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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1608 of 2015

Smt. Maya Rani Barman, W/o Shri B.R. Barman, aged about 57 years, working as Staff Nurse, Maharani Hospital, Jagdalpur, District Bastar, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Director, Health Services, Sanchanalaya Health Services, Indrawati Bhawan, 3rd Floor, Naya Raipur, Chhattisgarh.
3. Chief Medical and Health Officer, Jagdalpur, District Bastar, Chhattisgarh.
4. Joint Director cum Superintendent, Maharani Hospital, Jagdalpur, District Bastar, Chhattisgarh.

---- Respondents

AND

Writ Petition (S) No.1619 of 2015

Laxmi Tandiya, W/o Shiv Kumar Netam, aged about 44 years, working as Staff Nurse, Maharani Hospital, Jagdalpur, District Bastar, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Director, Health Services, Sanchanalaya Health Services, Indrawati Bhawan, 3rd Floor, Naya Raipur, Chhattisgarh.
3. Chief Medical and Health Officer, Jagdalpur, District Bastar, Chhattisgarh.
4. Joint Director Cum Superintendent, Maharani Hospital,

Jagdalpur, District Bastar, Chhattisgarh.

---- Respondents

For Petitioners:	Mr. C. Jayant K. Rao, Advocate.
For Respondents/State:	Mr. Y.S. Thakur, Deputy Advocate General with Mr. Dilman Rati Minj, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

03/11/2015

1. Since common question of law and fact is involved in both the writ petitions, they are being disposed of by this common order.
2. The petitioners were promoted on the post of Nursing Sister from the post of Staff Nurse by order dated 26-12-2011. They made a representation for modification of the order to allow them to continue in their present place of posting on promoted post, but that was not granted and they continued in their present place of posting on their original post. By order dated 31-1-2015, their promotion order has been cancelled relying upon the condition mentioned in para 1 of the promotion order dated 26-12-2011. These writ petitions have been filed against the order dated 31-1-2015 questioning the same stating inter alia that the petitioners were never relieved from the said post by respondent No.4 from their respective places and, therefore, they have no opportunity to join the promoted

post and they were continued to their disadvantage by not working on the promoted post and getting the higher pay and allowance of said post. Therefore, the order cancelling the promotion be set aside.

3. Mr. C. Jayant K. Rao, learned counsel for the petitioners, would submit that since the petitioners were not relieved from their respective posts and, therefore, they could not join on the promoted post as such, their act is bona fide, otherwise, there was no reason not to join on the promoted post carrying higher pay and allowance. He would further submit that opportunity of hearing was also not granted to the petitioners.

4. On the other hand, Mr. Y.S. Thakur, learned Deputy Advocate General appearing for the State/respondents, would submit that condition No.1 appended to the order of promotion states that the petitioners were required to join within one month from the service of the order of promotion otherwise, it stands automatically cancelled upon expiry of one month and as such, the petitioners never applied for relieving and they were always making representations for allowing them to continue in the present place of posting on the higher post which was not allowed. He would further submit that the petitioners did not make any effort for joining on the transferred place and on the promoted

post as such, both the writ petitions deserve to be dismissed.

5. I have heard learned counsel for the parties, given thoughtful consideration to the submissions raised therein and gone through the record with utmost circumspection.
6. It is not in dispute that the petitioners were promoted on the higher post of Nursing Sister by order dated 26-12-2011, thereafter though they made representations to allow them on promoted place where they were at the time of promotion, neither their representations were considered nor they were relieved by the competent authority to join in the transferred place on promoted post. The petitioners were continuing on the lower post of Staff Nurse as on date and their claim is that they are not being relieved by their immediate superior to join the promoted post. It is not apparent from the record that the petitioners were ever relieved by the State/competent authority to join their transferred place on the promoted post. There is no refusal on the part of the petitioners, on record to join on the promoted post. On refusal, the State has to proceed in terms of Rule 15 of the Chhattisgarh Public Services (Promotion) Rules, 2003. Rule 15 of the said Rules authorizes the State Government to enforce the promotion, in case where the reason added by the public servant for

his refusal for promotion is not acceptable, disciplinary action may be taken against him for refusing to obey its order.

7. In the instant case, no such course has been followed obviously for the reason that the petitioners have not been relieved till this date from their original place of posting for joining on the promoted post, rather their promotion order has been cancelled that too without affording an opportunity of hearing to them, which is wholly impermissible in law. [See **Gajanan L. Pernekar v. State of Goa and another**¹.]

8. The impugned orders cancelling the promotion of the petitioners are quashed. The respondent authority is directed to relieve the petitioners within seven days from the date of receipt of a certified copy of this order to enable the petitioners to join on the promoted post in the transferred place in accordance with the rules.

9. The writ petitions are allowed to the extent indicated herein-below.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

¹ (1999) 8 SCC 378