

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
JUSTICE SUJOY PAUL
ON THE 12th OF SEPTEMBER, 2023
WRIT PETITION No. 21261 OF 2023**

BETWEEN :-

**RAHUL HALDAR, S/O SHRI SHANTI
RANJAN HALDAR, AGED ABOUT 39 YEARS,
OCCUPATION : DISTRICT MANAGER
(MICRO ENTERPRISE DEVELOPMENT)
STATE RURAL LIVELIHOOD MISSION,
BHOPAL, DISTRICT BHOPAL (M.P.)**

.....PETITIONER

(BY SHRI VIKAS MISHRA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH,
THROUGH CHIEF EXECUTIVE OFFICER
(ADMIN.), M.P. STATE RURAL LIVELIHOOD
MISSION, PANCHAYAT AND RURAL
DEVELOPMENT DEPARTMENT, BHOPAL
(M.P.)**
- 2. ADDITIONAL CHIEF EXECUTIVE OFFICER,
M.P. STATE RURAL LIVELIHOOD MISSION,
PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT, BHOPAL (M.P.)**
- 3. COLLECTOR CUM MISSION DIRECTOR,
BHOPAL, DISTRICT BHOPAL (M.P.)**
- 4. CHIEF EXECUTIVE OFFICER, JILA
PANCHAYAT, BHOPAL, DISTRICT BHOPAL
(M.P.)**

.....RESPONDENTS

(BY SHRI LALIT JOGLEKAR - GOVERNMENT ADVOCATE)

This writ petition coming on for admission this day, JUSTICE SUJOY PAUL passed the following :-

ORDER

This is the second visit of the petitioner to this Court against the transfer order dated 03.07.2023. In previous round i.e. W.P. No.15697 of 2023, the Court disposed of the petition by directing the respondents to decide the representation dated 04.07.2023 (Annexure P/8).

2. Shri Vikas Mishra, learned counsel for the petitioner submits that the respondents have rejected the representation by impugned order dated 14.08.2023 (Annexure P/1). In this rejection order, there is no reference to the representation and the Court order. It is submitted that the petitioner, a contractual employee, could not have been transferred. The previous transfer order dated 03.07.2023 is although modified by changing the place of transfer as Guna, the fact remains that a contractual employee is still transferred.

3. Shri Ankit Agrawal, learned Govt. Advocate supported the impugned order.

4. The petitioner neither in his previous representation dated 04.07.2023 (Annexure P/8) (with the previous petition) raised point of impermissibility of transfer of a contractual employee nor in the representation dated 15.07.2023 preferred after the decision of previous round.

5. The representation dated 04.07.2023 shows that petitioner raised ground only relating to personal inconvenience which cannot be a ground for interference in a transfer order.

6. In the first round, the petitioner was protected by this Court till decision is taken by the authority on his representation. The petitioner was obliged to take all possible factual and legal objections/grounds in his representation. If petitioner has failed to do so, he is bound to face the consequences. Putting it differently, if petitioner is permitted to raise new ground in a new round of litigation against the same transfer order, it will be against the public policy. In a case of this nature, even if, law is in favour of petitioner, relief can be refused in exercise of discretionary jurisdiction if it is against the public policy. The Division Bench of this Court considered this aspect in sufficient details in the common order dated 08.08.2019 passed in **W.P. No.11706 of 2013 (Sitaram Giri vs. Union of India)** and other connected matters. The relevant portion reads as under :-

“16. it is trite that this Court may refuse to extend a particular benefit to the petitioners despite the fact that it would be lawful to do so. Such refusal may be on the ground that it will be against the public policy/interest. It is apposite to take note of certain judgments of Supreme Court on this point. In **AIR 1964 SC 1419, [Thansingh Nathmal vs. Supdt. Of Taxes]** the Apex Court opined as under:

“The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is

discretionary: it is not exercised merely because it is lawful to do so.”

[Emphasis Supplied]

In 1980 (2) SCC 437, [M/s. Shiv Shankar Dal Mills & others vs. State of Haryana & others] in para 6 the Apex Court held as under:

“6. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects.”

[Emphasis Supplied]

In 1984 (4) SCC 371, [M.P. Mittal vs. State of Haryana] the Apex Court held as under :

“.....it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.”

[Emphasis Supplied]

In Chandra Singh vs. State of Rajasthan reported in 2003 (6) SCC 545, the Apex Court held as under:

“43. Issuance of a writ of certiorari is a discretionary remedy. (See: Champalal Binani v. CIT[(1971) 3 SCC 20 : AIR 1970 SC 645] .) The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given

case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant.....

44. This Court in Brij Mohan Gupta case [(2003) 2 SCC 390 : 2003 SCC (L&S) 174] has also refused to exercise its discretionary jurisdiction in favour of the appellants although the order of the High Court was found liable to be set aside being not in accordance with law.”

[Emphasis Supplied]

In **Master Marine Services (P) Ltd. vs. Metclfe & Hodgkinson (P) Ltd. reported in 2005 (6) SCC 138**, the Apex Court opined as under:

“The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.”

[Emphasis Supplied]

17. The common string in these judgments is that even if impugned orders are illegal and it is lawful to strike it down, this Court may still deny such relief to the petitioners by taking into account the public interest and public policy.”

7. In Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P. Gwalior and others (1987) 1 SCC 5, in somewhat different context, it was poignantly held :-

“Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason, the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Rule 1(3) of Order XXIII. The principle underlying the above rule is founded on

the public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code.”

[Emphasis Supplied]

8. The aforesaid principle laid down by Supreme Court can be made applicable in a case of this nature where litigant despite getting opportunity did not avail it by raising relevant ground in the representation and in the second round is trying to make out a new case. The course adopted by the petitioner is an abuse of the process of Court.

9. In the instant case, there is no overwhelming public interest which requires interference. Interference is declined. Petition is **dismissed.**

(SUJOY PAUL)
JUDGE