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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
ON THE 27th OF APRIL, 2022

WRIT APPEAL No. 400 of 2022

Between:-

SHYAM KUMAR SINGH S/O LATE SHRI ANANT
PRATAP SINGH, AGED ABOUT 61 YEARS,
OCCUPATION: COMMISSIONER MUNICIPAL
CORPORATION, BURHANPUR (MADHYA
PRADESH)

.....APPELLANT

(BY SHRI R. N. SINGH - SENIOR ADVOCATE WITH SHRI RISHABH
SINGH - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH
ITS PRINCIPAL SECRETARY, URBAN
ADMINISTRATION AND DEVELOPMENT
DEPARTMENT AND HOUSING DEPARTMENT,
MANTRALAYA, VALLABH BHAWAN, BHOPAL
(M.P.) (MADHYA PRADESH)
2. SHRI SANJAY MEHTA, ADDITIONAL
COMMISSIONER MUNICIPAL CORPORATION,
GWALIOR GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI S.S. CHOUHAN - GOVERNMENT ADVOCATE FOR THE
RESPONDENT NO.1 AND SHRI T.K. MODH - ADVOCATE FOR THE
RESPONDENT NO.2)

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*This appeal coming on for admission this day, Hon'ble Shri Justice
Ravi Malimath, Chief Justice passed the following:*

ORDER

Aggrieved by the order dated 13.04.2022 (Annexure-A-1) in Writ
Petition No.8470 of 2022 passed by the learned Single Judge in dismissing the

petitioner's plea challenging the order of transfer, the petitioner is in appeal.

The case of the writ petitioner is that he is an Officer of the State Municipal Services. He is scheduled to superannuate on 31.08.2022. He is presently working as the Commissioner, Municipal Corporation, Burhanpur. That when the writ petitioner who was working on the post of Commissioner, Municipal Corporation, Ratlam, he was transferred by the order dated 09.07.2020 to Rewa, as the Joint Director, Urban Development and Housing Department. Within a period of 11 months, by the order dated 04.06.2021, he was transferred from Rewa as the Commissioner, Municipal Corporation, Burhanpur. By the impugned order dated 07.04.2022 (Annexure-P/1 to the writ petition) merely after a period of ten months, he has been transferred to Bhopal as Joint Director, Directorate, Urban Administration and Development, Bhopal. Questioning the same, instant writ petition was filed.

The learned Single Judge came to the view that even though there is a frequency of transfer of less than a year, the post of the Chief Municipal Commissioner is a sensitive post. That undue long stay at a particular place aids in development of vested interest. That it is the State Government, being the employer of the writ petitioner, who is in the best position to adjudge suitability of a particular person. Since the petitioner has not pleaded malafides nor was he able to demonstrate that the impugned order of transfer has been issued by any incompetent authority, the writ petition was dismissed.

The learned Senior Counsel Shri R.N. Singh appearing for appellant's counsel submits that the impugned order of transfer as well as that of the learned Single Judge are erroneous and liable to be interfered with. That there was no valid reason for transferring the writ petitioner. That he has been

transferred frequently on whichever post he held. That he has less than four months to go for his superannuation. Therefore, irrespective of the contentions, he pleads that the ground that he has to retire in less than four months, should have prevailed upon the authority in not transferring him. Therefore, he pleads that the appeal be allowed by setting aside the impugned order of transfer.

The State have filed their additional objections in the Court today. They have also produced the records. It is stated therein that based on the recommendations received by the local elected representative for shifting the petitioner out of the Municipal Corporation, Burhanpur, the petitioner was transferred. It is also contended that the same would not affect his retiral dues nor would there be any financial loss. That the transfer is an incidence of service. Hence, he pleads that the appeal be dismissed.

Heard learned counsels.

The original records of the case were summoned. The same would indicate that a communication was received from the office of the Hon'ble Chief Minister dated 30.12.2021 to the Directorate of Municipal Administration indicating that the Hon'ble local Member of Parliament has made a recommendation for transfer of the petitioner from Burhanpur to Bhopal and to shift the respondent No.2 in his place. However, the department having considered the same, did not recommend the transfer. The file was then placed before the Commissioner of Urban Administration. There also the Commissioner, Urban Administration did not recommend the transfer of the petitioner. The same also bears the signature/approval of the Principal Secretary of the department. Thereafter, the note dated 07.03.2022 indicates that the Minister for Urban Administration has made a recommendation to transfer the

petitioner from Burhanpur as well as to transfer the respondent No.2 to Burhanpur. Based on the said recommendations of the Minister, the same was placed for approval before the Hon'ble Chief Minister, who has approved the same on 06.04.2022. Thereafter, the impugned order of transfer has been issued.

On considering the original records as well as the objections filed by the State, the only inference that can be drawn is that the writ petitioner has been transferred purely and solely based on the recommendations made by the concerned elected representatives. There is no other reason assigned at all. The transfer order is not even in public interest or for any other reason. It has been effected purely on the recommendations of the concerned elected representatives.

If an order of transfer is made on extraneous or unacceptable reasons then judicial review of such an order is permissible. If a transfer order is passed on an extraneous consideration, the same can be interfered with by the Court. The Court is therefore duty bound in such circumstances to find out as to whether the transfer is bonafide or for extraneous consideration, or as a measure of punishment or otherwise.

It is needless to say that an elected representative can always recommend a transfer of an employee. However, such a recommendation has to be for genuine and cogent reasons. It cannot be justified by usurping the authority of the concerned administrative department. In the instant case, the concerned administrative department has declined to transfer the petitioner. The same has also been endorsed by the Principal Secretary of the department. Notwithstanding the same, the concerned Minister has made a recommendation

contrary to the opinion of the department. The said file was placed for approval before the Hon'ble Chief Minister, who was therefore compelled to approve the same. Such interference in matters of transfer, in our considered view, is highly inappropriate. Even though there can always be a recommendation, it cannot be forced upon the concerned authorities to effect the orders of transfer. The transfer of the petitioner, therefore, is not on any administrative ground or in public interest, but only due to insistence made by the concerned Minister.

In view of the facts and circumstances involved and as disclosed by the original records, the transfer order becomes unsustainable. No transfer order can be sustained if it is made purely on the ground of a recommendation made by a Minister. Therefore, we are of the view that the impugned order becomes unsustainable in law.

The further contention that it is a sensitive post and, therefore, a person should not remain for long is not a reason, as can be made out from the original records. The department as well as the concerned Commissioner having considered the recommendations of the elected representatives have clearly opined that it is not a fit case for transfer. Notwithstanding the same, he has been transferred. Therefore, whether the post is sensitive or not, is not a reason that can be found from the records to effect the transfer. The only reason that can be inferred from the records is that the transfer is based on a recommendation. No such recommendation can be a valid ground to sustain an order of transfer.

It is further pleaded by the respondent No.2 that he has already occupied the position at Burhanpur. If that be so, then necessarily his order of transfer also would have to be quashed and he would have to be reverted back to his earlier position or await further orders from the Government. As of now, we

are of the view that the petitioner is entitled to continue in the present place, namely, as Commissioner of Municipal Corporation, Burhanpur. The respondent No.2, who is presently holding charge, shall hand over the charge to the petitioner and await further orders from the State.

Hence, for all these reasons, the appeal is allowed. The order passed by the learned Single Judge dated 13.04.2022 (Annexure-A-1) in Writ Petition No.8470 of 2022, is set aside. The impugned order of transfer dated 07.04.2022 (Annexure-P/1) passed by respondent No.1, is quashed. Since the impugned order of transfer also includes the transfer of respondent No.2, apparently, the said order also would stand quashed based on the aforesaid observations. The respondent No.2 shall hand over charge to the writ petitioner and await further orders from the State.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

A.Praj.