

1 WP-21033-2024
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 29th OF JULY, 2024

WRIT PETITION No. 21033 of 2024

DR. MAYURA SETIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Sanjay Verma - Advocate for petitioner.

Shri Swatantra Pandey - Panel Lawyer for respondent/State.
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ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs -

- "1. May like to issue writ of certiorari, set aside the transfer order dated 22.07.2024 and the relieving order dated 22.07.2024 (Annexure P/1 and P/2).*
- 2. Grant any other order or directions as deemed just and proper, including the costs of the litigation."*

It is the case of the petitioner that she was appointed as a Demonstrator in Netaji Subhash Chandra Bose Medical College (Autonomous), Jabalpur on 25.03.2017. Later, she was promoted to the post of Assistant Professor on 02.05.2018 and to the post of Designate Associate Professor on 03.11.2022. Despite the appointment of the petitioner being non-transferable, she has been transferred to Government Medical College, Seoni vide impugned order dated 22.07.2024.

It is pointed out that Clause 12 of the appointment order clearly stipulates that the services of the petitioner are non-transferable. The

petitioner was earlier transferred and she filed a writ petition before this Court being WP No.4491 of 2023 and vide order dated 22.02.2023, the interim relief was granted to the petitioner to the effect that she was permitted to perform her duties at the present place of posting i.e. Netaji Subhash Chandra Bose Medical College, Jabalpur till the next date of hearing and thereafter vide final order dated 14.03.2023, the writ petition was allowed in the light of the order passed in the case of Dr. Yogesh Rathore vs State of Madhya Pradesh : WP No.4543 of 2023 dated 23.02.2023 and the impugned order dated 17.02.2023 was quashed. Based upon the aforesaid, the case of the petitioner was allowed and the impugned transfer order was quashed.

It is further pointed out that in identical circumstances, the case of other employee i.e. Dr. Shailesh Kumar who has also preferred a writ petition being WP No.4557 of 2023 which was disposed of vide order dated 23.02.2023 and the impugned transfer order therein was also quashed. The authorities being well aware of this fact that the services of the petitioner are non-transferable, again they have passed an impugned order transferring the petitioner to Government Medical College, Seoni which is not permissible. Therefore, this petition has been filed.

When the matter was taken up in the second round, State counsel was directed to seek instructions to the effect that despite a specific observation made by the Court in the earlier round of litigation and the similar transfer order of the petitioner was quashed, holding that there is a condition in the appointment order that her services are non-transferable then under what

circumstances, this order impugned dated 22.07.2024 has been passed.

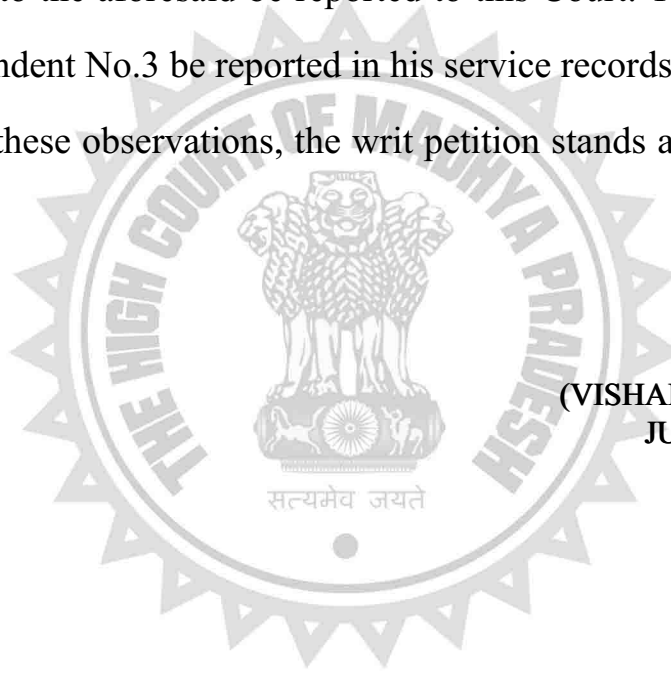
When the matter is taken up in the second round, State counsel fairly submits that he has sought instructions from the respondents-department telephonically and submits that a mistake has been committed and transfer orders have been passed.

Once the respondents accept the mistake in passing the order dated 22.07.2024 coupled with the fact that there is no subsequent order passed by them cancelling the said order, it appears that there is no initiative taken by the respondents to cancel the order dated 22.07.2024. The petitioner is compelled to approach this Court again challenging her transfer order, although it is temporary in nature but the fact remains that Clause 12 of the appointment order is clear and cogent that her services are non-transferable. Furthermore, the similar issue was considered by this Court on the earlier occasion and the transfer order of the petitioner and others were quashed considering Clause 12 of the appointment order. Hence, the impugned order dated 22.07.2024 is unsustainable and the same is hereby quashed.

The respondent No.3 despite the fact that the services of the petitioner are non-transferable and knowing well that earlier transfer order was quashed considering Clause 12 of the appointment order, the impugned order has been passed transferring the petitioner to Government Medical College, Seoni. Under these circumstances, the respondent No.3 has not only disobeyed the order passed by this Court in the earlier round of litigation but also has shown disrespect to the orders passed by this Court. The respondent No.3 was well aware of the reason for quashment of the earlier transfer order

but despite the same, the impugned order has been passed. Now the respondent No.3 has submitted that the said order has been passed under a mistake. However, this Court is of the considered opinion that the petitioner should be appropriately compensated for the same. Therefore, while quashing the impugned transfer order, this Court deems it appropriate to impose a cost of Rs.25,000/- on the respondents, to be personally borne by the respondent No.3-Director, Medical Education, and to be paid to the petitioner within a period of seven days from the date of this order. The compliance to the aforesaid be reported to this Court. The aforesaid conduct of the respondent No.3 be reported in his service records.

With these observations, the writ petition stands allowed and disposed off finally.



(VISHAL MISHRA)
JUDGE

L.Raj