

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1208 of 2015

- N.K. Banchhor, 52 years, S/o Late A.R. Banchhor Fisheries Inspector, O/o Joint Director, Fisheries, Raipur

---- Petitioner

**Versus**

- State of Chhattisgarh, Through its Secretary, Fisheries Deptt. Mantralaya, Naya Raipur
- Director, Directorate of Fisheries, Indravati Bhavan, Raipur
- Joint Director, Fisheries, District Raipur
- K.L. Jaiswal, S/o Late Sahasram Jaiswal, Fisheries Inspector, O/o Assistant Director, Fisheries, Balodabazar

---- Respondents

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|----------------------|--------------------------------|
| For Petitioner       | Mr. Raja Sharma, Advocate      |
| For Respondent/State | Mr. Arvind Dubey, Panel Lawyer |
| For Respondent No.4  | Mr. M.K. Sinha, Advocate       |

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Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

30/7/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner has assailed the legality and validity of the order dated 31.03.2015, whereby, while deciding the representation preferred by respondent No.4, the State Government has cancelled the transfer order dated 15.07.2014, which was already executed by the petitioner.

(3) By the said transfer order, the petitioner was transferred from the office of Assistant Director (Fisheries), District Baloda Bazar to the office of Joint Director, (Fisheries), Tilda District Raipur and respondent No.4 was transferred and posted at Baloda Bazar in place of the petitioner.

(4) Although the representation has been decided pursuant to the direction issued by this Court in W.P.(S) No.3523/2014, yet considering the fact that while deciding the said representation neither the petitioner was noticed nor given any opportunity of hearing and moreover, the State Government has not considered the settled principle freshly reiterated by the Division Bench of this Court in **Tarun Kanungo vs. State of Chhattisgarh and others (W.A. No.248 of 2015 decided on 15.05.2015)** holding thus :

“3. The question for cancellation of an order not in existence does not arise. The only option available to the authorities was to issue any fresh orders. We may appropriately refer to two Bench decisions in **2000 (2) PLJR 332 (Smt. Jyotsna Kumari v. The State of Bihar)** and **2000 (3) PLJR 139 (Mahmood Azam Siddique v. The State of Bihar)** observing as follows :

'12. Now it is a settled law that once an order of transfer issued and acted upon, it is spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant.'”

(5) In view of the above, the impugned order is set aside. However, liberty is reserved in favour of the State Government to pass fresh order

depending upon the administrative exigency, in accordance with the transfer policy.

(6) As a result, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

Judge

(Prashant Kumar Mishra)

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