

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Writ Petition No : 5303 of 2011(S)

Dr. R.P. Gautam

- V/s -

State of MP and others

Present : **Hon'ble Shri Justice Rajendra Menon.**

Shri V.K. Shukla, counsel for the petitioner.

Shri S.S. Bisen, Government Advocate, for
Respondent Nos. 1 to 4.

Shri Anil Khare and Shri S. Pandey for respondent No.5.

Whether approved for reporting:

Yes / No.

ORDER
30/08/2011

Petitioner, who is working as Veterinary Extension Officer, Block Teonthar, District feeling aggrieved by action of the respondents in transferring him to Baldevgarh, District Tikamgarh by the impugned order-dated 14.3.2011 – Annexure P/1, has filed this writ petition. Challenge to the order of transfer is made mainly on the ground pertaining to malafide of respondent No.5, President of Janpad Panchayat, Teonthar.

2- It is the case of the petitioner that he has been working effectively as a Veterinary Extension Officer in Teonthar and while discharging the functions as a Veterinary Extension Officer, he was entrusted with certain enquiry in the matter of a complaint with regard to paddy being illegally transported from the State of MP and sold in the adjoining State in an illegal manner, in the name of fake farmers. It is stated that the Sub Divisional Officer (Revenue), Teonthar constituted an

Enquiry Committee, for inspection and taking action on the complaint. Petitioner was one of the Members of the Four Member team, which was appointed by the SDO on 7.2.2011, vide Annexure P/2. It is stated that brother of respondent No.5 one Shri Satya Prakash Singh, who is an Assistant Samiti Sevak at Sewa Sahakari Samiti Chakghat, was involved in this paddy scam and as 6 Samiti Sevaks were suspended, which included brother of respondent No.5, the impugned action is taken at the instance of respondent No.5 to somehow remove the petitioner from the scene and to ensure that the enquiry is not properly conducted. Bringing on record certain newspaper cuttings and media information in this regard as contained in Annexures P/3 and P/5, the first ground is to the effect that the transfer is initiated at the instance of respondent No.5, who is a Member of the ruling party as is evident from the newspaper cutting – Annexure P/5, and the same is illegal.

3- The second ground for attributing malafide is to the effect that on 26.1.2011 (Republic Day), a Flag Hoisting Ceremony was scheduled in the Janpad Panchayat between 8.00 AM to 9.00 AM. Respondent No.5, who was the President of the Janpad Panchayat and who was required to hoist the national flag and read the message of the Chief Minister, did not come within the stipulated time and as he was absent and the time for hoisting the flag was nearing completion, at the instance of the Chief Executive Officer of the Janpad Panchayat, the Vice President was authorized to hoist the flag and on the ground that the CEO – one Shri M.P. Gautam got the flag hoisted through the Vice President – Shri Amarnath Pankesh and petitioner was also actively involved in this incident, it is stated that respondent No.5 got annoyed, abused and threatened the petitioner, Shri M.P. Gautam and others for which a police complaint was also lodged. Complaints were also made by some employees with regard to attitude of respondent No.5 in this regard and the Gazetted Officers of the Veterinary Assistant Surgeons Association also submitted a memorandum in this regard, which are Annexures P/7 to P/10 respectively. Inter alia contending that for inquiring into this incident the Collector had appointed a Sub Divisional

Magistrate – Shri Rakesh Kumar Kusrey, who recorded the statement of various persons, filed as Annexure P/11 and in the report submitted by the enquiry officer respondent No.5 was found responsible for improper behaviour and contending that because of this petitioner is transferred, this writ petition has been filed. Accordingly, highlighting the aforesaid two instances as the grounds of malafide for transferring the petitioner, this writ petition is filed.

4- Refuting the aforesaid the State Government has filed a detailed reply and it is stated that transfer of the petitioner was not vitiated due to malafides as alleged. Petitioner had remained in one place for more than 16 years, there were serious complaints against him, he had joined at Teonthar on 20.9.1995 as is evident from extract of service book – Annexure R/1 and as he completed more than 15 years posting at one place it is stated that in administrative interest he has been transferred. Respondent No.5 has filed a detailed reply and Shri Pandey, learned counsel for respondent No.5, has filed various documents to show that petitioner during his 15 years posting at Teonthar has committed various irregularities, serious complaints were received against him and even questions were raised in the Vidhan Sabha against his activities and the fact that he has remained in one place for more than 15 years. Collectively filing these documents as Annexures R/5/A to R/5/H and contending that the transfer of the petitioner is only on administrative consideration, respondent No.5 refutes the aforesaid.

5- Petitioner by filing rejoinder has contended that the transfer of the petitioner is not on administrative consideration as alleged, the so called enquiry is conducted against the petitioner has been concluded, he has been exonerated, there is nothing against the petitioner and by filing certain reports of the authorities of the Economic Offence Wing, it is tried to indicate that petitioner is being made a scapegoat and transferred due to activities of the petitioner in the matter of taking action against brother of respondent No.5. By bringing on record the order passed by the Commissioner vide Annexure P/21 dated 22.7.2011 and a letter written by certain political person vide Annexures P/26 and P/27, which

is alleged to have been received by the petitioner under the Right to Information Act, it is stated that the petitioner is transferred on political considerations and, therefore, the action is unsustainable.

6- Shri V.K. Shukla, learned counsel for the petitioner, by taking me through the averments and the documents filed alongwith the petition and the rejoinder, emphasized that petitioner is being punished for the two instances which took place at Teonthar, due to which respondent No.5 was annoyed with the petitioner and, therefore, the transfer is at the instance of respondent No.5. Per contra Shri S.S. Bisen, learned counsel for the State, and Shri Shivendra Pandey, learned counsel for respondent No.5, refuted the aforesaid and emphasized that petitioner had remained at one place for more than 15 years and, therefore, there is no illegality in transferring him.

7- I have heard learned counsel for the parties and perused the records.

8- From the facts that have come on record, it is clear that petitioner has remained in Teonthar for more than 15 years now. Extract of the service book – Annexure R/1 indicates that he joined in Block Teonthar on 21.9.1995 and has continued in one place for more than 15 years. Petitioner does not challenge the order of transfer on the ground of any statutory rule or regulation being violated nor does he indicate any other ground to challenge his transfer. The only ground for assailing the transfer is the malafide of respondent No.5 and the malafides are attributed due to the two instances, as detailed hereinabove. The first instance is the enquiry conducted against one of the brothers of respondent No.5 – namely Shri Satya Prakash Singh, who is an Assistant Samiti Sevak in Chakghat and petitioner's involvement in the enquiry being conducted against this person. The second instance is with regard to the controversy about hoisting of Flag in the office of Janpad Panchayat on 26.1.2011. The question is as to whether the malafides alleged by the petitioner on these counts are established from the material available on record and on the same interference into the matter is warranted or not?

9- Before advertent to consider the aforesaid questions, it may be necessary to take note of the meaning of the word 'malice/malafide' and the scope of interference into the order of transfer on such grounds. Legal meaning of the word 'malice' is considered by the Supreme Court in various cases and in the case of **State of AP and Others Vs. Goverdhanlal Pitti [(2003) 4 SCC 739]**, while considering the allegations of certain malafides attributed to the State in the matter of acquiring of land, the question of malafides is considered by the Supreme Court in paras 12 and 13, in the following manner:

“(12) THE legal meaning of malice is "ill-will" or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, 'it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others. (See Words and Phrases legally defined in Third Edition. London Butterworths 1989).

(13) WHERE malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (Eighth Edition at page 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seek to 'acquire land' 'for a purpose not authorized by the Act'. The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other'.

It is, therefore, clear from the aforesaid definition that if an act is not done bonafidely for the purpose for it is undertaken, malafides may be attributed.

10- During the course of hearing of the writ petition, Shri V.K. Shukla had invited my attention to two judgments of the Supreme Court, namely – **Arvind Dattatraya Dhande Vs. State of Maharashtra and others, (1997) 6 SCC 169**; and, **B. Varadha Rao Vs. State of Karnataka and Another, AIR 1987 SC 287**. In both these judgments also, it is indicated that if an act is done for ulterior motive on extraneous consideration and is done for achieving some other purpose, the act may be termed as arbitrary or an act of malafide. If the power is exercised for extraneous or irrelevant considerations or it amounts to colourable exercise of power, the same can be interfered with by this Court. The test, therefore, would be to ascertain as to whether the allegations of malafide alleged are really in existence or is the mere apprehension of the person concerned. The surrounding circumstances must be taken note and a decision arrived at after evaluating the totality of the facts and circumstances available in a particular case.

11- If the case in hand is evaluated in the backdrop of the aforesaid principle, it would be seen that petitioner has indicated two instances to attribute malafides in the matter of the impugned action taken against him. That being so, it would be appropriate to evaluate as to how the action of the petitioner would have resulted in any prejudice or loss to respondent No.5 warranting his interference into the matter.

12- As far as the enquiry conducted by the petitioner against Shri Satya Prakash Singh in the matter of illegal procurement of paddy is concerned, if the enquiry ordered by the SDO vide Annexure P/2 is taken note of, it would be seen that it is not the petitioner alone who is the person entrusted with the enquiry. Apart from the petitioner one Shri J.P. Sharma, Senior Agriculture Development Officer, Teonthar – who is a senior officer than the petitioner, is also a member of the enquiry team alongwith Shri V.C. Tiwari, Project Officer and the Revenue Inspector of the region concerned. The enquiry is being conducted by four persons and records indicate that no final decision into the matter is taken. Only a prima facie consideration has been made and there is nothing available on record to indicate that all the four persons, who are conducting the

enquiry, are being proceeded against the being harassed in the enquiry being conducted by them. Even in the enquiry no adverse action against the brother of respondent No.5 is being taken by the petitioner in his individual capacity, but it is being taken in his capacity as a member of the enquiry team, which consists of three more members and none of the three are being harassed or proceeded against and there is nothing to indicate that the three other members, who are part of the enquiry team alongwith the petitioner, are also being harassed in the manner as alleged by respondent No.5. It is only against the petitioner that the so called action is sought to be taken and it is beyond comprehension that when enquiry is done by a team of four persons, petitioner alone would be pressurized. The enquiry is being conducted by all the team members collectively and the finding is given by them in a collective manner. The allegations of malafide due to involvement of the petitioner in the enquiry team is nothing but an apprehension of the petitioner and it cannot be said that the allegations of malafide on this count are established to such an extent that it could be said to be correct. The same seems to be an apprehension of the petitioner and when the enquiry is being conducted by four persons, in the absence of any material to show that all the persons of the enquiry committee are being harassed in the manner as done in the case of the petitioner, the allegations of harassment or malafide in the matter of transfer of the petitioner alone on this count cannot be said to be established from the circumstances available on record.

13- As far as the second ground of malafide is concerned, it is based on the dispute that arose in the matter of flag hoisting. As far as this dispute is concerned, the enquiry into this matter and the statement of various witnesses indicate that it was one Shri M.P. Gautam, the CEO, who was instrumental in taking the action and the petitioner is only shown to be present in the complaints. It is not known as to what action was taken against Shri M.P. Gautam in the matter. Even in the report submitted by the competent authority it is only found that because of the flag hoisting ordered by the CEO of the Janpad Panchayat,

respondent No.5 was annoyed, but there is nothing to indicate that he had grievance only against the petitioner. This ground raised is also nothing but an assumption of the petitioner and on this ground the question of interference does not arise.

14- As ordered by this Court, the transfer file of the petitioner was called and it is found that the transfer of the petitioner was initiated from the office of the Chief Minister and finding the petitioner to have worked at one place for more than 15 years, the decision taken is to transfer the petitioner. Merely because respondent No.5 is found to be involved in two instances, on the grounds raised by the petitioner this Court cannot assume that transfer of the petitioner ordered by the competent authorities of the department are initiated due to any malafide on their part. No malafides are attributed to any of the officers or the authorities, who have initiated the transfer. In the rejoinder filed, petitioner has tried to bring on record certain communications to show that these communications have resulted in transfer of the petitioner. None of these communications available on record are made by respondent No.5, for transfer of the petitioner. The communications available are Annexure P/26. This is a complaint made by respondent No.5 with regard to the action of Shri M.P. Gautam, Shri Vipin Yadav – Accountant and the petitioner in the matter of flag hoisting. In this, there is nothing to indicate that respondent No.5 has sought transfer of the petitioner. Respondent No.5 in this letter – Annexure P/26 has made a complaint against three persons namely – Shri M.P. Gautam; petitioner and Shri Vipin Yadav. There is nothing to indicate as to what action is taken against Shri M.P. Gautam and Shri Vipin Yadav. When there is complaint against three persons merely because the petitioner is transferred and name of the petitioner finds mention in Annexure P/26, an inference cannot be drawn that petitioner is transferred because of complaint of respondent No.5 when two other persons – Shri M.P. Gautam and Shri Vipin Yadav, who are also named in the same complaint, are seen to have no grievance in the matter. As far as the other communication available at Annexure 27-A is concerned, it is a

letter written by one Shri Janardhan Mishra, President of a political party, seeking transfer of the petitioner on the ground that petitioner has remained in Teonthar, but there is nothing to indicate that this communication has influenced the transfer of the petitioner. The documents available on record does indicate that petitioner has remained in Teonthar for more than 15 years, there are serious complaints against him and, therefore, as a matter of administrative consideration petitioner has been transferred.

15- In the judgment relied upon by Shri Pandey, in the case of in the case of **Mohammed Masood Ahmad Vs. State of UP and others, (2007) 8 SCC 150**, the question of transfer being vitiated due to complaints made by the MLA is concerned, and after taking note of the principles governing transfer, the following observations are made by the Supreme Court in paragraph 8 as under:

“8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter-affidavit filed on behalf of Respondents 1 and 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within the jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.”

16- In view of the totality of the facts and circumstances of the present case, the two allegations of malafide made by the petitioner cannot be said to be substantially establishing the grounds of malafide

for transfer of the petitioner. In both these complaints it is not the petitioner alone against whom the allegations are made. The complaints are against more than three or four persons and if respondent No.5 had grievance he would not have proceeded against the petitioner alone, his grievance would be against all the persons. It is only against the petitioner that action is seen to have been taken and this action is also taken at the instance of the departmental authorities from Bhopal and against these authorities, who have taken the action, there is no allegation of malafide.

17- Keeping in view the totality of the facts and circumstances of the case, this Court does not find the present to be a case where interference can be made on the grounds of malafide.

18- Even if for a moment, it is assumed that respondent No.5 may have some grievance against the petitioner and may have made some complaints against him, but if the competent authority had evaluated the totality of the circumstances existing, found that there are complaints and counter-complaints by and against the petitioner and considering the fact that petitioner has remained at one place for more than 15 years, if action is taken to transfer him, this Court does not deem it appropriate to interfere into the matter.

19- Accordingly, finding no case for interference on the grounds raised, the petition is dismissed.

(RAJENDRA MENON)
J U D G E

Aks/-