

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 190 of 2015**

1. Smt. Swati Shrivastava, w/o Shri Rajesh Shrivastava, aged about 42 years, Occupation- Service, presently posted as Assistant Grade-III in Directorate, Higher Education, resident of Sr. MIG-26, Kabir Nagar, Raipur (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Education, DKS Bhawan, Raipur, [Now Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Raipur (CG)]
2. The Commissioner, Higher Education, Raipur (CG)
3. The Additional Director (T), Directorate, Higher Education, Raipur (CG)
4. Principal, Government D.G. Girls College, Raipur (CG)

---- Respondents

For Appellant	:	Shri Amrito Das, Advocate
For Respondents/State	:	Shri U.N.S. Deo, Government Advocate

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P.SAM KOSHY, J.**

Order On Board**Per NAVIN SINHA, C.J.****23/04/2015**

1. The present appeal arises from order dated 19.12.2014 in Writ Petition (S) No. 4579 of 2007. The Learned Single Judge dismissed the writ petition declining to interfere with the order dated 29.6.2007

transferring the Petitioner back to the Collegiate Branch holding that she never came to be absorbed in the Directorate Branch.

2. Learned Counsel for the Appellant submits that the order of transfer dated 29.5.2000 makes it apparent that the Appellant was in fact sent to the Directorate Branch from the Collegiate Branch with an aspect of permanence, the transfer being against a vacant post. The Appellant continued to work in the Directorate, and after reorganization of the State she was allocated to State of Chhattisgarh where she joined in the Directorate Branch in the year 2002. She represented pursuant to the order of the Court against the order dated 29.6.2007 in Writ Petition (S) No. 3925 of 2007 preferred by her. The impugned order dated 26.7.2007 also acknowledges that her name figured in the gradation-list of the Directorate Branch. This was not possible unless the authorities were treating her to have been absorbed in the Directorate Branch itself. In the facts of the case, there was no necessity of a formal order for absorption in the Directorate Branch. The Appellant was deemed to have been absorbed in the Directorate Branch by the conduct of the Respondents in treating her so for seven long years. If the facts and circumstances otherwise reflect that she was treated as an absorbed employee, it would suffice in the given facts and circumstances of the case.

3. Learned Counsel for the State supporting the order under appeal submitted that by order dated 29.5.2000, at her own request for personal reasons, the Appellant who was working in Rajnandgaon in

the Collegiate Branch was transferred to Bhopal in the Directorate Branch. Since the transfer was at her own request, no transfer allowance was admissible and she lost her seniority also. The fact that the transfer may have been made on a vacant post does not amount to a change of cadre. Any error committed by including her name in the gradation-list of employees in the Directorate Branch cannot be construed as deemed absorption. There had to be a specific order absorbing the Appellant in the Directorate Branch from the Collegiate Branch. The order of the Learned Single Judge calls for no interference.

4. We have considered the submissions on behalf of the parties.

5. The Appellant, an employee of the Collegiate Branch at Rajnandgaon was transferred on 29.5.2000 to the Directorate Branch at Bhopal on her personal request. The language of the order itself connotes that it was a temporary arrangement and she was not being sent with an element of permanence to the Directorate Branch. The word 'transfer' has been loosely used in the order dated 29.5.2000. There can be no transfer outside the cadre. Appropriately it was a deputation to the Directorate Branch with her consent. A deputationist has no right to the deputed post and neither can a deputationist claim absorption on the deputed post. The fact that she may have continued in the Directorate Branch after allocation to the State of Chhattisgarh upon reorganization in 2002 was only a continuation of the state of affairs of the deputation that existed at the time of reorganization and it

cannot be construed as an order for absorption in the State of Chhattisgarh in the Directorate Branch. On 29.6.2007, she was sent back to the Collegiate Branch. The impugned order dated 26.7.2007 is reasoned holding that she was allowed to work in the Directorate Branch purely as stop-gap arrangement. That no orders for her absorption in the Directorate Branch had been issued at any time. Inclusion of her name in the gradation list of the Directorate Branch was an inadvertent error. Her seniority in the Collegiate Branch consequent to the order for repatriation would not be affected.

6. We therefore find no reason to interfere with the order of the Learned Single Judge under appeal.

7. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE