

Bheemsen Sharma Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-11-2012

Appellant : Bheemsen Sharma

Respondent : The State of Madhya Pradesh

Advocate for Def. : Shri. K.C.Ghildyal, Shri. V.K.Shukla

Advocate for Pet/Ap. : Shri. Shashank Shekhar

Judgement :

Bheemsen Sharma versus State 1 W.P.No.10927/2012 11.12.2012: Shri Shashank Shekhar, learned counsel for the petitioner.

Smt.

Sheetal Dubey, learned Panel Lawyer for the respondents No.1 to 3.

Shri K.C.Ghildyal, learned counsel for respondent No.4.

Shri V.K.Shukla, learned counsel for respondent No.5.

Petitioner who is substantively holding the post of Revenue Sub Inspector in Nagar Parishad, Teonthar, has filed this writ petition challenging the orders Annexures P/6 and P/7 passed by the State Government transferring him to his substantive post of Revenue Sub Inspector and posting him in the neighboring District of Sidhi.

Challenge to the order of transfer is made mainly on two counts.

The fiRs.ground is that transfer is tainted with malafide and the same is attributed to the activities of respondent No.5, the President of Nagar Parishad, Teonthar and the second ground of challenge is that petitioner is being replaced by respondent No.4 who is substantively holding the post of Head Clerk/ Accountant and as per the Circular of State Government respondent No.4 cannot replace the petitioner.

It is a case of the petitioner that he is substantively holding the post of Assistant Inspector (Revenue) and is a Bheemsen Sharma versus State 2 Revenue Officer.

By virtue of various circulars issued, the charge of Chief Municipal Officer was granted to the petitioner.

While the petitioner was so working, it is stated that the President of Nagar Parishad, Teonthar, respondent No.5 made certain illegal constructions in his premises and therefore, petitioner issued a show cause notice dated 15.12.2011 Annexure P/3 and another show cause notice Annexure P/4 dated 11.4.2012 directing the President respondent No.5 to remove the illegal construction.

It is stated that annoyed with the same, respondent No.5 made a communication to the Minister of the department vide Annexure P/5 on 29.5.2012, as a result petitioner has been transferred.

Referring to the communication made by respondent No.5 as contained in Annexure P/5 directing for transfer of the petitioner and further pointing out that the transfer is on political interference made by respondent No.5 who is a political person, the fiRs.ground of challenge is that transfer is tainted with malafide and therefore, the same be quashed.

The next ground of challenge is to the effect that as per the Circular dated 28.1.91 filed by the petitioner as Annexure P/2 an Accountant is not in the line of appointment as a Incharge Chief Municipal Officer and therefore, it is stated that replacement of the petitioner of respondent No.4 who is only an Accountant is unsustainable.

Accordingly, on the aforesaid two grounds the writ petition has been filed.

As far as the grounds of malafide are concerned, respondent No.5 represented by Shri V.K.Shukla has come out with a case that the document Annexure P/5 is a forged and fabricated document.

Respondent No.5 has not issued Bheemsen Sharma versus State 3 any such letter and it is stated that the petitioner has filed a forged document to deliberately malign the reputation of respondent No.5 and as the same is unsustainable, he has denied his involvement in the transfer and it is his case that the action is taken by the State Government and he has no role to play in the transfer of the petitioner.

Respondent No.4 represented by Shri K.C.Ghildyal has filed a detailed reply and the respondent State Government and respondent No.4 has stated that the so called Circular dated 28.1.91 is not superseded by various other Circulars issued and they have brought on record the Circular dated 29.3.2011 Annexure R/1 to contend that in view of the said Circular and the provisions of Section 89(1) of the M.P.Municipalities Act, 1961 respondent No.4 who has ten years of experience of working can be appointed.

Respondent No.4 has also filed a separate return and by indicating the pay scale on which respondent No.4 is working and the pay scale on which the petitioner is working it is emphasized that he is holding a post in higher scale and therefore, he is entitled to be posted in place of the petitioner.

Petitioner has filed a rejoinder and has also tried to justify his action.

Having heard learned counsel for the parties and on perusal of the record, it is clear that petitioner is substantively holding the post of Revenue Officer and is only an Incharge Chief Municipal Officer.

The post held by the petitioner as Incharge Chief Municipal Officer does not give the petitioner any legally enforceable right to continue to Bheemsen Sharma versus State 4 work on such a post.

He is officiating on a higher post and it is well within the rights of the State Government to undo the temporary officiating arrangement and post a person in place of the petitioner.

Once it is clear under law that person officiating has no right to continue on the post, prima facie claim made by the petitioner for continuing on the officiating post of Chief Municipal Officer is not tenable.

However, if the removal of the petitioner from such post is found to be arbitrary and tainted with malafide, then interference can be made and therefore, it not become necessary to consider the fiRs.question of malafide raised by the petitioner.

Grounds of malafide raised by the petitioner is only by contending that because he has issued two show cause notices to respondent No.5 on 15.12.2011 and 11.4.2012, the impugned action is taken.

For this petitioner places reliance on a letter Annexure P/5 dated 29.5.2012 written by respondent No.5 to the Minister of the Department concerned requesting for transfer of the petitioner mainly on the ground that his activities are detrimental to the party in power.

Even though issuance of this letter is referred to by the petitioner in para 5.6 of the writ petition but he does not show as to how and under what circumstances this communication was received by the petitioner.

The communication is to the Minister of the department concerned.

It is neither addressed to the petitioner nor is it marked for any action or comments of the petitioner by the department concerned.

Therefore, at the time of admission when this question was posed to the petitioner, petitioner has filed I.A.No.10249/2012 along with the affidavit of one Dadu Ram Pathak.

Shri Dadu Ram Bheemsen Sharma versus State 5 Pathak claims to be a worker of the particular political organization and it is stated by him that respondent No.5 has

issued this letter.

It was handed over by him to Shri Dadu Ram Pathak who forwarded it onward to the Minister concerned.

Except for the affidavit of Shri Dadu Ram Pathak there is nothing to show that the communication Annexure P/ 5 was ever made by respondent No.5.

In his reply respondent No.5 has categorically denied issuance of this letter and he has stated that he has never made any communication to the Minister of the Department concerned and he vehemently denies issuance of said letter.

It is therefore a case where except for making a vague allegations with regard to issuance of the said letter, petitioner is unable to prove by cogent substantive evidence the issuance of such a letter.

From the preliminary objection raised by the State Government and in the reply they only submitted that petitioner has been transferred to his substantive post, there are complaints against him and they do not say that respondent No.5 has ever sought for transfer of the petitioner.

Grounds of malafide alleged cannot be taken note of merely on the basis of vague allegations unsupported by cogent evidence and material.

It is surprising that respondent No.5 makes serious allegations against the petitioner and the letter is readily available with the petitioner and is used by him for making allegations of malafide.

If the affidavit and signature of respondent No.5 Shri Anil Tiwari available on record not only in the affidavit but also in Vakalatnama are taken note of, it may be seen that Bheemsen Sharma versus State 6 his signature are entirely different from those as appearing in Annexure P/5 and therefore, the possibility of Annexure P/5 being a false and fabricated document filed by the petitioner only for misusing it and making out a case of malafide cannot be ruled out.

It may also be taken note of that this writ petition was filed on 24.7.2012 and in the body of the writ petition particularly in para 5.6 wherein reference is made to this

letter Annexure P/5 very conveniently petitioner has not given any particulars as to how and in what manner this letter was received by him and how he is in possession of this letter which under normal circumstances cannot be available with him.

It is only when certain queries were made by this Court at the time of admission that petitioner filed an application on 30th July, 2012 vide I.A.No.10249/2012 and brought on record an affidavit of Shri Dadu Ram Pathak to say that he gave the letter to the petitioner.

This story put forth by the petitioner based on affidavit of Shri Dadu Ram Pathak, prima facie seems to be not convincing and cannot be accepted by this Court.

That apart, it would be seen that the transfer order was issued vide Annexure P/6 on 14th July, 2012.

In the order of transfer more than 37 persons are being transferred from one place to another and between the date of transfer and till filing of this writ petition there is no representation or complaint made by the petitioner to any higher authority pointing out the malafides of respondent No.5.

Under such circumstances in the absence of any cogent evidence and material being produced to show that the malafide of respondent No.5 are established, the grounds of malafide cannot be accepted by Bheemsen Sharma versus State 7 this Court and therefore, the same is rejected.

The petitioner has filed a letter Annexure P/11 to say that the signature in Annexure P/11 and P/5 are that of respondent No.5 and he wants this Court to accept the same.

This Court on the basis of these documents is unable to hold that the grounds of malafides are established and does not deem it appropriate to interfere in the matter on such consideration.

As far as the second ground is concerned, record indicates that petitioner had been officiating as Chief Municipal Officer for more than four years and he has

completed his tenure posting in Nagar Parishad Teonthar.

That apart, he is only officiating and holding temporary charge and his contention is that he cannot be replaced by respondent No.4.

In support thereof, he has placed reliance on a Circular dated 28.1.91.

However, as pointed out by Smt.

Dubey, learned counsel appearing for the respondent State this Circular is already superseded vide Annexure R/1 and not by virtue of powers conferred by the State Government under Section 89(1) of the M.P.Municipalities Act, they can post any other person in place of the petitioner.

Respondent No.4 as on date is holding the post of Head Clerk/ Accountant and is drawing pay in the scale of Rs.4000-6000/- whereas, as a Revenue Sub Inspector, petitioner is in a lower scale of pay i.e.Rs.3500-5200/-.

It is therefore, a case where the officiating arrangement given to the petitioner is being undone and as a temporary arrangement respondent No.4 who is holding the higher pay Bheemsen Sharma versus State 8 scale then the petitioner is posted and as his posting is in accordance to the requirement of law, I see no reason to interfere into the matter.

Respondent No.4 is also entitled to be post on officiating basis and as return goes to show that they are only undertaking a temporary arrangement.

Keeping in view the aforesaid facts and circumstances, I see no substance in the writ petition.

This writ petition is therefore, dismissed.

(Rajendra Menon) Judge mrs.mishra

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