

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

**BEFORE
JUSTICE SUJOY PAUL
&
JUSTICE ACHAL KUMAR PALIWAL**

ON THE 05TH OF JULY, 2023

WRIT APPEAL No. 1393 OF 2022

BETWEEN :-

**SMT. CHHAYA PARIHAR W/O SHRI
MADHAV SINGH PARIHAR, AGED ABOUT 51
YEARS, OCCUPATION: ASSISTANT
TEACHER GOVERNMENT GIRLS MIDDLE
SCHOOL, BHELSI AND WARDEN
KASTURBA GANDHI GIRLS HOSTAL,
BHELSI SITRICT TIKAMGARH (M.P.)
(MADHYA PRADESH)**

....APPELLANT

(BY SHRI SHIVAM MISHRA -ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE PRINCIPAL
SECRETARY SCHOOL EDUCATION
DEPARTMENT VALLABH BHAWAN
BHOPAL (M.P.) (MADHYA PRADESH)**
- 2. THE COMMISSIONER, RAJYA
SHIKSHA KENDRA MADHYA
PRADESH BHOPAL (MADHYA
PRADESH)**
- 3. THE COLLECTOR, TIKAMGARH
DISTRICT TIKAMGARH (MADHYA
PRADESH)**
- 4. CHIEF EXECUTIVE OFFICER, ZILA
PANCHAYAT ,TIKAMGARH DISTRICT
TIKAMGARH (MADHYA PRADESH)**

5. THE DISTRICT EDUCATION OFFICER, TIKAMGARH DISTRICT TIKAMGARH (MADHYA PRADESH)
6. SMT. GANESHI GUPTA W/O SHRI NARAYAN DAS GUPTA, AGED ABOUT 52 YEARS, OCCUPATION: ADHYAPAK AND WARDEN, GOVERNMENT GIRLS HOSTAL AHAR JANPAD PANCHAYAT AND TEHSIL BALDEOGARH DISTRICT TIKAMGARH M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ANKIT AGRAWAL - GOVERNMENT ADVOCATE)

This appeal coming on for admission this day, JUSTICE SUJOY PAUL passed the following:

J U D G M E N T

Heard on admission.

2. This *Intra Court* appeal assails the order of Writ Court dated 11th October, 2022 passed in WP No. 21328 of 2022.
3. The grievance of the appellant / petitioner is that she was holding the post of In-charge Hostel Warden. By the impugned order dated 06.09.2022, the respondents appointed the respondent No.6 on the said post.
4. Learned counsel for the appellant submits that infact respondent No.6 previously filed Writ Petition No. 12883 of 2017 in which by order dated 28.08.2017 the Court directed to maintain status quo regarding posting of the petitioner. The said writ petition is still pending and interim order aforesaid is prevailing. In this backdrop, it

was not open to the Government to post the respondent No.6 in place of the petitioner.

5. Learned counsel for the appellant further submits that learned Single Judge has declined interference merely on the ground that no legal right of the petitioner is infringed. Petitioner has no legal or constitutional right to occupy the post of Hostel Warden in In-charge capacity. Shri Shivam Mishra, learned counsel for the appellant has taken pains to rely on the judgment of this Court reported in **2016 (3) MPLJ 152 (Dr. V.B. Singh Baghel Vs. State of M.P. & Ors.)** and urged that even as per this judgment, on two counts, judicial review of an order posting an employee to occupy the post on In-charge basis can be called in question viz. (i) when order impugned is malafide in nature and (ii) breach of fundamental rights.

6. Shri Mishra, learned counsel for the appellant submits that in view of para 5.5 of the writ petition, the petitioner categorically pleaded about malafide and therefore, the scope of judicial interference was very much there. He further submits that this is a case where respondent acted with malice and therefore, the learned Single Judge was not right in dismissing the writ petition.

7. Shri Ankit Agrawal, learned G.A. for the State supported the order of writ Court.

8. No other point is pressed by learned counsel for the parties.

9. We have heard the parties at length and perused the record.

10. In the opinion of this Court, the respondent No.6 was enjoying a status quo order passed in WP No. 12883/2017 since 28.08.2017. This is trite that when a transfer order or posting order is called in question

in a writ petition and Court directs the parties to maintain status quo or stays the effect and operation of that order, that does not deprive the Department to pass a fresh order of posting / transfer. The order of status quo / stay operates qua the order which is subject matter of challenge in a particular litigation. For example, if a transfer order passed in July, 2023 is called in question in a writ petition by an employee and Court directs to maintain status quo or stays the order of transfer that does not mean that Government in future cannot transfer or post the employee elsewhere. Thus, we are unable to persuade ourselves with the said line of argument of Shri Mishra.

11. As noticed, the learned Single Bench has declined interference because the petitioner and respondent No.6 were at loggerheads for a post which is of In-charge capacity. The curtains were finally drawn on this issue by the Supreme Court in **AIR 1993 SC 2273 (State of Haryana Vs. S.M. Sharma and Ors.)** relevant portion of the said judgment reads as under:-

“11. We are constrained to say that the High Court extended its extra-ordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court. It was a patent misuse of the process of the court.”

12. The *ratio decidendi* of said judgment was followed by this Court in **Dr. V.B. Singh Baghel (supra)**.

13. So far attack on the ground of malice is concerned, mere bald averment in the writ petition that order is malafide in nature is not

sufficient. There must be sufficient / adequate pleadings to show why said order is termed as ‘malafide’. There is no such pleading in the writ petition. Even otherwise, appellant has not impleaded the competent Officer *eo nomine*. Hence, in view of law laid down in **2019 (4) MPLJ 242 (Suverna Bidua Vs. Union of India)** and **(2004) 12 SCC 390 (Medley Minerals India Ltd. VS. State of Orissa and Ors.)** order cannot be interfered with on the ground of malafide. In **Medley Minerals India Ltd. (supra)** the Supreme Court has held as under :-

“It is trite that plea of mala fides has to be specific and demonstrable. Not only this, but the person against whom the mala fides are alleged must be made a party to the proceedings and given reasonable opportunity of hearing. No such attempt made in the writ petition before the High Court. The argument of mala fides must therefore fail.”

14. The learned Single Judge, in our opinion, has taken a plausible view which is in consonance with the judgments of Supreme Court in **Dr. V. B. Singh Baghel and S.M. Sharma (supra)**. It is noteworthy that appellant’s substantive post is Assistant Teacher and impugned order before the Writ Court has not caused any financial loss to the petitioner. Her right to continue on substantive post is not taken away or infringed in any manner. Hence, we find no reason to interfere in this writ appeal. The Writ Appeal **fails** and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(ACHAL KUMAR PALIWAL)
JUDGE