

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6563 of 2014

1. Smt. Kiran Bala Tamrakar W/o Shri Surendra Kumar Tamrakar Aged About 52 years, Govt. Middle School, Dudhali, Block Dondilohara, District Balod C.G.

---- Petitioner

Versus

1. State Govt. of Chhattisgarh, Through The Secretary, Department Of Aadim Jati & Anusuchit Jati Vibhag Ministry, Mahanadi Bhawan, New Raipur, CG, PS Rakhi.
2. Collector Balod, C.G.
3. Block Education Officer Dondilohara District Balod C.G.
4. Smt. Kanchan Gajbhaiye, Shikchha Karmi Verg -li (Kala Transferred As Maths Teacher Name At Serial No. 8 Of Annex P -2) Middle School, Dudhali, Block Dondilohara District Balod C.G.

---- Respondent

And

WPS No. 6575 Of 2014

1. Ashok Kumar Chandel S/o Late Baldev Singh Chandel Aged About 56 years Working As Upper Division Teacher Govt. Middle School Suregaon, Block Dondi Lohara, District Balod C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Education Department Mahanadi Bhawan, Mantralaya, New Raipur, Dist. Raipur C.G.
2. Collector Balod, Dist. Balod C.G.

3. Block Education Officer Dondilohara Distt. Balod C.G.

---- Respondent

And

WPS No. 116 Of 2015

1. Amarnath Lakda S/o Baje Lakda Aged About 48 years Working As Upper Division Teacher, Govt. Boys Middle School, Sendrimunda, Block Kunkuri, District Jashpur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh, Through Secretary, School Education Department, Mahanadi Bhawan, Manralaya, Naya Raipur, District Raipur, Chhattisgarh
2. Collector Jashpur, District Jashpur, Chhattisgarh
3. Assistant Commissioner Jashpur, District Jashpur, Chhattisgarh
4. Block Education Officer, Block Kunkuri, District Jashpur, Chhattisgarh

---- Respondent

And

WPS No. 117 Of 2015

1. Brisbal Ekka S/o Iliyus Ekka Aged About 44 years Working As Upper Division Teacher, Govt. Girls Middle School, Rajouti, Block Kunkuri, District Jashpur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh, Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. Collector Jashpur, District Jashpur, Chhattisgarh
3. Assistant Commissioner Jashpur, District Jashpur, Chhattisgarh

4. Block Education Officer, Block Kunkuri, District Jashpur, Chhattisgarh

---- Respondent

For respective petitioners	Shri V.K. Sharma, Shri U.R. Koshaley & Shri Harish Khuntiya, Advocates.
----------------------------	---

For Respondent State	Shri Y.S. Thakur, Dy. AG, Shri A.V. Sridhar, PL & Shri Chandresh Shrivastava, PL
----------------------	--

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/04/2015

Heard learned counsel for the parties.

1. In this batch of writ petitions the petitioners are working as Upper Division Teachers (for short 'UDT'). At the time of posting of Teachers in different schools under the rationalization policy the petitioners have been transferred to different schools either in the same block or in the nearby block.
2. The petitioners had earlier preferred writ petitions, which were disposed of with an observation that transfer/posting of an employee is an incidence of service, therefore, Court should not interfere with the transfer/posting order unless there is malice, infringement of statutory rules and regulations, however, since the petitioners were agitating violation of the policy/guidelines

they were allowed to make representation and the order of transfer was kept in abeyance for a period of four weeks.

3. By the orders impugned, in these petitions, the representation filed by each of the petitioners have been dismissed by separate orders.
4. According to the learned counsel for the petitioners, the petitioners have been transferred to teach a different subject than what they are proficient, therefore, the same is arbitrary. They would submit that recruitment of UDT is made subjectwise, therefore, the UDT cannot be compelled to teach a different subject than for what the recruitment has been made.
5. In the earlier orders passed with respect to each of the petitioner, this Court has referred various decisions of the Supreme Court to reiterate the limitations in exercise of power under Article 226 of the Constitution of India in the matters concerning transfer/posting of an employee.
6. Petitioners have not attributed malice in law or in fact or violation of any statutory provision while making the transfer. Merely because there may be some difficulty for the petitioners to teach the subject for which they have been posted at the transferred place, it cannot be termed as arbitrary.

7. There is nothing in the statutory rules i.e. Chhattisgarh Non-Gazetted Class III Education Service (School Level Service) Recruitment and Promotion Rules, 2008 (for short 'the Rules'), which prohibits posting of UDT to a school for teaching a different subject.
8. Column 7 of Schedule III of the Rules is only to the effect that post of UDT will be subject/group wise (faculty), to mean number of posts of UDT should be filled up subjectwise, however, there is no further stipulation that the UDT appointed for a particular subject shall not be posted or assigned the duty of teaching another subject.
9. It is a matter of common knowledge that at the primary and middle school level a teacher is required to impart education to the students in all the subjects, as at that level of education no specialization in any subject is needed.
10. Moreover, before passing the impugned order, the transferring authority has conducted counseling giving opportunity to each of the petitioner to accord consent for teaching a particular subject. All the petitioners have either consented for teaching the subject for which they have been transferred or they failed to appear in the counseling. Thus, before passing the order, the procedure prescribed in the rationalization policy has been adhered.

11. In absence of any violation of any statutory provision or *mala fide* exercise of power and for the reason that the transfer order has been issued under the rationalization policy for proper distribution of teachers uniformly in all the schools and to fill up the posts of teachers in deficient schools, this Court does not find any substance in these writ petitions.
12. Accordingly, all the writ petitions are liable to be and are hereby dismissed.

J u d g e

Gowri