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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 28th OF MARCH, 2025

WRIT PETITION No. 11441 of 2025

NASEEM UDDIN

Versus

***STATE OF MADHYA PRADESH THROUGH PRINCIPAL
SECRETARY VALLABH BHAWAN, BHOPAL (M.P) AND OTHERS***

Appearance:

Shri Shanmukh Bachu - Advocate for the petitioner.

Shri Rajwardhan Gawde – G.A. for respondents/State.

ORDER

1] Heard on the question of admission.

2] This writ petition has been filed by the petitioner, who is posted as Incharge Assistant Controller, Legal Metrology, Ratlam, under Article 226 of the Constitution of India, seeking the following reliefs:-

“A. The present writ petition may kindly be allowed.

B. Issue appropriate writ, direction or order and quash the impugned order dated 13/03/2025 (**ANNEXURE P/1**) passed by Respondent no.02 and impugned order dated 17/03/2025 (**ANNEXURE P/2**) passed by Respondent no.03 for being in the teeth of Article 14 and 15 of the Constitution of India.

C. Issue appropriate writ, direction or order calling for records of impugned order dated 13/03/2025 and Annexure P/4, for quashing the same.

D. Issue appropriate writ, direction or order holding that the impugned order dated 13/03/2025 (**ANNEXURE P/1**) is patently illegal and smacks of malafide.



2

E. That any other relief which this Hon'ble Court may deem fit may also be kindly given to the Petitioner.”

3] The petitioner is aggrieved of the order of transfer dated 13.03.2025, whereby he has been transferred from Ratlam to Chhindwara on the said post of In-charge Assistant Controller, Legal Metrology. The petitioner has filed this petition on the ground of *mala fide* on the part of the respondents, as his contention is that his transfer is politically motivated, and only because he belongs to Muslim community, he has been transferred at the instance of the local leader of the Bhartiya Janta Party (hereinafter referred to as the BJP) who is also arrayed as the respondent no.5. The petitioner has also relied upon a document (Annexure P/4), which is stated to be the recommendation of transfer of the petitioner and other four persons to some other place, all of whom are also Muslims and posted at Ratlam. The petitioner's contention is that on the ground of religion, he and other persons have been discriminated by the State, and have been transferred from Ratlam to some other districts which is in violation of his rights guaranteed under Article 14 of the Constitution of India.

4] Shri Shanmukh Bachu, learned counsel for the petitioner has submitted that the transfer is in violation of the transfer policy also, as the transfer has been effected in the ban period. Counsel for the petitioner has also relied upon a decision rendered by the Supreme Court in the case of **Sri Pubi Lombi v. The State of Arunachal Pradesh & Ors.**, reported as **2024 SCC OnLine SC 279** to submit that he has also made the private persons as the party respondents as he has alleged *mala fide* on their part.



5] Counsel for the State, on the other hand, has vehemently opposed the prayer, and it is submitted that the petition itself is filed with *mala fide* intention of taking undue benefit of the petitioner's religion, and communal colour is being given to a normal order of transfer. It is also submitted that merely if four persons of one community from one place have been transferred to other places, it cannot be deemed to be a transfer with *mala fide* intention. Thus, it is submitted that the petition being devoid of merits, is liable to be dismissed with costs.

6] Heard. Having considered the rival submissions, and on perusal of the record, this Court finds that although the petitioner has made serious allegations of communal bias in transferring him and the other persons from Ratlam, but, admittedly, no other persons, whose names have also been mentioned in the petition, have joined him in his cause.

7] On perusal of the petition, it is also found that the petitioner's initial appointment at Ratlam was way back on 07.09.2015, when he was posted as Inspector, Legal Metrology, Ratlam, thus admittedly, he has not been transferred to any other place since last around 9 to 10 years, despite there being a provision under Clause 16 and 17 of the Transfer Policy, which is filed on record, that a government employee may be transferred from one place to another on completion of three years. Thus, when the petitioner has remained in Ratlam since last more than 9 years, and after staying in Ratlam for three years, has been successfully able to avoid his transfer in the last 6 to 7 years, it is difficult to accept his contention that he is being transferred with *mala fide* intention and in violation of the transfer policy.



4

8] So far as Annexure P/4 is concerned, which is a document reflecting the names of the petitioner and the other persons, the petitioner's contention is that it is at the instance of the leader(s) of the *BJP* that he and other persons have been transferred. However, on a close scrutiny it is found that what is the nature of this document (Annexure P/4) and who has issued the same, is not mentioned, and how the petitioner has come in possession of the same, is also not mentioned.

9] It is also found that the petitioner has relied upon the transfer order dated 04.03.2025 of the other person, namely, Shakil Ahmad, who according to the petitioner, is also transferred with *mala fide* intention from Ratlam to other place and in this order, it is found that he is not the only one who is transferred, in fact three other persons, including a woman, who are non-Muslims, have also been transferred to different places.

10] So far as the decision relied upon by the counsel for the petitioner in the case of **Sri Pubi Lombi (supra)** is concerned, certain relevant paras of the same read as under:-

“We have heard learned counsel for the parties and first we wish to appreciate the law and principles laid-down in the matter of transfer persuading judicial review.

9. In the case of *Union of India v. S.L. Abbas*, (1993) 4 SCC 357, it is clearly observed by this Court that the scope of judicial review is only available when there is a clear violation of statutory provision or the transfer is persuaded by mala-fide, non-observation of executive instructions does not confer a legally enforceable right to an employee holding a transferable post. The relevant paragraph reads as under:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no



doubt, the authority must keep in mind the guidelines issued by the Government on the subject.....”

10. Further, following the footsteps of *S.L. Abbas* (supra) this Court in the case of *Union of India v. N.P. Thomas*, 1993 Supp (1) SCC 704 held that the interference by the Court in an order of transfer on the instance of an employee holding a transferrable post without any violation of statutory provision is not permissible.

11. This Court further curtailed the scope of judicial review in the case of *N.K. Singh v. Union of India*, (1994) 6 SCC 98 holding that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest. It was further reiterated that interference is only justified in a case of malafide or infraction of any professed norm or principle. Moreover, in the cases where the career prospects of a person challenging transfer remain unaffected and no detriment is caused, interference to the transfer must be eschewed. It is further held that the evidence requires to prove such transfer is prejudicial and in absence thereof interference is not warranted. The law reiterated by this Court is reproduced, in following words:—

“9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved *at the threshold*, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

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“23.Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

“24. ...Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government



servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was ill-advised.”

12. The issue involved in the present case is somewhat similar in the case of *Mohd. Masood Ahmad v. State of U.P.*, (2007) 8 SCC 150 wherein this Court in paragraph 8 has observed as thus:—

“8. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee.....”

13. It is not tangential to mention that this Court in the case of *State of Punjab v. Joginder Singh Dhatt*, (1990) 2 SCC 661 : AIR 1993 SC 2486 observed as thus:—

“3.....It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting.....”

(Emphasis supplied)

11] Counsel for the petitioner has also relied upon a decision rendered by the Division Bench of this Court in the case of **Somesh Tiwari Vs. Union of India and others** reported as [2007(3) M.P.L.J. 162], which provides that transfer made with *mala fide* exercise of powers is susceptible to judicial scrutiny.

12] However, testing the facts and circumstances of the case on the anvil of the aforesaid decisions, this Court finds that the petitioner has not been able to demonstrate any such *mala fide* intentions on the part of the respondents, and on the contrary his continuation at Ratlam since last more than 9 to 10 years, and his unwillingness to move out of the said place by any means, even by alleging communal bias, only demonstrates his desperate attempt to stall his transfer, which is highly deprecated.



7

13] This court is also of the considered opinion that if such unsubstantiated allegations are allowed to be entertained on their face value, it would lead to serious breach in execution of administrative orders, and if accepted, tomorrow any Senior Officer of a Muslim community passing an order of transfer of his sub-ordinates, who belong to non-muslim community, may also be susceptible to such criticism of communal bias, leading to a total failure of State machinery and resultant disorder. Thus, such practice has to be discouraged at the threshold only.

14] From the record, it is also found that it was only on 22.10.2024, when the petitioner was also given the additional charge of Deputy Controller of Legal Metrology, Indore by the Controller of Legal Metrology, and thus, it cannot be said that there was any malice on the part of the respondents in transferring him now by the same Government only.

15] So far as the contention of the petitioner that the transfer is affected in the ban period, it is trite that the transfer policy is directory only and not binding on the government, whereas it is also trite that the transfer is an incident of service and is binding on the government employee.

16] In such circumstances, and the petition being devoid of merits, is hereby **dismissed**.

(SUBODH ABHYANKAR)
JUDGE

Pankaj