

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR**

**W.P. No.14015/2016**

Dr. Sushil Kumar Tiwari

**Vs.**

State of M.P. and another

Shri Ajay Pal Singh, learned counsel for the petitioner.  
Shri Sanjay Dwivedi, learned Dy. Advocate General for the respondents.  
Shri R.G. Mahajan, learned counsel for the intervenor.

**Whether approved for recording : Yes**

**ORDER**  
**(14/10/2016)**

The petitioner has filed the present writ petition challenging the order dated 12/08/2016 issued by respondent No.1 thereby transferring the services of the petitioner from Directorate, Aayush, Bhopal to Govt. Homeopathy Medical College and Hospital, Bhopal

2. The petitioner was appointed on the post of Assistant Medical Officer in Homeopathy Department in the year 1985. He was thereafter promoted to the post of Medical Officer and posted as OSD with respondent No.2. In the year 2015 he was promoted to the post of Specialist. The petitioner, being senior most person in the department, has given charge of the post of Dy. Director. It has been stated that the petitioner was never

posted in the Medical College and, therefore, he does not have any teaching experience. It is submitted that the petitioner has been subjected to frequent transfers. Vide order dated 26/6/2014 the petitioner was transferred to Jai Prakash Hospital, Bhopal on the post of Specialist. Thereafter vide order dated 15/06/2015 he has been transferred from J.P. Hospital Bhopal to Directorate, Aayush. On 18/8/2015 he was again posted in J.P. Hospital, Bhopal and thereafter on 03/10/2015 he was posted on promotion in the Directorate, Aayush. In the light of these orders, it has been submitted that the petitioner has been subjected to frequent transfers. The petitioner has further submitted that the said transfer order has been issued at the instance of one Dr. J.K. Gupta. He has stated that Shri J.K. Gupta is politically powerful person and due to his political connection, the impugned transfer order has been passed on a post which does not exist in the Homeopathy Medical College, Bhopal. It has been further submitted that the said transfer order has been issued with malicious intent and arbitrary exercise of power. It is submitted that as per the transfer policy, in case in the directorate if the transfer is to be made, then the matter should be placed before Hon'ble the

Chief Minister in coordination and approval be taken. However, in the present case, no such approval has been taken and, therefore, the impugned transfer order is contrary to the transfer policy.

3. This Court vide order dated 24/08/2016 directed the Government Advocate to seek instructions in the matter regarding whether the post of Specialist is lying vacant at the transferred place and till that date, the effect and operation of the impugned transfer order was stayed. In compliance of the direction issued by this Court, the State Government has filed its reply and in the reply the respondents have stated that the petitioner is posted at Bhopal for last more than 13 years and it has been stated that the said transfer order is not an actual transfer order but it is only a local arrangement because by the said transfer order, the headquarter of the petitioner does not change. The respondents have further stated that as per the clause-11.1 of the transfer policy, it is specifically prescribed that the transfer from one office to another in the same head office is a local arrangement and would not be treated under the category of transfer. It has been further stated that the post of Specialist in Govt. Homeopathy Medical College and

Hospital, Bhopal is sanctioned which is at present vacant. It has been denied that the transfer order has been issued at the instant of Dr. J.K. Gupta. It has further been contended that the petitioner has made allegations against the person without impleading him as a party in the instant writ petition. It is contended that the petitioner has challenged the transfer order also on the ground that he does not possess the teaching experience. The respondents have stated that the petitioner, himself, has submitted a representation along with memo dated 29/11/1991 whereby he sought permission to discharge the duty of Lecturer. He also submitted a representation on 10/07/2003 whereby he sought transfer in Govt. Homeopathy Medical College and Hospital, Bhopal. Thus, all these documents clearly establish that the petitioner is having teaching experience and in past he was also interested to discharge teaching duties.

4. The intervenor, in his application, has denied the fact that the order has been issued at his instance. He submits that the petitioner has been transferred on a vacant post in the Govt. Medical College (Homeopathy) and for the said purpose he relies the letter dated 24/08/2015 (Annexure-I/15) issued by the

Joint Director, Directorate, Aayush. He further submits that there are number of complaints made against the petitioner and, therefore, on the basis of the said complaint, the Minister, Incharge has made a request to the respondents for transferring the services of the petitioner. He submits that by the impugned order, the petitioner has been transferred from Directorate to the Medical College and, therefore, it does not amount to a transfer. He further submits that Principal and CEO of Govt. Homeopathic Medical College & Hospital, Bhopal, vide its letter dated 30/08/2016 has informed the Commissioner, Aayush that there is one sanctioned post of Specialist lying vacant. Thus, on the basis of this document, he submits that the petitioner has been transferred on vacant post of Specialist in Govt. Homeopathy Medical College and Hospital, Bhopal.

5. Learned counsel for the petitioner argues that the said impugned transfer order is illegal and arbitrary. He submits that by the impugned transfer order, the petitioner has been transferred on a non-existing post. Learned counsel for the petitioner further submits that the petitioner does not possess the teaching experience and, therefore, he cannot be transferred on a teaching post. It is submitted by learned counsel that the

said transfer order amounts to a frequent transfer. On the basis of reply submitted by the respondents, he further argues that the impugned transfer order has been passed on the complaint and, therefore, it amounts to a penal transfer and, therefore, the same cannot be issued without issuing any notice or giving any opportunity of hearing to the petitioner.

6. Learned Dy. Advocate General for the respondents argues that by the impugned transfer order, the petitioner has been transferred from one office to another and it does not change the headquarter of the petitioner, therefore, it does not amount to a transfer as per clause -11.1 of the transfer policy. He further relies on Rule 9 (17) of the Fundamental Rules. He further argues that the petitioner has been transferred on a vacant post of the Specialist. He argues that there is one vacant post of Specialist in the Govt. Homeopathy Medical College and Hospital, Bhopal and the said post is lying vacant. For the said purpose, he relies on Annexure-R/1. He further argues that against the said transfer order, the petitioner has submitted a representation and the said representation has been rejected by respondent No.1 vide order dated 8/9/2016 and the petitioner has not challenged the said order in the writ petition,

therefore, the writ petition deserves to be dismissed on this ground alone. He further argues that the petitioner is having a teaching experience and he, himself, submitted a representation for discharging the duties of Lecturer. Thus, this document shows that he was also interested to discharge teaching duties. Learned Dy. Advocate General also relies on the judgment passed by the Apex Court in the case of **Union of India Vs. S.L. Abbas** reported in **(1993) 4 SCC 357** in which the Apex Court has held that the Court should not interfere in the case of transfer which is passed under the administrative exigency.

7. Learned counsel for the intervenor denies that the said transfer order has been issued at his instance. He argues that although the petitioner has made specific allegations against the intervenor in para-5.3 and 6.4 of the writ petition, however, the petitioner has not impleaded the intervenor as a party in the writ petition. The petition, therefore, deserves to be dismissed on this short ground alone. He further argues that there were number of complaints against the petitioner and, therefore, on the basis of the said complaint, the Minister Incharge has made a recommendation to the concerned department for transferring the services of the petitioner. He further argues that as the

petitioner has been transferred from the Office of Directorate, Aayush to the Govt. Homeopathy Medical College and Hospital, Bhopal i.e. within the same district and, therefore, the approval of the Chief Minister is not required to be taken. He further submits that the post of Specialist is sanctioned at Govt. Homeopathy Medical College and Hospital, Bhopal which is clear from the letter dated 24/08/2016 i.e. Annexure-I/15 as well as the letter dated 30/08/2016 i.e. Annexure-I/17. Both these documents show that the post of Specialist is sanctioned and lying vacant at Govt. Homeopathy Medical College and Hospital, Bhopal and the petitioner has been posted against the said vacant post.

8. Learned counsel for the respondents have relied on the judgment passed by the Division Bench of this Court in the case of **Kalyan Ashish De Vs. Union of India and others** reported in **2016 (1) MPLJ 693**, as well as the judgment passed by the High Court of Chhattisgarh in the case of **N.D. Atulkar Vs. State of Chhattisgarh and others** reported in **2006(3) MPHT 38**.

9. I have heard learned counsel for the parties and perused the record. The petitioner who is working on the post of

Incharge Dy. Director has filed the present writ petition challenging the order dated 12/8/2016 issued by respondent No.1 thereby he has been transferred from the Office of Directorate, Aayush to Govt. Homeopathy Medical College and Hospital, Bhopal on the vacant post of Specialist. The transfer order has been challenged mainly on the ground,- firstly that he has been posted to a non-existing post. Secondly, on the ground that the petitioner has been subjected five transfers in a span of two years and the impugned order has been issued at the instance of Dr. J.K. Gupta. So far as the argument of learned counsel for the petitioner regarding frequent transfer is concerned, it appears from the record that the petitioner was initially working the Directorate, Aayush, Bhopal. He was posted vide order dated 26/6/2014 in J.P. Hospital, Bhopal. Thereafter vide order dated 15/6/2015 he was posted from J.P. Hospital, Bhopal to Directorate, Aayush and then vide order dated 18/08/2015 he was posted in the J.P. Hospital, Bhopal and thereafter on 03/10/2015 the petitioner was posted on promotion in the Directorate, Aayush. Thus, by all these orders, the petitioner has been posted from one office to another in District Bhopal. It is pertinent to point out that

the petitioner is posted in Bhopal for last more than 13 years. Thus, this order cannot be treated as a frequent transfer order but it is only a local arrangement. Clause 11.1 of the transfer policy specifically prescribes that the transfer from one office to another in the same head office is a local arrangement and it would not be treated under the category of transfer.

10. Fundamental Rules 9 (17) provides for definition of the transfer which reads as under :

“9(17) “Transfer” means the movement of a Government servant from one headquarter station in which he is employed to another such station either (a) to take up the duties of a new post, or (b) in consequence of a change of his headquarters.”

As per the said rule, the transfer means change of headquarter. However, as in the present case, the headquarter of the petitioner does not change and, therefore, it does not amount to a transfer.

11. Second argument which raised by learned counsel

petitioner is regarding transfer on non-existing post. The respondents have filed their reply and along with the reply, the respondents have filed a copy of creation of memo. In the said memo at serial No.3, post of Specialist has been shown and as per the letter dated 30/08/2016, one post of Specialist is sanctioned and lying vacant and against the said post salary of one Dr. Renuka Shrivastava is being withdraw.

12. The intervenor has also filed some documents i.e. Annexure-I/15 which is written by Assistant Director, Directorate, Aayush to the O.I.C. of the case that one post of Specialist is sanctioned at Govt. Homeopathy Medical College and Hospital, Bhopal and the petitioner has been transferred against the said vacant post. Thus, the contention of learned counsel for the petitioner that the petitioner has been transferred against the non-existing post cannot be accepted.

13. The third contention which is raised by learned counsel for the petitioner that the said transfer order has been issued at the instance of Dr. J.K. Gupta cannot be accepted. When the petitioner has made a specific allegation against Dr. J.K. Gupta, then he should have joined him as a party in this writ petition. Learned counsel for the petitioner has further raised

a point that the impugned transfer order is a penal transfer order as it has been issued on the basis of the complaint and, therefore, the said transfer order is a penal transfer and it cannot be passed without issuing any notice or giving any opportunity of hearing to the petitioner.

14. The Apex Court in the case of **Mohd. Masood Ahmad Vs. State of U.P. and others**, reported in **(2007) 8 SCC 150**, in para-8 has held as under :

“8. ....  
 ..... In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of the MLA, that by itself would not vitiate the 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 any official the state government is certainly within its jurisdiction to transfer such an employee. ....”.

15. The Division Bench of this Court in the case of **Kalyan**

**Ashish De (supra)** in para-6 has held as under :

“6. It is settled position of law that no government servant can contend that once appointed to a particular post, he should continue to remain there for as long as he desires. Transfer of an employee is not only the necessary incident inherent in the terms of appointment but also implicitly an essential condition of service, in the absence of any specific indication to the contrary in the law governing conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their

higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or us made inviolation of any statutory provision. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirement of the situation concerned. This is for the reason that Courts or Tribunals

cannot substitute their own decision in the matter of transfer for that of competent authorities of the state and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer. (Please see State of U.P. Vs. Gobardhan Lal, AIR 2004 SC 2165).”

16. Similarly High Court of Chhattisgarh in the case of **N.D. Atulkar (supra)** in para-8 of the judgment has held as under :

“8. ....  
 ..... Mere frequency of transfers without anything further to show that they are tainted by malafide or liable to be condemned on grounds of arbitrariness and unreasonableness, could not be a

ground for this Court to review the impugned transfer order under Article 226 of the Constitution of India and annul the same. No exception could be taken if a State employer or public employer transfers an employee frequently from one place to another place to meet the exigencies of the service and in the public interest. Looking from any angle, we have no good reason to interfere with the impugned transfer order. The writ petition is devoid of merit and it is accordingly dismissed, however, with no order as to costs.”

17. Thus, learned counsel for the petitioner has failed to point out violation of any statutory rules as well as failed to point out that the impugned transfer order has been issued with mala fide intention. In view of aforesaid, I do not find any reason to interfere in the said transfer order.

18. Accordingly, the writ petition deserves to be and is hereby dismissed.

(Ms. Vandana Kasrekar)  
JUDGE

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