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WP-18968-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 22nd OF MAY, 2026WRIT PETITION No. 18968 of 2026*ASHOK SINGH**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Pratip Visoriya - learned counsel for petitioner.

Shri G.K. Agarwal - learned Government Advocate for
respondent/State.

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ORDER

This petition, under Article 226 of the Constitution of India, has been filed seeking following relief(s):

1. That, order dt.08/05/2026 (Annexure P-1) passed by respondent No.2 may kindly be quashed.

2. That, any other relief including the cost of petition be given.

2. Learned counsel for petitioner has challenged the impugned order dated 08.05.2026 whereby petitioner has been attached to Janpad Panchayat, Porsa, District Morena. It is further submitted that the said impugned order dated 08.05.2026 (Annexure P/1) is contrary to the GAD Circular dated 04.05.2024 issued by the State Government wherein directions were issued regarding attachments. As per the transfer policy also, attachment is not permissible. It is further submitted that the GAD has issued circulars on



various occasions stating that attachment is not permissible; however, contrary to the same, the impugned order dated 08.05.2026 has been issued by the respondents. It is further submitted that in the impugned order, the respondents have stated that the attachment order has been passed as a punishment whereas an attachment/transfer order cannot be passed by way of punishment.

3. Learned counsel for respondent/State opposed the prayer made by learned counsel for petitioner and supported the impugned order dated 8.5.2026.

4. Heard learned counsel for parties and perused the record.

5. *Prima facie*, the impugned order dated 08.05.2026 appears to be contrary to the GAD Circular dated 04.05.2024 and the transfer policy wherein attachment is not permissible. It is also observed that an attachment/transfer order cannot be passed by way of punishment. The Supreme Court in the case of *Somesh Tiwari v. Union of India, (2009) 2 SCC 592* has held as under:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia mala fide* on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set



aside being wholly illegal."

6. It is settled law that the transfer and attachment of Government employee/officer cannot be made by way of punishment. In the transfer policy, Clause 52 specifically prohibits all types of attachments. So far as complaint made against the petitioner is concerned, preliminary inquiry was conducted by the respondent authorities, however, enquiry report does not disclose allegations levelled against the petitioner being found proved. Therefore, an employee/officer cannot be victimised by way of attachment or transfer. If the Government wants to transfer an employee on administrative ground then that option is always available under the transfer policy.

7. Considering the aforesaid, present petition *is allowed and disposed of* in following terms:

(i) the impugned order dated 8.5.2026 is hereby quashed; and

(ii) the respondents are directed to permit the petitioner to continue discharging his duties/services at his present place of posting, however, respondents would be at liberty to take disciplinary action against the petitioner in accordance with law, if so desire.

(ANAND SINGH BAHRAWAT)
V. JUDGE