# IN THE HIGH COURT OF MADHYA PRADESH

# AT GWALIOR

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT**

**WRIT PETITION No. 25274 of 2026**

**CNR No.: MPHC030172022026**

***RAJENDRA SNGH SIKARWAR***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri MPS Raghuwanshi - learned Senior Advocate with Shri Dharmendra Singh Raghuwanshi - learned counsel for petitioner.*

*Shri Prabhat Pateriya - learned Government Advocate for respondent/State.*

*Shri Siddharth Sharma - learned counsel for respondent No.4.*

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**Reserved on 2.11.2026**

**Pronounced on 23.11.2026**

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**ORDER**

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

> *"(i) That, the impugned order dated 30.06.2026 (Annexure P/1) be directed to be quashed and set aside.*

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*(ii) That, the petitioner is directed to continue as In-charge Block Education Officer Morena till his date of retirement i.e. 31.12.2026.*

*(iii) That, other relief which is just and proper in the facts and circumstances of the case may also be granted."*

2. Learned counsel for petitioner submits that the substantive post of the petitioner is Principal, Government High School and the substantive post of respondent No.4 is also Principal, Government High School. The petitioner is senior to respondent No.4, as his name appears at serial No.383, whereas the name of respondent No.4 appears at serial No.911 in the seniority list. It is further submitted that the post of Block Education Officer, Morena, fell vacant due to the inability expressed by Mr. Shyam Singh Tomar, the then Block Education Officer. Consequently, the petitioner, who was working as Principal, Integrated Government High School, Shivlal Ka Pura, was given the charge of Block Education Officer by the District Education Officer, after obtaining approval from the Collector, vide order dated 20.05.2026. The aforesaid order was passed considering the petitioner to be the senior-most Principal working in the block. Since 20.05.2026, the petitioner has been working as Block Education Officer. Learned counsel for the petitioner submits that the aforesaid order dated 20.05.2026 was passed on the basis of the instructions dated 29.09.2015 issued by the Commissioner, Public Instruction, Bhopal. As per the said instructions, the current charge of the post of Block Education Officer is to be given to the senior-most Principal working in the concerned block. Thereafter, without considering the aforesaid aspect, respondent No.4 was posted as In-charge Block Education Officer, Morena, vide impugned order dated 30.06.2026. Since respondent No.4 is junior to the petitioner, the petitioner cannot be compelled to work under him. No order has been passed against the petitioner. It is further submitted that in

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identical circumstances, this Court passed an interim order in W.P. No.21570 of 2025, followed by a final order in the said matter. It is also submitted that the petitioner is going to retire on 31.12.2026 and at the fag end of his service, he cannot be compelled to work under his junior. Learned counsel for petitioner further submits that vide order dated 09.10.2026, this Court directed the learned Government Advocate to produce the note sheet on the basis of which the impugned order dated 30.06.2026 was issued. In compliance thereof, learned counsel for the respondent/State filed an application for taking additional documents on record. As per Annexure-A, no proposal was made by the official respondents for giving the charge to respondent No.4. It is further submitted that as per the transfer policy, the posting or transfer of a Class-II officer can be made only after a proposal is submitted by the official respondents and approval is obtained from the concerned Cabinet Minister. Respondent No.4 is also a Class-II Government servant. However, in the present case, no such proposal was made by the official respondents. Further, as mentioned at page No.14 of the reply, in note No.19, the Cabinet Minister, namely, Shri Uday Pratap Singh, directed that the posting order of respondent No.4 as Block Education Officer be issued, which is contrary to the transfer policy.

3. Per contra, learned counsel for the respondent/State submits that the impugned posting order was passed by the official respondents on account of administrative exigency and after obtaining approval from the Cabinet Minister. It is further submitted that the petitioner cannot claim a right to continue as In-charge Block Education Officer, as his substantive post is Principal, Government High School. The impugned order has been passed in the interest of administration and this Court should not interfere in matters relating to posting or

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transfer while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

4. Learned counsel for respondent No.4 submits that initially, the charge of Block Education Officer, Morena, was given to the petitioner as an interim measure and as a local arrangement, since the then incumbent, Mr. Shyam Singh Tomar, had expressed his inability to continue on the said post. The said order did not confer any right upon the petitioner and he cannot claim continuation as In-charge Block Education Officer. In the absence of any legally enforceable right, neither the writ jurisdiction under Article 226 of the Constitution of India can be invoked nor can a writ of mandamus be issued. It is further submitted that initially, the charge was given to the petitioner on the basis of instructions issued by the Commissioner, Directorate of Public Instruction, whereas the impugned order has been passed by the State Government. The executive instructions issued by the Commissioner do not govern the decision taken at the State Government level. It is also submitted that the petitioner is not the senior-most Principal and several other Principals are senior to him. Thus, even as per the instructions issued by the Commissioner, the petitioner is not entitled to be given the charge of Block Education Officer. Learned counsel for respondent No.4 further submits that in compliance with the impugned order, respondent No.4 has already been relieved from his previous place of posting. It is contended that once the impugned order has been implemented, the same cannot be interfered with by this Court under Article 226 of the Constitution of India. It is further submitted that the petitioner has not been transferred and only the additional charge of Block Education Officer has been withdrawn from him. As per Annexure-A, filed along with the application for taking additional documents on

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record, the post of Block Education Officer, Morena, was vacant. Therefore, in accordance with the GAD policy dated 22.05.2026, the State Government posted respondent No.4 as In-charge Block Education Officer. The impugned order was thus issued in accordance with the transfer policy. It is further submitted that the protection available under the transfer policy is against transfer and not against the withdrawal of additional charge given as a local arrangement.

5. No other grounds have been raised by learned counsel for the parties.

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

7. The principal question which arises for consideration in the present petition is whether the State Government, while exercising its administrative powers, could withdraw the additional charge of Block Education Officer from the petitioner and post respondent No.4 without following the applicable procedure and without disclosing any reasonable administrative justification for such action.

8. Before examining the rival submissions, it is necessary to clarify that the petitioner is not holding the substantive post of Block Education Officer. His substantive post is Principal, Government High School. Merely because the petitioner was given the additional charge of Block Education Officer by order dated 20.05.2026, he does not acquire any indefeasible right to continue on the said post. Ordinarily, the authority competent to make such an arrangement also has the power to modify or withdraw it in the interest of administration. However, the absence of an indefeasible right to hold an additional charge does not mean that the State Government can exercise its administrative powers arbitrarily or in disregard of the applicable instructions and prescribed procedure.

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Every action of the State Government is required to satisfy the test of fairness, reasonableness and non-arbitrariness under Article 14 of the Constitution of India.

9. In ***E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3**, the Supreme Court held that equality and arbitrariness are sworn enemies and that arbitrary State action is contrary to Article 14 of the Constitution. Therefore, even in administrative matters, the decision-making authority is required to act fairly and on relevant considerations. Similarly, in ***Bannari Amman Sugars Ltd. v. Commercial Tax Officer, (2005) 1 SCC 625,*** the Supreme Court held that even where the Government has the power to change its policy, such change must be made fairly and should not give the impression that it has been made arbitrarily or on extraneous considerations. The State is required to act for discernible reasons and not according to its whims.

10. In the present case, the petitioner was initially given the additional charge of Block Education Officer vide order dated 20.05.2026 after obtaining approval from the Collector. The said arrangement was made keeping in view the instructions dated 29.09.2015 issued by the Commissioner, Public Instruction, which provide for giving the current charge of Block Education Officer to the senior-most Principal working in the concerned block. It is not disputed that the substantive post of the petitioner and respondent No.4 is the same. The seniority list placed on record shows that the petitioner is placed at serial No.383, whereas respondent No.4 is placed at serial No.911. Thus, the petitioner is admittedly senior to respondent No.4 in the seniority list. Although respondent No.4 has disputed that the petitioner is the senior-most Principal, the relevant consideration under the instructions dated 29.09.2015 is the seniority of

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Signing time: 11/23/2026
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Principals working in the concerned block. The respondents have not placed any satisfactory material on record to demonstrate that respondent No.4 was preferred over the petitioner on the basis of any relevant administrative consideration or that the petitioner was ineligible to hold the additional charge under the said instructions.

11. This Court is conscious of the settled legal position that an employee cannot claim a right to hold an additional charge merely because the same was earlier assigned to him. However, the issue in the present case is not merely whether the petitioner has a right to continue on the additional charge. The issue is whether the State Government, while withdrawing the existing arrangement and making a fresh arrangement, has acted in a fair and reasonable manner. In this regard, the note sheet produced by the State assumes significance. This Court, vide order dated 09.10.2026, **specifically directed the State counsel to produce the note sheet on the basis of which the impugned order dated 30.06.2026 was issued. A perusal of the documents subsequently produced before this Court, particularly Annexure-A, does not disclose any proposal initiated by the concerned departmental authorities for posting respondent No.4 as In-charge Block Education Officer. On the contrary, note No.19 indicates that the Cabinet Minister directly directed issuance of the posting order of respondent No.4.**

12. The State has justified the impugned order on the ground of administrative exigency and approval of the Cabinet Minister. However, mere reference to administrative exigency cannot be sufficient in every case. The record must disclose some relevant administrative consideration justifying the decision, particularly when an existing arrangement is being disturbed and another officer,

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Signing time: 11/23/2026
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who is junior in the seniority list, is being preferred. Further, the respondents have not satisfactorily explained why the petitioner, who was already discharging the duties of Block Education Officer, was replaced by respondent No.4 within a short period of approximately forty days. There is no material on record to indicate any complaint, unsatisfactory performance, administrative difficulty or other reason requiring withdrawal of the petitioner's charge. The impugned action, therefore, does not appear to be supported by any discernible administrative reason.

13. It is true that the transfer policy or executive instructions do not ordinarily confer an enforceable right upon an employee to insist upon a particular posting. However, such instructions are intended to regulate administrative decisions and ensure fairness and consistency. The authorities cannot disregard the applicable procedure in an individual case without any reasonable justification. In ***Union of India v. S.L. Abbas, (1993) 4 SCC 357,*** the Supreme Court held that ordinarily the Court should not interfere with an order of transfer unless it is vitiated by mala fides or is contrary to statutory provisions. At the same time, the Court observed that the authority is required to keep the Government guidelines in mind while taking a decision. The aforesaid judgment does not give an unrestricted power to the State to take arbitrary administrative decisions. The power must still be exercised fairly and in public interest.

14. Further, in ***State of Haryana v. S.M. Sharma, (1993) 3 SCC (Supp.) 252,*** the Supreme Court held that an employee holding current duty charge does not acquire a right to continue on the said charge. However, the said decision was rendered in the facts of that case, where the competent authority had withdrawn the current duty charge and there was no such issue regarding the manner in

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Signing time: 11/23/2026
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which the decision had been taken in disregard of the applicable departmental instructions. Therefore, the said judgment does not prevent this Court from examining whether the impugned action in the present case suffers from arbitrariness or procedural irregularity. The distinction is important. This Court is not declaring that the petitioner has acquired any substantive right to the post of Block Education Officer or that an officer holding additional charge cannot be replaced. **The interference is warranted because the material placed before this Court does not disclose a fair and reasonable decision-making process for preferring respondent No.4 over the petitioner, particularly when the initial arrangement was made under the applicable departmental instructions and the petitioner is senior to respondent No.4.**

15. It is also relevant that the petitioner is due to retire on 31.12.2026. Although the proximity of retirement, by itself, cannot create a legal right in favour of an employee to continue on a particular post, the same is a relevant circumstance while examining the overall facts of the case. The petitioner has been discharging the duties of Block Education Officer since 20.05.2026. The impugned order was passed on 30.06.2026, without any demonstrated deficiency in his work or any disclosed administrative reason for replacing him. The action has, therefore, affected the petitioner's existing administrative position shortly before his retirement.

16. The contention of respondent No.4 that the impugned order has already been implemented and he has been relieved from his earlier place of posting also does not, by itself, validate an otherwise arbitrary administrative decision. The legality of an administrative order has to be examined on the basis of the circumstances and material existing when the decision was taken. Subsequent

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Signing time: 11/23/2026
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implementation of the order cannot cure the illegality, if any, in the decision-making process. In view of the aforesaid discussion, this Court is of the considered opinion that although the petitioner has no absolute right to continue on the additional charge of Block Education Officer, **the respondents have failed to demonstrate any reasonable administrative justification for replacing him with respondent No.4. The decision reflected in the impugned order, when examined in the light of the applicable departmental instructions, the seniority position and the note sheet produced before this Court, does not satisfy the requirement of fairness and non-arbitrariness under Article 14 of the Constitution of India.**

17. Accordingly, this petition is allowed and disposed of with following directions:

> (i) the impugned order dated 30.06.2026 (Annexure P/1), to the extent it relates to posting respondent No.4 as In-charge Block Education Officer, Morena, is hereby quashed and set aside till the age of retirement of petitioner i.e. 31.12.2026.
>
> (ii) The respondents are directed to restore the petitioner to the additional charge of Block Education Officer, Morena, and permit him to continue on the said charge till his date of retirement, i.e., 31.12.2026, subject to any subsequent decision necessitated by a genuine administrative exigency, which shall be taken by the competent authority in accordance with law and on relevant considerations.

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(iii) It is clarified that the petitioner shall not acquire any substantive right to the post of Block Education Officer merely on account of the present order. The present directions are confined to the facts and circumstances of this case and shall not be treated as a declaration of any general right to hold additional charge.

**(Anand Singh Bahrawat)**
**Judge**

**Ahmad**

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