

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 2930 OF 2014

Satish Menon, aged about 49 years, S/o Late K.N.R. Menon, R/o E-30, Archana Vihar, Nehru Nagar, Post & P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Fisheries, Mahanadi Bhawan, Mantralaya, Post & PS Mandir Hasaud, Raipur (C.G.)

2. Section Officer, Department of Fisheries, Government of Chhattisgarh, Mahanadi Bhawan, Post & PS Mandir Hasaud, Raipur (C.G.)

3. Director-Fisheries, Department of Fisheries, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Post & PS Mandir Hasaud, Raipur (C.G.)

4. Virendra Singh Jadaun, S/o Ram Singh, aged about 56 years, Fisheries Inspector, R/o Palash-702, Green Garden Colony, Post & PS Civil Lines, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Jitendra Pali, Advocate.
For Respondents No. 1 to 3	:	Mr. Prafull Bharat, Additional Advocate General, along with Mr. R.K. Jaiswal, Panel Lawyer.
For Respondent No.4	:	Mr. Prateek Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/09/2015

1. Challenge in the present writ petition is to the order dated 22.4.2014 issued by Respondent No.1 whereby the Respondent-State Government has cancelled the earlier transfer order dated 28.9.2013 so far as the Petitioner and Respondent No.4 is concerned.

2. True it is that the law in respect of transfer of a government employee is by now settled by a series of decisions by the Supreme Court as well as by the various High Court. It has been enunciated in a catena of decisions that transfer is an incident to service and that no employee can seek right in his favour for being posted at a particular

place nor can the employee seek right to be posted at particular place of choice. It has also by now well settled that transfer order of an employee can be challenged only on certain limited grounds such as transfer order being contrary to the service conditions and the transfer order having been issued with mala fide intention.

3. The fact in the present case is that the Respondent-State Government on 28.9.2013, Annexure P-6, had issued order of transfer transferring a number of employees of the Respondent-Department from one place to another. In the process, the Petitioner was transferred from the office of Assistant Director, Machhali Palan, District Mungeli to the Block Masturi, District Bilaspur. Simultaneously, vide the same order, Respondent No.4 who was posted at the place where the Petitioner is being posted, was ordered to be posted from Block Masturi, District Bilaspur to the office of Assistant Director, Machhali Palan, District Mungeli. A plain reading of the said order dated 28.9.2013 shows that the order of transfer was issued on administrative ground.

4. The said order dated 28.9.2013 was challenged by the private Respondent i.e. Respondent No.4 vide Writ Petition (S) No. 3413 of 2013 wherein the Petitioner herein was also a Respondent. However, the said writ petition was disposed of at motion stage itself without granting any protection to the Petitioner therein. Respondent No.4 had challenged the order dated 28.9.2013 on two grounds; firstly, the order being bad in law in the light of Respondent No.4 being assigned certain election duties pertaining to the State Assembly Elections which were to be held during that period and, secondly, Respondent No.4 had challenged it on the ground that Respondent No.4 is an office bearer of a Union and therefore he falls within the protected category.

5. So far as the question of Respondent No.4 being transferred in spite of his being assigned election duties, the High Court while deciding the Writ Petition (S) No. 3413 of 2013, vide order dated 18.10.2013, in paragraph 5, held as under:-

“In view of the law laid down by this Court, as aforesaid, the contention raised by the learned counsel for the petitioner, to the contrary, is not sustainable.”

6. So far as the second issue of Respondent No.4 being an office bearer, the writ petition was disposed of only with a liberty to approach the competent authority by moving a representation in this regard and if such a representation is made the authorities under the State Government should decide the same.

7. Based upon the order of transfer dated 28.9.2013, the Petitioner was relieved from Mungeli on 13.12.2013 and he gave his joining at the District Head Office at Bilaspur. However, since Respondent No.4 was not relieved from his place, he (Respondent No.4) continued to work at Masturi and the Petitioner was asked to discharge his duties at District Office, Bilaspur.

8. The Last Pay Certificate of the Petitioner from Mungeli was also sent to Bilaspur as is evident from Annexure P-10, dated 14.2.2014. According to the Petitioner, after the Petitioner has been given joining at Bilaspur and on his Last Pay Certificate having been issued from the transferred place at Mungeli, the Petitioner for all practical purposes substantially has assumed his duties at Bilaspur in compliance of the order of transfer dated 28.9.2013. According to the Petitioner, since the order of transfer stood complied it has attained finality and there was no scope for the Respondent-State authorities to reconsider and recall the same.

9. Counsel for the Petitioner further submits that even otherwise the order passed by the Writ Court in the writ petition preferred by Respondent No.4 also no right has been accrued in his favour rather the writ court has declined in paragraph 5 to interfere with the ground of transfer being made during the election period particularly when Respondent No.4 was assigned election duties. So far as Respondent No.4 being an office bearer is concerned, the only solace given to him was to approach the State authorities for redressal of his grievance only on the point of his having the immunity of being an office bearer of the Trade Union.

10. It was submitted by the Counsel for the Petitioner that after the writ petition of Respondent No.4 was disposed of on 18.10.2013, he approached the authorities by making representations bringing all those facts before the State Government on which the Writ Court had already declined to interfere and that Respondent No.4 did not approach the State authorities seeking benefits of his being an office bearer, for cancellation/modification of the order dated 28.9.2013. According to the Petitioner, the department also did not go through the order passed by the High Court in the writ petition of Respondent No.4, dated 18.10.2013, and initiated proceedings to decide the representation afresh considering also the grounds which have been declined by the High Court and thus the impugned order is bad in law.

11. Counsel for the Petitioner further also argues the fact that since the order of transfer has been so far as the Petitioner is concerned stood executed there was no authority left with the State Government to cancel the order once executive order has been modified/amended the same. Counsel for the Petitioner relied upon a decision under similar set of facts passed by this Court in Writ Petition (S) No. 1015 of 2015

(Vivek Hardeo v. State of Chhattisgarh and Others), dated 16.7.2015 and also a judgement dated 30.7.2015 passed in Writ Petition (S) No. 1126 of 2015 (Rajesh Verma v. State of Chhattisgarh & Others), wherein both the writ petitions which were also pertaining to the Fisheries department, the order of cancelling the earlier transfer order which stood executed was quashed by the High Court, and on similar terms the present writ petition also was pressed upon seeking quashment of the impugned order dated 22.4.2014.

12. Counsel for the Petitioner also drew the attention of the Court to Annexure P-3, dated 21.4.2014, which showed that Respondent No.4 was posted at Masturi, Bilaspur ever since 14.3.1997 and that even subsequent to his service being absorbed by the State Government on 11.5.2006 he continued to work at Block Masturi and as such he remained at Masturi, Bilaspur ever since 1997 and does not want to be transferred from that place of posting under any circumstances. The Petitioner also referred to an order of the Writ Court whereby Respondent No.4 had also challenged his earlier order of transfer issued on 5.3.2008 transferring him from Bilaspur to Ambikapur, i.e. Writ Petition (S) No. 1704 of 2008, wherein the Respondent No.4 was successful in getting the interim order on 19.3.2008 and the writ petition finally got disposed of on 7.7.2009 wherein the impugned order of transfer was quashed only on the ground of there being an interim order in his favour and Respondent No.4 having continued to serve at a particular place by virtue of interim order reserving the right of the State Government to pass afresh order in case of administrative exigency.

13. Per contra, Counsel appearing for Respondent No.4 opposing the petition contended that the Petitioner does not have any locus standi to file the present writ petition for the reason that the Petitioner has not put

up any claim justifying the claim put forth by the Petitioner seeking quashment of Annexure P-1 except for banking upon the alleged weakness of Respondent No.4. Counsel for Respondent No.4 further submits that in fact the Petitioner on 28.9.2013 could not have been transferred at all for the reason that the order dated 28.9.2013 has been issued at the instance of the office of the Chief Election Officer and that the order was passed only in respect of those persons who had completed more than 3 years of posting at the particular place and since the Petitioner at Mungeli had not put in 3 years of service he could not have been transferred on 28.9.2013. This aspect has not been disclosed by the Petitioner in his writ petition, therefore the petition deserves to be rejected.

14. Counsel for Respondent No.4 further contended that the impugned order dated 22.4.2014 (Annexure P-1) has been passed considering the total facts and circumstances of the case, particularly, the factual details in respect of the service records pertaining to the length of service at a particular place of the employees whose names are reflected in Annexure P-1. He further submits that on verification since the State Government found that the Petitioner could not have been transferred on 28.9.2013 and realizing the mistake that they have committed, the rectification has been done by the State Government by issuance of impugned order dated 22.4.2014 and this is well within the power and authority of the State Government and that rectification can always be done when it is detected. He further agitated that the document attached with the writ petition, i.e., Annexure P-20, dated 4.4.2014, would itself show that the Petitioner had not completed more than 3 years at Mungeli. He also submitted that the impugned order was passed after the concurrence of the concerned Minister was taken

and therefore it cannot be said that there was any procedural illegality or irregularity committed by the department while issuing the impugned order and thus prayed for the rejection of the writ petition itself.

15. Shri Prafull Bharat, Additional Advocate General, along with Shri R.K. Jaiswal, Panel Lawyer, appearing for Respondents No. 1 to 3, submits that looking to the facts and circumstances of the case, particularly, the fact that there is an interim order in favour of the Petitioner since 2.7.2014, he has instructions to plead that the State Government as of now does not intend to press upon the impugned order (Annexure P-1) so far as the Petitioner and Respondent No.4 is concerned. However, the State may be granted the liberty to pass a fresh order in case if administrative exigency so requires.

16. Considering the arguments put forth by all the parties and on perusal of the record what is explicit is that this Court while deciding the validity of the transfer order dated 28.9.2013 in a writ petition filed by Respondent No.4, i.e., Writ Petition (S) No. 3413 of 2013, vide order dated 18.10.2013 had declined to entertain the petition. Since the petition on its merits was refused to entertain by the writ Court earlier, it would not be proper for this Court to again re-appreciate the entire facts and circumstances again. Moreover, liberty of representation to the government was given to the Petitioner therein only in respect of his status as an office bearer of a trade union. Thus, except for the issue of Respondent No.4 having an alleged protection of being an office bearer of a trade union, all other grounds could not have been raised by Respondent No.4 in his representation nor could the State Government have gone into other aspects while issuing the impugned order dated 22.4.2014 which already stood decided in the writ petition preferred by Respondent No.4.

17. The two judgments referred to by the Counsel for the Petitioner, i.e., order dated 16.7.2015 passed in Writ Petition (S) No. 1015 of 2015 and order dated 30.7.2015 passed in Writ Petition (S) No. 1126 of 2015, would reveal that both these writ petitions arose from the same department i.e. Fisheries department, and the issue involved in both the said writ petitions was also of similar nature wherein a transfer order which was earlier issued and which was acted upon and stood implemented was subsequently some months later was ordered to be cancelled.

18. The Coordinate Bench of this High Court has relied upon the judgement passed by the Division Bench of this High Court in Writ Appeal No. 248 of 2015 (Tarun Kanungo v. State of Chhattisgarh and others), dated 15.5.2015, and also a judgement referred by this Court passed in Writ Petition (S) No. 5012 of 2009 (Brajendra Singh v. State of Chhattisgarh & Others), dated 9.3.2010, and have held that once the transfer order has been executed or given effect to, the authorities cannot cancel the implemented order. They could have only passed a fresh order only in administrative exigency if so required. Considering the judgments referred therein, the High Court had as a consequence allowed those writ petitions and quashed the impugned order of cancellation of the earlier transfer order which had already been acted upon and stood executed.

19. Consistency in rendering judgments or passing interim orders is an integral element of legal propriety and judicial discipline. Inconsistent orders passed by different benches of a Court in the same fact situation will undermine and shake the faith of the people in the judicial system and rule of law and leave an imprint in the mind of the litigant that he has been discriminated.

20. The Division Bench of this Court has decided a similar issue in the case of Tarun Kanungo v. State of Chhattisgarh and others, passed in Writ Appeal No. 248 of 2015, dated 15.5.2015, holding as under:-

“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.”

21. Relying upon the said judgement of the Division Bench, the coordinate Bench of this Court also has decided couple of writ petitions referred to in the preceding paragraphs holding that once the order has been acted upon, the same could not have been modified or cancelled. Recourse available to the Government was that of passing a fresh order of transfer.

22. On the basis of the said legal pronouncements laid by the Division Bench as well as by the coordinate Bench of this High Court and also acknowledging the judicial discipline, this Court is also inclined to take the same view. In the present case, the Petitioner was transferred vide order dated 28.9.2013 and which was acted upon by the Petitioner on 13.12.2013 when he gave his joining at the District Head Officer at Bilaspur and his Last Pay Certificate from his earlier place of posting also having been sent to Bilaspur, it stands complied with and the Petitioner's transfer order stands acted upon. To add with it, the State Government now has made a statement that pursuant to the fact that there has been an interim protection in favour of the Petitioner for quite some time, the State Government as of now do not intend to pursue the transfer order any further reserving their right to pass a fresh order in case if need so arises.

23. In view of the aforesaid facts and circumstances of the case, the present writ petition therefore deserves to be and is accordingly allowed. The impugned order dated 22.4.2014 cancelling the earlier transfer order dated 28.9.2013 so far as the Petitioner is concerned is set aside/quashed. It is made clear that the State Government shall, however, be free to pass a fresh order determining the place of posting of the Petitioner depending upon the administrative exigency in accordance with the policy and the rules of the State Government as and when required.

24. The Writ Petition stands allowed.

25. No order as to cost.

Sd/-
(P. Sam Koshy)
Judge