

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 5583 OF 2014

Mahesh Kumar Bhuarya, son of Shri Ramadhar Bhuarya, aged about 53 years, Block Education Officer, Khairagarh, District-Rajnandgaon (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Education Department, Mantralaya, New Raipur, Police Station-Rakhi, Civil & Revenue District – Raipur (C.G.)

2. The District Education Officer, Rajnandgaon, District-Rajnandgaon (C.G.)

3. O.P. Tandon, Block Education Officer, Nawagarh, District Bemetara (C.G.)

... Respondents

For Petitioner	:	Mr. Prateek Sharma, Advocate.
For Respondent-State.	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/09/2015

1. Challenge through the present Writ Petition is to the order dated 28.7.2014 whereby the representation preferred by the Petitioner, pursuant to the order passed by this Court in Writ Petition (S) No. 1721 of 2014, dated 3.4.2014, has been rejected.

2. Learned Counsel for the Petitioner submits that the Petitioner was vide order dated 22.2.2014 transferred from the post of Block Education Officer, Khairagarh, District Rajnandgaon to Nawagarh, District Bemetara. That the Petitioner pursuant to the order dated 22.2.2014 had given his joining and resumed his duties at Nawagarh. However, subsequent to his joining at Nawagarh, he preferred a writ petition, i.e. Writ Petition No. 1721 of 2014, challenging the order of transfer dated 22.2.2014, which was disposed of with only a direction to make a representation to the Respondent authorities.

3. Accordingly, on a representation being made, the impugned order dated 28.7.2014 has been passed rejecting his representation. It is this order dated 28.7.2014 which is under challenge in the present Writ Petition.

4. Learned Counsel for the Petitioner further submits that along with the Petitioner about 33 other employees of the State Government were also transferred considering Lok Sabha elections that were to be conducted during that period and that most of the employees who have been transferred by the said order had made representation to the State Government and that in many of the cases where the employees had made representation, the State Government has allowed the representations and cancelled the earlier transfer order dated 22.2.2014. But, in respect of the Petitioner and also in the case of the reliever to the post where the Petitioner has been transferred, the representation has been rejected. According to the Petitioner, it is a case where the State Government has arbitrarily and also in a discriminatory manner rejected the application.

5. So far as the transfer and posting is concerned, it is a settled position of law that it is always the prerogative of the employer to decide as to the place of posting of its employees and what would be best place where the government servants would be discharging his/her duties. The Courts have the power to scrutinize the order of transfer only in the event of it being contrary to the service conditions or in case if there are any malafides alleged against any of the officers of the employer. Transfer policy of the State Government is always administrative in nature and it is for the employer to decide the place of posting of an employee. The government servants cannot claim as a matter of right of continuing to work at a particular place of posting or

get posting at a particular place of their own choice. No Government servant can claim immunity from being transferred as the transfer is an incident to service and transferring of an employee is not only an essential condition of service but is also necessary in the public interest and public administration.

6. In the instant case also a perusal of the pleading would clearly reflect that the Petitioner has not taken the ground of transfer order being contrary to the service rules or that there has been any malafide in the issuance of the impugned order. The only ground which the Petitioner relies upon strongly is the fact that in many of the cases the Government on due consideration allowed the representations of the government servants canceling the earlier transfer orders and therefore the case of the Petitioner also should have been considered in similar terms. This by itself would not be a good ground for exercising the writ jurisdiction conferred upon this Court under Article 226 of the Constitution particularly when there are no malafides attributed to any of the officers in the writ petition and more particularly when it is not the case where the impugned order has been passed contrary to the service rules.

7. The law in so far as the transfer is concerned is well settled by a series of decisions of the Supreme Court as well as by this High Court wherein it has been repeatedly emphasized that transfer being an incident to service cannot be subjected to challenge as a matter of routine only because it causes personal inconvenience to an employee.

8. Another important aspect which cannot be lost sight of is the fact that the present petition is pending since 14.10.2014 without any interim protection. Therefore, by now the Petitioner must have complied with the order of transfer. Hence, on this ground also there would not be any

scope for this Court to now subject the impugned order to judicial scrutiny.

9. Considering the total facts and circumstances of the case, this Court is not inclined to interfere with the impugned order.

10. The present Writ Petition being devoid of merits is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/