

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6038 of 2014

- Pardeshi Pandey /So Late Shri Bhim Pandey Aged About 53 years Presently Working As Development Extension Officer (Vikas Vistar Adhikari) At Janpad Panchayat Mahasamund District Mahasamund, Civil & Revenue District Mahasamund (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through the Secretary, Department Of Panchayat & Rural Development, Mahanadi Bhawan Capital Complex, Naya Raipur (C.G.)
2. The Deputy Secretary , Department Of Panchayat & Rural Development, Raipur, Mahanadi Bhawan, Capital Complex, Naya Raipur (C.G.)
3. The Chief Executive Officer Zila Panchayat, Mahasamund District Mahasamund (C.G.)

---- Respondents

For Petitioner	: Shri Praveen Das, Advocate
For Respondent/State	: Shri Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

30/04/2015

With the consent of learned counsel for the parties, the petition is heard finally.

1. This petition seeks quashment of the order dated 15/07/2014 passed by the respondent No.2 transferring the petitioner, a Development Extension Officer, Janpad Panchayat, Mahasamund to the Janpad Panchayat, Kondagaon.
2. The order of transfer is assailed on the ground that his wife is suffering from serious illness of cancer and she is under treatment from cancer specialist of Sanjeevani CBCC USA Cancer Hospital, Raipur. In his earlier writ petition bearing W.P.(S) No. 3558/2014 this Court referred to the said ground raised by the petitioner as also the application submitted by him for transferring him to Basna on the ground that it will be easier for him to get treated in case of urgency. While

disposing the petition vide order dated 25/07/2014 this Court permitted the petitioner to move a representation before the Committee of Senior Secretaries in accordance with para 6 of the transfer policy and at the same time the transfer order was kept in abeyance for a period of eight weeks or till the representation is decided, whichever is earlier.

3. By the present impugned order the Committee of Senior Secretaries have demonstrated their helplessness in recommending cancellation of petitioner's transfer by observing that in the transfer policy there is no such provision entitling the concerned employee to get his transfer order cancelled on account of illness of a family member.

4. Even though the policy does not contain any provision for cancellation of transfer on the ground of acute illness of family member of the employees, in genuinely appropriate cases, grave and serious difficulties of an employee has to be looked into by the employer, in the absence of which, the employer would not be of any assistance to an employee, who is in dire need of assistance for smooth discharging his duty, while at the same time getting his family member treated in the best available medical facility.

5. Although in matters concerning transfer and posting, this Court is slow in interfering in view of the law laid-down by the Supreme Court in various decisions *E.P. Royappa v. State of Tamil Nadu and another*¹, *Shilpi Bose (Mrs.) and others v. State of Bihar & another*², *State of M.P. and another v. S.S. Kourv and others*³, *Mohd. Masood Ahmad v. State of U.P. & others*⁴, *Chief Commercial Manager, South Central Railway, Secunderabad & others v. G. Ratnam & others*⁵ and *Airports Authority of India v. Rajeev Ratan Pandey & others*⁶, yet at the same time, it is equally true that the nature of power and jurisdiction under Article 226 is equitable and discretionary. The High Court is required to exercise the jurisdiction to reach injustice wherever it is found. There are no limits to the power, the same should not be exercised unless substantial injustice has ensued or is likely to ensue and further that the Court can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. It also follows that the wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the

1 1974 (4) SCC 3

2 (1991) Supp 2 SCC 659

3 (1995) 3 SCC 270

4 (2007) 8 SCC 150

5 (2007) 8 SCC 212

6 (2009) 8 SCC 337

remedy is appropriate to the judicial process and that the High Court should not fail to intervene when a grave error has crept in or injustice or arbitrariness has ushered.

6. On this issue it would be apt to refer to the observations by the Supreme Court in *Dwarka Nath v. Incometax Officer, Special Circle, D. Ward, Kanpur and another*⁷ *Gujarat Steel Tubes Ltd. and others v. Gujarat Steel Tubes Mazdoor Sabha and others*⁸ and *Eastern Coalfields Limited and others v. Bajrangi Rabidas*⁹.

7. After placing reliance on various decisions of the Supreme Court, this Court in **Dashrath Gupta (HUF) & others v. State of Chhattisgarh and Others**¹⁰, at para 9, held thus :

'9. The common thread flowing from the above referred judgments of the Supreme Court with regard to the nature of power and jurisdiction under Article 226 is to the effect that the High Court's power is equitable and discretionary. The High Court is required to exercise the jurisdiction to reach injustice wherever it is found. There are no limits to the power, the same should not be exercised unless substantial injustice has ensued or is likely to ensue and further that the Court can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. It also follows that the wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process and that the High Court should not fail to intervene when a grave error has crept in and injustice or arbitrariness has ushered.'

8. In view of the above, the writ petition is disposed of with a direction to the State Government to consider petitioner's pending representation sympathetically and decide the same. Keeping in view the above observations. Till the representation is decided, the petitioner shall be allowed to continue at the present place of posting.

9. Petitioner shall submit copy of this order before the State Government within a period of 15 days from today.

JUDGE

7 AIR 1966 SC 81

8 (1980) 2 SCC 593

9 (2014) 13 SCC 681

10 WP(C) No. 1761 of 2013 (decided on 30.01.2015)