

C-22/15/15

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6613 of 2014

- Punam Shrivastava, D/o late Naresh Chandra Shrivastava, aged about 27 years, R/o Village Koma, Post-Kirvai, Thana & Tahsil-Rajim, District - Gariyaband (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh Through the Secretary, Department of Panchayat and Rural Development Mantralaya, New Raipur, District-Raipur (C.G.)
2. The Chief Executive Officer, Zila Panchayat, Raipur District-Raipur (C.G.)
3. The Chief Executive Officer, Janpad Panchayat Abhanpur, District - Raipur (C.G.)

---- Respondents

For Petitioner : Shri Bharat Rajput, Advocate.
For Respondent/State: Shri S. Majid Ali, Panel Lawyer.
For Respondent No.3: Shri PK Bhaduri, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

14/05/2015

1. The petitioner has assailed the legality and validity of the order dated 27.11.2014 passed by the Zila Panchayat, Raipur transferring her from Gram Panchayat Girola, Janpad Panchayat Abhanpur to Gram Panchayat, Gordi, Janpad Panchayat, Simga.
2. Placing reliance on the judgment of this Court in the matter of

Omprakash Vs. State of Chhattisgarh and others {2011 (5) MPHT 23 (CG)}, learned counsel for the petitioner would submit that the petitioner cannot be transferred from one Janpad Panchayat to another Janpad Panchayat.

3. Learned State counsel and learned counsel for respondent No.3 would submit that the judgment in the matter of **Omprakash** (Supra) has been rendered prior to the amendment in Rule 27 of the CG Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (Henceforth 'the Rules, 1999'), however, since thereafter the said provision has suffered amendment and the provision as occurs today is as follows:-

"27. Appointment of Panchayat employee to and his Panchayat.—Notwithstanding anything contained in these rules, the appointing authority on application made by any employee of Panchayat Service of other Panchayat, may appoint such employee to a same or equivalent post in the Panchayat service on such terms and conditions as may be mutually agreed upon between the two Panchayats, and subject to the following conditions, namely:--

(i) Such appointment shall not be made to post to be filled by promotion.

(ii) The person so appointed shall receive the junior most rank, for the purpose of seniority, in the cadre of the post to which he is appointed, as it stands on the date of such appointment;

Provided that in the public interest the Chief Executive Officer of the concerned Zila Panchayat may transfer any employee from one Janpad Panchayat to another Janpad Panchayat within the district and in case of such transfer, the seniority of the transferred employee shall not be affected:

Provided further that in the public interest the Commissioner cum Director, Panchayat may transfer any employee of Panchayat services, working with the Zila Panchayat, from one Zila Panchayat to another

Zila Panchayat in the state and in case of such transfer, the seniority of the transferred employee shall not be affected."

4. In view of the amendment in the Rule, the law laid down in **Omprakash** (Supra) is no longer applicable in the facts of the present case, as after the amendment, the CEO, Zila Panchayat has authority to transfer a Panchayat employee from one Janpad Panchayat to another Janpad Panchayat and the said order does not affect the seniority of the concerned employee.
5. The issue now remains to be considered is – whether on the date of issuance of the impugned order, the Zila Panchayat, Raipur could have passed the order for an area which is within the territorial jurisdiction of Baloda Bazar, revenue district?
6. It is informed by learned State counsel that as on the date of the impugned order, the Zila Panchayat, Raipur was exercising jurisdiction over revenue districts of Raipur, Baloda Bazar and Gariyaband. A separate Zila Panchayat for Baloda Bazar has been constituted after issuance of the impugned order.
7. Learned counsel for the petitioner would submit that even if Baloda Bazar was coming within the area of Zila Panchayat, Raipur, the same being a different district and the concerned Rule only refers to the word 'district' and not area of Zila Panchayat, the order still remains without jurisdiction.
8. To appreciate the above submission made by Shri Rajput, it would be profitable to refer the provisions contained in Section 5 of the CG General Clauses Act, 1957, which are reproduced hereunder:-

"5. Gender and number.- In all Chhattisgarh Acts, unless a different intention appears, -

(a) words importing the masculine gender shall be

taken to include females; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular."

9. Thus, the word in singular would include plural and vice versa, therefore, the word 'district' occurring in Rule 27 would mean the districts coming within the jurisdiction of a particular Zila Panchayat. Thus, if there are more than one revenue districts falling within particular Zila Panchayat, the employees working therein can be transferred from one Janpad Panchayat to another Janpad Panchayat even if the two Janpad Panchayats are falling within the jurisdiction of two different revenue districts.

10. In the matter of **Satish Ramteke Vs. State of Chhattisgarh & others** {WP(S) No.2706/2013 & other connected matters, decided on 8th October, 2013}, this Court has held thus:-

"8. On a bare reading of the first proviso to Rule 27 of the Rules, 1999, it is manifestly clear that upon transfer from one Janpad Panchayat to another Janpad Panchayat, the concerned employee does not lose his seniority, therefore, any argument contrary to provisions of law cannot be accepted. It may happen in a given case that because of availability of a senior person in the cadre at the transferred place, the transferred employee may be in a disadvantageous position with respect to promotion to the next higher post or in a given case he is most likely to be promoted in his near future at his present place of posting and because of transfer he may lose that chance of promotion, but to say that the said event which may or may not happen in future effects his seniority in *praesenti* is not sustainable.

11. For the foregoing, this writ petition has no substance, the same deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Barve