

**Writ Appeal No.823 of 2015**

**17.11.2015**

Shri Ashish Trivedi, learned counsel for the appellant.

Shri N.K.Tiwari, learned counsel for the respondent No.1.

Heard counsel for the parties.

**02.** As short question is involved, appeal is taken up for final disposal forthwith, by consent. Counsel for the contesting Respondent waives notice.

**03.** This writ appeal takes exception to the judgment of the learned Single Judge dated 07.10.2015 in Writ Petition No.17129/2015. By the said writ petition, the respondent No.1 questioned the transfer order dated 28.09.2015 (Annexure P-9 to the writ petition) passed by the Commissioner, Panchayat Raj.

**04.** The argument, as proceeded before the learned Single Judge, as can be discerned from the impugned order, is that, there was no power to transfer the Secretary of the Gram Panchayat. To buttress this argument, reliance was placed on the document dated 24.07.2014 (Annexure P-10). Clause 2 of the said document envisages that the Secretary of the Gram Panchayat can be transferred within the Janpad Panchayat to the nearby Gram Panchayat. It was, therefore, argued that the transfer order was bad as the transfer of the respondent No.1 was beyond the

neighbouring Gram Panchayat area. This argument found favour with the learned Single Judge. The learned Single Judge opined that the transfer of the petitioner was not permissible and for which reason, the transfer order came to be set aside. This opinion of the learned Single Judge is the subject matter of challenge in this intra-Court writ appeal.

**05.** The appellant relies on Rule 6 sub-Rule (7) of the Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011, to contend that there is ample power to transfer Gram Panchayat Secretary on administrative ground within the Janpad Panchayat, as has been done in the present case. The said Rule reads thus:-

“(7) 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 complaints on the recommendation of the Chief Executive Officer, Janpad Panchayat.”

**06.** The validity of the said Rules has not been challenged. The first part of the Rule empowers the Competent Authority to transfer the Gram Panchayat

Secretary on administrative ground. The second part of the same Rule also enables the Competent Authority to transfer the Gram Panchayat, Secretary on an application made in that behalf, in accordance with the transfer policy.

07. The argument of the respondent, however, is that the document, Annexure P-10 dated 24.07.2014 is in the nature of policy and for which reason the transfer of the respondent No.1 is in contravention of the said policy. Reliance was placed on Clause 2 of the said document which reads thus:-

“2. xte ipk; r l fpo dk LFkkukarj.k dk; j r tuin ipk; r ds Hkhrj gh fudVLFk xte ipk; r eafd; k tk, xkA”

08. Reliance was also placed on the order passed by the Secretary of Panchayat and Gramin Vikas Department dated 26.09.2011 (Annexure A/05), in particular, Clauses 2 and 3 thereof, which read thus :-

“2- xte ipk; r ea dk; j r xte ipk; r l fpo dk LFkkukUrj n jh xte ipk; r ea nksuka xte ipk; r , oa mudh xte l Hkkvka }kjk vki l h l gefr l s ikfjr l adYi ds vk/kkj ij LFkkukUrj tuin ipk; r ds Hkhrj l ad/kr tuin ipk; r dh l keW; izkkl u l fefr }kjk ikfjr iLrko vuq kj fd; k tk l dsxkA xte ipk; r dh , dh cBd ftl ea dkje dh vko’; drk ugha gkrh gS }kjk ikfjr iLrko ekW; ughafd; k tkosxkA

3- , d tuin ipk; r dh xte ipk; r l s n j s tuin ipk; r dh xte ipk; r ea LFkkukUrj }kjk mijkDrkuq kj ikfjr l adYi ds vk/kkj ij

ftyk iøk; r dh lkekU; izkl u lfevr }kjk  
 ikfjr iLrko vuq kj xte iøk; r ea in fjDr  
 gkus dh n'kk eafd; k tk l dskA”

09. Reverting to the argument of the respondent, in our opinion, the same is based on ignorance of the distinction between the policy and inter-departmental correspondence or communication. The document, Annexure P-10 dated 24.07.2014 though titled as ‘Order’ is not a policy document as such. It is issued under the signature of Additional Chief Secretary, Panchayat and Gramin Vikas Department, Madhya Pradesh. It is not issued in the name of the Governor. Even the document, Annexure A/05, purported to be order dated 26.09.2011 will not take the matter any further because even this cannot be treated as a policy document issued in the name of the Governor. Further, in view of the Division Bench judgment in the case of **R.S. Choudhary vs. State of M.P. and others, I.L.R. (2007) M.P. 1329**, the transfer policy is not enforceable.

10. In any case, the question of applying the principle underlying the aforesaid documents may arise, if the transfer was to be effected on the basis of the application to be made by the person concerned in terms of the second part of sub-Rule (7). The first part of sub-Rule (7) gives unconditional power to the Competent Authority to

transfer the Gram Panchayat Secretary within the same Janpad Panchayat on administrative ground; and not limited to the neighbouring Gram Panchayat.

**11.** In the present case, the transfer has been ordered by the Commissioner, Panchayat Raj in exercise of statutory authority under Rule 6(7) of the Rules of 2011 for administrative ground. Hence, no fault can be found with the said decision. Suffice it to observe that opinion of the learned Single Judge that there is no power to transfer the Secretary beyond the neighbouring Gram Panchayat is manifestly wrong and cannot be countenanced. It is in the teeth of the first part of sub-Rule (7) of Rule 6 of Rules of 2011. In our opinion, therefore, the impugned judgment of the learned Single Judge cannot stand the test of judicial scrutiny.

**12.** Counsel for the respondent No.1 then submits that the respondent No.1 in the writ petition had also made averments in the writ petition regarding *mala fide* exercise of power at the behest of respondent No.6. No doubt, such averments are noticed in the writ petition. However, that was not the ground agitated before the learned Single Judge. There is nothing in the impugned judgment of the learned Single Judge that the said contention was canvassed. In this intra-Court writ appeal filed by the

Gram Panchayat, we cannot examine that ground for the first time, which was not pursued before the learned Single Judge.

**13.** As observed earlier, since there is power to transfer on administrative ground within the same Janpad Panchayat, the opinion of the learned Single Judge to the contrary cannot be sustained and will have to be set aside.

**14.** At this stage, counsel for the respondent No.1 submits that the respondent No.1 has made representation. We are not expressing any opinion on the said representation. It is open to the respondent No.1 to pursue that representation to its logical end, if so advised. The Authority to whom such representation is made, may consider the same expeditiously.

**15.** This appeal **succeeds**. The impugned judgment is set aside and the transfer order dated 28.09.2015 (Annexure P-9 in the writ petition) is restored. The respondent No.1 shall forthwith resume at the post where he has been transferred in terms of the transfer order, if already not resumed.

**(A. M. Khanwilkar)**  
Chief Justice

**(Sanjay Yadav)**  
Judge