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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK JAIN**

ON THE 22nd OF MARCH, 2024

WRIT PETITION No. 7367 of 2024

BETWEEN:-

**SANTOSH JATAV S/O SHRI TULSIRAM JATAV, AGED
ABOUT 36 YEARS, OCCUPATION: PANCHAYAT
SECRETARY POSTED GRAM PANCHAYAT DUGARIYA
JANPAD PANCHAYAT OBEDULLAGANJ DISTRICT
RAISEN (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI V.D.S. CHAUHAN - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY PANCHAYAT
DEPARTMENT VALLABH BHOPAL (MADHYA
PRADESH)**
- 2. COLLECTOR, RAISEN DISTRICT RAISEN
(MADHYA PRADESH)**
- 3. ZILA PANCHAYAT RAISEN THROUGH ITS CHIEF
EXECUTIVE OFFICER DISTRICT RAISEN
(MADHYA PRADESH)**
- 4. JANPAD PANCHAYAT OBEDULLAGANJ THROUGH
ITS CHIEF EXECUTIVE OFFICE DISTRICT RAISEN
(MADHYA PRADESH)**
- 5. NARENDRA PARMAR, PANCHAYAT SECRETARY,
GRAM PANCHAYAT AGARIYA JANPAD
PANCHAYAT OBEDULLAGANJ DISTRICT RAISEN
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI NAVEEN DUBEY - GOVERNMENT ADVOCATE)

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

following:

ORDER

Challenge is made to the order Annexure P-1, whereby the petitioner has been attached to Janpad Panchayat, Obedullaganj. Further challenge is made to Annexure P-2, whereby as a consequence of order Annexure P-1 the respondent No.5 has been given additional charge in place of petitioner.

2. Learned counsel for the petitioner submits that order Annexure P-1 mentions that there are certain complaints against the petitioner and as consequence of the said complaints, petitioner has been attached to Janpad Panchayat. It is contended that there is no post of Panchayat Secretary in Janpad Panchayat and the post of Panchayat Secretary is in Gram Panchayat only as per the statutory rules of 2011 governing service conditions of Panchayat Secretary. Thus, it is submitted that the petitioner could not be attached or posted to the place where there is no post. It is further argued that even if there were complaints against the petitioner, then the respondents were having other options to proceed against the petitioner.

3. Learned Government Advocate for the State has supported the order Annexure P-1, however, he is not in a position to dispute that there is no post of Panchayat Secretary in Janpad Panchayat.

4. Upon hearing learned counsel for the parties, it is evident that the petitioner has been posted in the place, where there is no post of Panchayat Secretary. Something which could not be done directly by way of transfer cannot be allowed to be done directly by way of attachment. If there were complaints against the petitioner, there were other avenues open to the respondents to proceed against the petitioner. However, attachment to the place, where there is no post cannot be said to be legally sustainable. See:-

Pratap Singh Mandeliya vs. State of M.P. reported in ILR 2014 MP 2792.

5 . Consequently, orders Annexure P-1 and P-2 are set aside. The respondents would be at liberty to take appropriate action on the complaints strictly as per the service rules applicable to the petitioner.

6. With the aforesaid observations, the petition is **allowed**.

(VIVEK JAIN)
JUDGE

rj

