

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 14<sup>th</sup> OF AUGUST, 2023**

**WRIT PETITION No. 19020 of 2023**

**BETWEEN:-**

**DR. SUNIL DATT CHATURVEDI, S/O LATE R.S.  
CHATURVEDI, AGED ABOUT 59 YEARS,  
OCCUPATION: IN CHARGE REGISTRAR  
MAHARAJA CHHATRASAL BUNDELKHAND  
UNIVERSITY CHHATARPUR, DISTRICT  
CHHATARPUR, R/O 8 NANDAKANHA  
CHHATARPUR, DISTRICT CHHATARPUR  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI SANJAY KUMAR AGRAWAL- ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH THE PRINCIPAL SECRETARY,  
DEPARTMENT OF HIGHER EDUCATION,  
GOVERNMENT OF MADHAYA PRADESH,  
MANTRALAYA, VALLABH BHAWAN,  
BHOPAL DISTRICT BHOPAL (MADHYA  
PRADESH)**
- 2. THE COMMISSIONER HIGHER  
EDUCATION GOVERNMENT OF MADHYA  
PRADESH, SATPUDA BHAWAN BHOPAL,  
DISTRICT BHOPAL (MADHYA PRADESH)**
- 3. THE VICE CHANCELLOR, MAHARAJA  
CHHATARSAL BUNDELKHAND  
UNIVERSITY CHHATARPUR, DISTRICT  
CHHATARPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI H.S. RUPRAH- ADDITIONAL ADVOCATE GENERAL WITH SHRI SWAPNIL GANGULY- DEPUTY ADVOCATE GENERAL)**

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*This petition coming on for admission this day, the court passed the following:*

**ORDER**

This petition under Article 226 of Constitution of India has been filed against order dated 28.07.2023 passed by respondent No. 1 by which the petitioner has been repatriated from the post of Registrar, Maharaja Chhatrasal Bundelkhand University, Chhatarpur and has been transferred to Government College, Niwas, District Mandla.

2. It is the case of petitioner that he is an employee of Department of Higher Education, Government of Madhya Pradesh. Initially he was appointed as Assistant Professor (Physics) in the department of Higher Education Government of Madhya Pradesh. By order dated 01.01.2006, he was promoted to the post of Professor (Physics). Since, then the petitioner is working on the post of Professor (Physics). He has put in more than 36 years of blotless service to the respondent/State. The petitioner was posted as Professor (Physics) in Government Maharaja Autonomous Post Graduate College, Chhatarpur. The said college was transferred to Maharaja Chhatrasal Bundelkhand University, Chhatarpur vide order dated 24.09.2021. On account of transfer of the said college to the University, the petitioner was treated to be posted on deputation in Government Maharaja Chhatrasal Bundelkhand University Chhatarpur and in pursuance of order dated 27.09.2021, the services of the petitioner were taken on deputation by Maharaja Chhatarsal Bundelkhand University, Chhatarpur. By order dated 14.03.2023,

petitioner was given charge of the post of Registrar of the University which was taken over by him by order dated 15.03.2023. It is the case of petitioner that immediately after taking over the charge of the post of Registrar, he started taking stern action against private colleges which were not complying with the requisite norms for grant of affiliation. It was found that large number of private colleges were running without any building or infrastructure. The action taken by petitioner against private colleges was prominently reported in the local newspapers. On 20.04.2023, an advertisement was issued by the University inviting applications from eligible candidates for appointment to various Class-IV posts. Total 16 posts of Peon/Chowkidar were notified by the said advertisement. The responsibility for conducting selection for appointment on the notified Class-IV posts was handed over to examination controller by order dated 26.05.2023.

**3.** It is the case of petitioner that he was not associated with the process of selection for appointment to the notified Class-IV posts. However, it appears that some serious irregularities were committed in the process of selection and accordingly, pamphlet was circulated in the University specifying the names of the persons who were likely to be selected for appointment on the said post. On the basis of said pamphlet, a complaint was made to Hon'ble Chancellor alleging commission of serious irregularities in the process of selection and appointment on Class-IV posts. On the basis of said complaint, an explanation was called from petitioner which was submitted by him on 22.06.2023. It was clearly pointed out by petitioner that he was not associated in the selection process and in fact the responsibilities for conducting the selection was handed over to the examination controller. Looking to the serious complaints regarding the process of selection and appointment

on Class-IV posts, the Executive Council of the University took a decision to cancel the entire selection and on the basis of decision taken by Executive Council, an order dated 13.07.2023 was issued whereby cancelling the advertisement dated 20.04.2023.

4. It is the case of the petitioner that the persons who were selected for appointment mainly belong to an organization connected with the ruling party in the State of Madhya Pradesh. Because of cancellation of selection process, certain influential persons belonging to the said organization started accusing the petitioner and accordingly, they made a request to Chief Minister to transfer the petitioner either to Burhanpur, Alirajpur, Balaghat or Mandla. On the basis of said request, a note-sheet was prepared by Principal Secretary of Chief Minister and was sent to the Department of Higher Education for taking action in accordance with law. It was also prayed that the respondents may be directed to produce copy of said note-sheet. It is submitted that on the basis of directions issued by the Principal Secretary of Chief Minister, respondent No. 1 has now issued an order dated 28.07.2023 by which the services of the petitioner have been repatriated from the University and has been posted in Government College, Niwas, District Mandla.

5. It is submitted that so far as repatriation of petitioner is concerned, petitioner cannot have any grievance because a deputationist has no right to continue on deputation but petitioner is primarily aggrieved by his transfer to Government College, Niwas, District Mandla. It is submitted that transfer of petitioner was not in public interest and no administrative exigency was involved and order of transfer was by way of punishment. It was further submitted that even the Vice Chancellor of the University has requested the State Government to allow petitioner to continue on the post of Registrar and his services are required for the

proper administration of the University. It is also submitted that petitioner has been appointed as Research Supervisor for two research scholars namely Girijesh Juyal and Himanshu Agrawal. In case petitioner is transferred to Government College, Niwas, District Mandla, then research work of the students would be completely hampered. Accordingly, research scholars have also submitted representation seeking cancellation of transfer order of petitioner. The petitioner has also made a detailed representation, but no decision has been taken so far. It is submitted that in fact four research scholars are working under petitioner and all four have made a representation for cancellation of transfer order of the petitioner. It is further stated that present is a case of malice in law by the State.

6. Respondents No. 1 and 2 have filed their return and claimed that in catena of judgments, the Supreme Court and the High Court have clarified that judicial scope of interference in the administrative functionality of transfer of employee, is extremely limited and should be invoked in rarest of rare cases. It is the case of petitioner that transfer order suffers from the vice of malice and the same has been issued on the basis of note-sheet sent from the office of the Chief Minister. The contention of the petitioner in respect of malice was categorically denied. It was submitted that in the transfer policy itself, it has been clarified that if a transfer is to be made after the relaxation period as provided in the transfer policy, then the same can be done at any time in coordination with the office of Chief Minister. Since petitioner was transferred during ban period, therefore, it was done with the coordination of the office of Chief Minister.

7. It is submitted that there is only one post of Assistant Professor/Professor (Physics) in Government College, Niwas, District

Mandla which was lying vacant. Thus, the transfer order of petitioner was to meet such administrative exigency. It is also mentioned that so far as the University is concerned, even after the transfer of petitioner, still Dr. R.P. Kumhar is working as Professor (Physics). So far as the request made by Research Scholars is concerned, it is not the case of petitioner that if a Supervisor has been allotted to Research Scholars, then the same cannot be subsequently changed or any additional Supervisor cannot be appointed for the said purposes. The petitioner has already been relieved from the University on 07.08.2023 and the charge of the post of Registrar had already been taken over by Shri Vijay Kumar Tirki on 31.07.2023. The petitioner was merely given the additional charge of the post of Registrar and no one can claim the right over the said current charge. The petitioner has been working at Government Maharaja College, Chhatarpur from 30.06.1990 till today, therefore, it is clear that the petitioner has already spent 33 long years at Chhatarpur. The petitioner has made bald averments with respect to some organization connected with the ruling party. However, there is no cogent material to substantiate such bald averments. No person in the personal capacity has been impleaded. The transfer of the petitioner has taken place in accordance with the transfer policy as per administrative exigency.

**8.** Petitioner has filed his rejoinder and submitted that in fact department of petitioner did not propose for his transfer. Coordination with the office of Chief Minister will arise only if proposal sent by department is approved. However, in present case in fact proposal to transfer the petitioner has originated from the office of Chief Minister. It is further submitted that it is incorrect to say that one post of Assistant Professor/Professor (Physics) in Government College, Niwas, District

Mandla is lying vacant. In fact one guest faculty is already posted in Government College, Niwas, District Mandla. It is submitted that respondent No.3 has sanctioned 11 research scholars in Physics out of which 4 are doing research work under supervision of petitioner. In addition to 11 research scholars in Physics, total 455 students in B.Sc. 1<sup>st</sup> year, 694 students in B.Sc. 2<sup>nd</sup> year and 475 students in B.Sc. 3<sup>rd</sup> year are studying in School of Studies in Physics and Research Centre of respondent No.3. School of Studies in Physics and Research Centre of respondent No.3 is also conducting Post Graduate courses in Physics. Total 58 students are pursuing their studies in M.Sc. previous and 45 students in M.Sc. final year courses. Thus, in all 1738 students are studying in School of Studies in Physics and Research Centre, whereas Government College, Niwas, District Mandla is an undergraduate college, where there are no Post Graduate courses in Physics. Even in graduate courses, there are no students in Physics Major and only 4 students in Physics Minor in B.Sc.1<sup>st</sup> year and no student in Physics Major and only 2 students in Physics Minor in B.Sc.2<sup>nd</sup> year and no student in Physics Major and only 2 students in Physics Minor in B.Sc.3<sup>rd</sup> year are studying. Thus, it is the contention of petitioner that interest of Physics students studying in respondent No.3 University are being put to peril only for name sake. It is submitted that 3 research scholars have done substantial research work under petitioner and therefore, change of Research Director at this stage would render research work redundant and appointment of fresh Research Director would also take considerable time. The respondents have not pointed out as to why petitioner has been picked up for transfer to Government College, Niwas, District Mandla, whereas other Professors from adjoining districts could have been transferred to Niwas. The relieving

order of petitioner also suffers from malafides because petitioner was relieved only after time was taken by Additional Advocate General to file return. It is further submitted that since transfer order suffers from malice in law by State Government, therefore, impleadment of Chief Minister and other authorities is not necessary.

9. Heard learned counsel for the parties.

10. Counsel for petitioner was right in submitting that no deputationist has any right to continue on deputation and therefore, his repatriation to parent department cannot be challenged. However, main thrust of argument is with regard to transfer of petitioner to Government College, Niwas, District Mandla.

11. It appears that a pamphlet was published and circulated to the effect that persons named in the said pamphlet would be appointed on the post of notified Class-IV post. From plain reading of said pamphlet, which has also been filed alongwith writ petition, it is clear that serious allegations were made against petitioner also. It is the contention of petitioner that decision to cancel recruitment was taken by Executive Council but petitioner has not explained as to why serious allegations were also made against him in the pamphlet.

12. Be that whatever it may be.

13. Since it is not a matter of departmental enquiry, therefore, it is not necessary for this Court to adjudicate as to whether allegations of corruption made against petitioner in the pamphlet were correct or not?

14. Undisputedly, petitioner has spent 33 long years in Government Maharaja Autonomous Post Graduate College, Chhatarpur. His contention is that 1738 students are studying in college and his transfer to Government College, Niwas would be detrimental to the interest of 1738 students. Accordingly, counsel for petitioner was directed to point



out as to whether petitioner after his posting as Registrar on deputation was taking classes of Physics or not?

**15.** It is fairly conceded by counsel for petitioner that after his posting as Registrar on deputation, petitioner was not taking classes of 1738 students, who are students of Physics studying in college. Therefore, one thing is clear that concern shown by petitioner is superficial and not real. If petitioner was so concerned about the future of 1738 students of Physics subject studying in School of Studies in Physics and Research Centre, Maharaja Chhatrasal Bundelkhand University, Chhatarpur, then he should not have accepted non-teaching post of Registrar on deputation. Thus, petitioner is changing his version from time to time as per his convenience.

**16.** When School of Studies in Physics and Research Centre was effectively functioning even in absence of petitioner, then petitioner cannot make any comment with regard to functioning and status of Dr.R.K. Kumhar.

**17.** It is the case of petitioner that there are only 8 students in Government College, Niwas District Mandla. Every student is entitled for good education and the level of education in a college cannot fluctuate on the basis of strength of students. Petitioner is an experienced Professor in Physics and therefore, students studying Government College, Niwas, District Mandla are also entitled for experience and knowledge of petitioner. It is well established principle of law that transfer is an exigency of service and no one can claim that he should be posted at a particular place specifically when petitioner himself had accepted a non-teaching post of Registrar on deputation.

**18.** So far as the question of malice in law is concerned, the Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector,**

**Raigad and Others** reported in **(2012) 4 SCC 407** has held as under:

“47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. “Legal malice” or “malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorised purpose constitutes malice in law. (See *ADM, Jabalpur v. Shivakant Shukla* [(1976) 2 SCC 521 : AIR 1976 SC 1207], *Union of India v. V. Ramakrishnan* [(2005) 8 SCC 394 : 2005 SCC (L&S) 1150] and *Kalabharati Advertising v. Hemant Vimalnath Narichania* [(2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808 : AIR 2010 SC 3745] .)”

19. “Malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act, which is taken with an oblique or indirect object.

20. In the present case, undisputedly, petitioner has already spent 33 long years in same college. By giving complete go by to the interest of students, he accepted a non-teaching post of Registrar on deputation.

During his posting as Registrar, he did not teach students as admitted by his counsel. In the pamphlet, which has been filed alongwith writ petition, apart from names of persons, who were likely to be recruited on the post of notified Class-IV employees, there were serious allegations of corruption against petitioner.

**21.** During course of arguments, all allegations were made by petitioner against the Chief Minister. It is well established principle of law that unless and until a person against whom allegations are being made is given an opportunity of hearing to rebut those allegations, this Court cannot consider such allegations. Admittedly, the Chief Minister and other officers, against whom petitioner is making allegations, have not been impleaded as a party to this petition. In the pamphlet, there are similar allegations against Vice Chancellor also. Therefore, if any proposal was sent by Vice Chancellor for retaining petitioner as Registrar would not have any sanctity in eyes of law.

**22.** Furthermore, petitioner has made an allegation that because of cancellation of entire recruitment process, influential persons of organization made a complaint to the Chief Minister. Neither petitioner has disclosed the names of such influential persons nor has impleaded any of them as respondents. Unless and until this Court comes to a conclusion that impugned order was passed with an oblique motive, it cannot be said that action of respondents was malice in law. The respondents have specifically pointed out reasons for posting petitioner in Government College, Niwas District Mandla. As already held every student studying in the college is entitled for proper education and cannot be deprived of experience of petitioner, who has also spent 33 long years of stay at Chhatarpur. Although, petitioner has tried to allege malafides against the Chief Minister, officers, as well as some private

persons by branding them as influential persons, but there is no material on record to substantiate said allegation. It is very easy to make allegations but it is very difficult to prove the same. But in order to prove allegations of malafide, basic requirement is that person, against whom such an allegation is made, must be given an opportunity to rebut the same. No one can be condemned without giving an opportunity of hearing.

**23.** The Supreme Court in the case of **State of Punjab and others Vs. Chaman Lal Goyal** reported in **(1995) 2 SCC 570** has held as under:

“8. .... Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person *eo nomine* so as to enable him to answer the charge against him, the charge of mala fides cannot be sustained. ....”

**24.** The Supreme Court in the case of **Indian Railway Construction Co. Ltd. Vs. Ajay Kumar** reported in **(2003) 4 SCC 579** has held as under:-

“**23.** Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala

fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Partap Singh v. State of Punjab* [AIR 1964 SC 72 : (1964) 4 SCR 733].) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in *E.P. Royappa v. State of T.N.* AIR 1974 SC 555 courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.”

**25.** The Supreme Court in the case of **State of Bihar and Another Vs. P.P. Sharma**, reported in (1992) Supp (1) SCC 222 has held as under:-

“55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the

allegation of mala fides or bias alleged against them .....

26. The Supreme Court in the case of **Federation of Railway Officers Association Vs. Union of India** reported in AIR 2003 SC 1344 has held as under :

“20. .... Allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.”

27. The Supreme Court in the case of **J.N. Banavalikar Vs. Municipal Corporation of Delhi**, reported in AIR 1996 SC 326 has held as under:

“21. .... Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.”

28. The Supreme Court in the case of **All India State Bank Officers' Federation and Others Vs. Union of India and others**, reported in (1997) 9 SCC 151 in para 22, has held that where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court are as under: -

“22. There is yet another reason why this contention of the petitioners must fail. It is

now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without merit.”

29. The Supreme Court in the case of **Indian Railway Construction Co. Ltd. Vs. Ajay Kumar** reported in (2003) 4 SCC 579 has held as under:

“23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same

can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Partap Singh v. State of Punjab* [AIR 1964 SC 72: (1964) 4 SCR 733] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in *E.P. Royappa v. State of T.N.* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.”

**30.** So far as the future of research scholars is concerned, respondents have taken a specific stand that they can be attached to a new Research Director. Therefore, once respondents have taken care of future of research scholars, then this Court cannot hold that transfer order of petitioner is bad.

**31.** Considering the totality of facts and circumstance of case, this Court is of considered opinion that petition *sans* merits and it is accordingly, **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**