

K.K. Raikwar Vs. the State of Madhya Pradesh

K.K. Raikwar Vs. the State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/1043850

Court : Madhya Pradesh

Decided On : Sep-24-2012

Appellant : K.K. Raikwar

Respondent : The State of Madhya Pradesh

Advocate for Def. : Shri. T.K.Khadka

Advocate for Pet/Ap. : Shri. Shashank Shekhar

Judgement :

K.K.Raikwar versus State & ORS.W.P.No.10679/2012 24/09/2012 Shri Shashank Shekhar, learned counsel for the petitioner.

Shri S.S.Bisen, learned GA for the respondent Nos.1, 2 & 3.

Shri Rajendra Tiwari, learned Sr.Counsel with Shri T.K.Khadka, learned counsel for Respondent No.5.

Heard learned counsel for the parties on the application for vacating stay filed by Respondent No.5 i.e.I.A.No.11436/2012.

Petitioner is working as a Chief Executive Officer of Janpad Panchayat Bahoriband District-Katni and by the impugned order, he has been transferred in the same capacity to Janpad Panchayat, Damoh and in his place, Respondent No.5 Smt.

Meena Kashyap is being posted.

Challenge to the order of transfer is made mainly on the ground that transfer has been ordered not on administrative consideration but due to the malafides of Respondent No.4 who in the capacity as President of Jila Panchayat, Katni had made complaint against the petitioner and as a consequence thereof, the impugned action is taken.

In support of the aforesaid, petitioner places reliance on complaints filed by the petitioner vide Annexure-P6 indicating that the petitioner had made complaints against the activities of Respondent No.4 and as a consequence thereof, he has been transferred.

It is also stated that petitioner is being shifted only to grant accommodation to Respondent No.5 Smt.

Meena Kashyap.

K.K.Raikwar versus State & ORS.While issuing notice, this Court on 18.7.2012 took note of both these contentions and prima-facie, finding a case made out, stay of the transfer was granted.

However, not after going through the detailed reply filed by the respondents, it is seen that the so called complaints made by the petitioner vide Annexure-P6 are documents which has been filed by the petitioner himself and there is no material available on record to indicate that these complaints were ever submitted by the petitioner to the authorities as indicated therein.

In the return filed, respondents have categorically denied availability of any such complaint and they have tried to bring to the notice of this Court that due to various irregularities committed by the petitioner in the matter of utilization of the funds of the Panchayat, particularly with regard to NERGA and MANREGA Schemes, departmental enquiries have been initiated against the petitioner and the petitioner is being transferred on administrative consideration.

As far as posting of Respondent No.5 is concerned, it is said that she is a widow lady and as she was staying alone in Damoh and her children were in Jabalpur, she had sought for her posting in any place nearer to Jabalpur and it is stated that her representation is allowed and she is posted in place of the petitioner.

Even though by filing a rejoinder, petitioner has tried to emphasize that in the departmental enquiries conducted, the enquiry officer has submitted reports finding the charges to be not K.K.Raikwar versus State & ORS. proved but learned counsel for the State points out that the matter is still pending before the competent disciplinary authority and a final decision is yet to be taken.

Having heard learned counsel for the parties on the grounds as indicated hereinabove at length and on consideration of the totality of the circumstances, it is clear that this Court had granted stay to the petitioner only because of the allegations of malafides.

As far as malafides are concerned, they are not proved or established from the documents available, only on the basis of the complaint submitted by the petitioner against Respondent No.4 vide Annexure-P6, the said allegations are not established.

There is no document showing submission of these complaints of the petitioner to any competent authority.

In fact except for making vague allegations, petitioner is unable to demonstrate before this Court as to how and in what manner and to whom, complaints have been made and as to how apart from the Annexure-P6, the allegations of malafides are established.

Once the complaints Annexure-P6 and its submission is not proved from the material available on record, it is a case where allegations of malafides are made without any basis and is not established.

That being so, once the grounds of malafide canvassed by the petitioner prima-facie are not established, no case is made out for interference.

As far as posting of Respondent No.5 is concerned, she is a widowed lady and merely because her application for posting is considered and she is transferred on K.K.Raikwar versus State & ORS.such consideration, her posting in place of the petitioner will not become illegal in view of the law laid down in the case of Shilpi Bose versus State of Bihar and others.AIR 1991.SC, 532.

Accordingly, as the main two grounds canvassed by the petitioner are not made out and when the records indicate that Respondent No.5, a widow lady, has been transferred on consideration of her representation, I see no reason to continue with the stay granted.

I.A.No.11436/2012, the application for vacation of stay is, accordingly, allowed.

Interim order of stay granted by this Court on 18.7.2012 stands vacated.

Petitioner has filed a rejoinder but a copy of the rejoinder is not granted to learned counsel for the Respondent No.5.

A Copy of the same be served on Respondent No.5 and respondents may file their additional return in view of the rejoinder within four weeks.

Documents filed vide I.A.No.12800/2012 are also taken on record.

List the matter after four weeks for orders.Certified Copy as per rules.

(Rajendra Menon) Judge nd

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com