

**THE HIGH COURT OF MADHYA PRADESH**

**Writ Petition No.18757 of 2021  
(Dashrath Dhurve Vs. The State of Madhya Pradesh and others)**

**Jabalpur, Dated : 23.09.2021**

Shri Rajnish Pandey, learned counsel for the petitioner.

Shri Ayur Jain, learned panel lawyer for the respondents/State.

Challenge is being made to transfer order dated 31.08.2021 passed by the respondent No.3 whereby the petitioner has been transferred from Government Middle School, Banspur, Block Ghodadongari, District Betul to Government Primary School Khurda, Block Bhimpur, District Betul at a distance of 150 Kms.

It is submitted by the learned counsel for the petitioner that the petitioner is an office bearer and is appointed as District Branch Secretary of M.P. Anusuchit Jati-Janjati Adhikari Evam Karmchari Sangh and in terms of Clause 33 of the Transfer Policy dated 24.06.2021 relaxation in transfer to such office bearer has been given. The petitioner could not have been transferred atleast for a period of four years. The other ground which has been taken that the petitioner has been detected Covid Positive in May, 2021, therefore, the transfer of the petitioner is again violative of Clause 24 of the Transfer Policy. The wife of the petitioner is a Government servant and is working at the same place and in terms of Clause 23 of the Transfer Policy the husband and wife who are Government servant should generally be posted at the same place or nearby place, therefore, the transfer order is again violative of Clause 23 of the transfer policy. It is submitted that a detailed representation has been submitted to the respondent No.3 pointing out all the deficiencies in the transfer order, but the same is kept pending and

has not been decided till date.

An innocuous prayer is made to direct the respondent No.3 to consider and decide the pending representation at an early date and till the decision on representation he may be permitted to continue at the present place of posting.

Per contra, learned counsel for the State has opposed the prayer and submitted that the transfer being a condition of service and the Government employee is duty bound to comply with the transfer order. The factum of transferring of an office bearer was considered by this Court in **Writ Petition No.17800/2021 (Balram Dhakar Vs. State of M.P. and others)** and decided on 09.09.2021 and the petition got dismissed.

Learned counsel for the petitioner could not distinguish the judgment passed in the case of **Balram Dhakar** (supra), therefore, this ground is of no help to the petitioner. As far as violation of clauses of transfer policy is concerned, the law is settled by the Division Bench of this Court in the case of **R.S.Choudhary Vs. State of M.P. and others** reported in **ILR (2007) MP 1329** and **Mridul Kumar Sharma Vs. State of M.P.** reported in **ILR (2015) MP 2556**, wherein the Division Bench of this Court has held that the only remedy against the violation of the terms of the transfer policy is to get the representation decided. It is submitted that the representation of the petitioner will be considered and decided expeditiously.

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

From the perusal of the record, it is seen that the petitioner has been transferred at a short distance of 150 kms from Government Middle School, Banspur, Block Ghodadongari, District Betul to Government Primary School

Khurda, Block Bhimpur, District Betul. The ground that the petitioner is an office bearer was considered in the case of **Balram Dhakar** (supra) whereby the writ petition was dismissed and no writ appeal has been preferred against the same, therefore, the same has attained finality.

The counsel for the petitioner could not distinguish the aforesaid judgment and could not point out that the petitioner is an elected office bearer or a nominated office bearer. As far as other grounds are concerned, they are with respect to violation of clauses of transfer policy, for which only remedy available to the petitioner is to get the representation decided in terms of the judgment of Division Bench of this Court in the case of **R.S.Choudhary Vs. State of M.P. and others** reported in **ILR (2007) MP 1329** and **Mridul Kumar Sharma Vs. State of M.P.** reported in **ILR (2015) MP 2556**.

The Division Bench of this Court in the case of **R.S.Choudhary** (supra) has held as under :-

*"Transfer Policy formulated by State is not enforceable as employee does not have a right and courts have limited jurisdiction to interfere in the order of transfer. Court can interfere in case of mandatory statutory rule or action is capricious, malicious, cavalier and fanciful. In case of violation of policy, proper remedy is to approach authorities by pointing out violation and authorities to deal with the same keeping in mind the policy guidelines."*

The Division Bench of this Court in **Mridul Kumar Sharma** (supra) has held as under :

*"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public Administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. If the order of transfer is not stayed, modified, or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other".*

In such circumstances, no interim relief can be granted to the petitioner and the only remedy available to the petitioner is to file a representation to the respondents/Authorities and get the representation decided. In such circumstances, this Court deems it appropriate to dispose of this petition with a direction to the petitioner to file a fresh representation to

the respondent No.3 within seven days and in case such a representation is preferred, the respondent No.3 is directed to dwell upon the representation and pass a self contained speaking order and communicate the outcome to the petitioner within a period of 15 days from the date of receipt of certified copy of this order.

Needless to mention here that this Court has not commented upon the merits of the case.

With the aforesaid observations, this petition is **disposed of**.

**(Vishal Mishra)**  
**Judge**

**AM.**