgment, reported in (2013) 3 SCC 526., *Kavi Raj v. State of Jammu and Kashmir*, the Apex Court examined the legality of the judgments of Punjab and Haryana High Court passed by writ court and writ appellate court. The writ court interfered with the posting of employees to a different department on the ground that before sending them on

deputation, outside their parent department, their consent was not obtained. The Division Bench in LPA disturbed the said finding. The Apex Court opined that the view taken by Single Judge of the High Court was clearly erroneous on the aspect of obtaining consent before deputation. The Apex Court opined that no statutory rule was brought to its notice requiring prior consent of an employee before his deployment against a post beyond his cadre. The mere fact that employees' consent was not sought before their posting would not have any determinative effect on the controversy. (Para 24). In the present case FR 110 squarely covers the aspect of deputation. Since under FR 110 the deputation without consent is permissible to SISF, no interference is warranted. This view was taken by this Court in *Buddhi Lal Noroji* (supra). The Division Bench did not interfere in this order in Writ Appeal No. 158/2013.

(emphasis supplied)

15] At this juncture, this court can also fruitfully rely upon a decision rendered by the Supreme Court in the case of ***R.L. Jain v. DDA, (2004) 4 SCC 79***, relevant para of the same reads as under:-

“14. In *Shree Vijay Cotton & Oil Mills* [(1991) 1 SCC 262] the precise question raised here, namely, whether in a case where the possession is taken prior to the issuance of notification under Section 4(1) of the Act, interest can be awarded in accordance with Section 28 or 34 of the Act was not examined and the only issue examined was whether in an appeal which has been preferred by the State Government challenging the quantum of compensation awarded by the District Judge it is open to the High Court to award interest to the claimant even though he had not preferred any appeal or cross-objection for the said purpose. It is well settled that a decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made therein. (See *Krishena Kumar v. Union of India* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846 : AIR 1990 SC 1782], *Municipal Corpn. of Delhi v. Gurnam Kaur* [(1989) 1 SCC 101 : AIR 1989 SC 38] and *Orient Paper and Industries Ltd. v. State of Orissa* [1991 Supp (1) SCC 81 : AIR 1991 SC 672] .) *Shree Vijay Cotton & Oil*

*Mills* [(1991) 1 SCC 262] is therefore not an authority for the proposition that where possession is taken before issuance of notification under Section 4(1), interest on the compensation amount could be awarded in accordance with Section 34 of the Act with effect from the date of taking of possession.

(emphasis supplied)

16] In view of the same, the decision rendered by the coordinate Bench of this Court in the case of ***Rakesh Kumar Urmaliya (supra)*** and the other decisions relied upon, in which, the aforesaid decision of ***Rakesh Kumar Urmaliya (supra)*** has been relied upon are distinguishable and do not decide the issue which has been raised in this petition.

17] So far as the contention of the respondent no.4 that Rule 15(j) of the Rules of 1998 would not be applicable because as per Rule 3, only on the direction of the Zila Panchayat, the cases of transfer are to be brought before the General Administration Committee, is concerned, this court has already held that Rule 15(j) of the Rules of 1994 is mandatory, and if the Zila Panchayat has not given any such directions to the General Administration Committee, the transfer is bad in law.

18] The respondents/State has also relied upon a circular dated 18.01.2023 issued by the Director cum Commissioner of Panchayat Raj Sanchalnalay, Bhopal in which it is directed to all the Chief Executive Officer of Zila Panchayat that Gram Panchayat Secretary should be transferred as per the Transfer Policy and the petitioner has been transferred as per the Transfer Policy of 2021 which has been continued in the year 2023 also, vide circular dated 14.06.2023.

19] It is also stated that the petitioner is posted at Gram Rangvasa since around 8 years hence also no interference is called for. In rebuttal, a rejoinder has also been filed by the petitioner and it is stated that the Circular dated 18.01.2023 is not applicable as it has not been issued as per the M.P. Business Allocation Rules which provides

“6. All orders or instruments made or executed by order or on behalf of the Government of Madhya Pradesh shall be expressed to be made or executed by order and in the name of the Governor of Madhya Pradesh.”

20] In such facts and circumstances of the case, this court is of the considered view that the impugned order of transfer cannot be sustained in the eyes of law and is liable to be quashed. However, if the occasion arises, the respondents shall be free to pass a fresh order of transfer in accordance with law as observed hereinabove.

Petition stands *allowed and disposed of*.

Sd/-

**(SUBODH ABHYANKAR)**  
**JUDGE**

krjoshi