

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1179 of 2015

1. Smt. Kalpana Tiwari W/O V.N. Tiwari Aged About 54 years Occupation Service, Presently Posted And Working As Upper Division Teacher, Government Boys Middle School, Kaparganj, R/O Near Hardevlal Mandir, Gole Bazar, Bilaspur, Tahsil & District Bilaspur, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of School Education Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur, (Chhattisgarh)
2. District Education Officer, Bilaspur, Distt. Bilaspur, (Chhattisgarh)
3. Block Education Officer, Bilha, Distt. Bilaspur, (Chhattisgarh)
4. Block Education Officer, Kota, Distt. Bilaspur, (Chhattisgarh)
5. Chandrika Prasad Pandey Upper Division Teacher, Government Middle School, Bandhwapara, Bilaspur, Distt. Bilaspur, (Chhattisgarh)
6. Chief Executive Officer, Zila Panchayat, Bilaspur, Distt. Bilaspur, (Chhattisgarh)

---- Respondent

For Petitioner
For Respondent

Shri Malay Shrivastava, Advocate
Shri Y.S. Thakur, Dy. Adv. General

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

07/04/2015

Heard learned counsel for the parties.

1. The petitioner is working as Upper Division Teacher. At the time of posting of teachers in different schools under the rationalization policy, the petitioner has been transferred from the Government Boys Middle School, Kaparganj to the Government Middle School, Karehapara, Tehsil Kota.
2. The petitioner had earlier preferred writ petition bearing W.P.(S) No.4554/2014, which was disposed of by this Court by order dated 03.09.2014 with an observation that transfer/posting of an employee is an incidence of service, therefore, the Court should not interfere with transfer/posting order unless there is malice, infringement of statutory rules and regulations. However, since the petitioner was agitating violation of the policy/guidelines, she was allowed to make representation and the impugned transfer order dated 13.08.2014, in respect of the petitioner was kept in abeyance. By order (Annexure-P-2), the representation preferred by the petitioner has been dismissed.
3. According to the petitioner, the impugned transfer order being illegal, arbitrary and contrary to the rationalization policy deserves to be quashed. Learned counsel for the petitioner would submit that the impugned order is a non speaking and unreasoned order. The impugned transfer order has been passed only to accommodate the respondent No.5, which is also contrary to the said rationalization policy. Learned counsel for the petitioner would submit that the representation has been decided by the Chief Executive Officer of Zila Panchayat whereas the transfer was passed by the District Education Officer (for short 'the DEO'), therefore, the Zila Panchayat is not the competent authority to decide the representation. He would also submit that the impugned order has not dealt with the grounds raised in the representation.

4. The transfer order was issued by the DEO under approval from the Collector. The impugned order has also been issued by the Chief Executive Officer, Zila Panchayat under approval from the Collector, therefore, both the orders have the prior approval and sanction of the Collector. Mere change of the issuing authority would not render the order without jurisdiction. Even otherwise the policy does not specifically figure out the authority who will decide the representation nor the order passed by this Court mentioned that the representation shall be decided by any particular authority. Since both the orders have been issued under the approval from the Collector, the argument raised in this aspect has no substance.
5. In the earlier order passed with respect to the petitioner, this Court has referred various decisions of the Supreme Court to reiterate the limitation in exercise of power under Article 226 of the Constitution of India in the matters concerning transfer/posting of an employee.
6. Having considered the fact that the transfer order has been issued under the rationalization policy for proper distribution of teachers uniformly in all the schools and to fill up the posts of teachers in different schools, this Court does not find any substance in this writ petition.
7. Accordingly, the writ petition is liable to be and is hereby dismissed.

J u d g e