

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2193 of 2015

- Smt. Dankumari Kaushik W/o Shri N.K. Kaushik Aged About 55 Years Presently Posted As Upper Division Teacher (English) At Government Girl Middle School Rajendra Nagar, District Bilaspur R/o Sarju Bagicha, Masanganj, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secreary, Department Of School Education Mantralaya, Mahanadi Bhawan, Naya Raipur Raipur Chhattisgarh
2. The Collector Bilaspur District Bilaspur Chhattisgarh
3. The District Education Officer, Bilaspur District Bilaspur Chhattisgarh
4. The Chief Executive Officer Zila Panchayat, Bilaspur, District Bilaspur Chhattisgarh
5. The Block Education Officer Block Bilha, District Bilaspur Chhattisgarh
6. Principal Government Higher Secondary School Rajendra Nagar, Bilaspur Chhattisgarh

-- Respondent

For Petitioner	Mr. Mateen Siddique, Advocate
For Respondent /State	Mr. Y.S. Thakur, Dy. A.G.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

4/9/2015

Heard finally with the consent of learned counsel for the parties.

- (2) The petitioner has assailed the order dated 10.03.2015 passed by

the Chief Executive Officer, Zila Panchayat, Bilaspur (for short "CEO") dismissing his representation against the rationalization posting vide order dated 13.08.2014; the order dated 12.05.2015 by which she has been relieved; and has further prayed for execution/enforcement of the order dated 31.10.2014 (Annexure P/5), by which, the District Education Officer, Bilaspur (in short "the DEO") has earlier allowed her representation and cancelled the posting order.

(3) By order dated 13.08.2015, issued by the DEO, pursuant to the recommendation of the District Level Committee, the petitioner was posted from Government Middle School, Rajendra Nagar, Bilaspur, to Government Middle School, Tifra, Bilha. This order was assailed in W.P. (S) No.4673 of 2014. The said writ petition was dismissed on 19.09.2014 with the following order :

"Heard on admission.

Challenge is made to order dated 13.08.2014, by which, the petitioner has been adjusted and shifted from Govt. Middle School, Rajendra Nagar, Bilaspur to Govt. Middle School, Tifra.

I find that both the place i.e. Rajendra Nagar and Tifra are in near vicinity. Therefore, only on this ground, no interference is called for in the impugned order of posting.

The petition is therefore dismissed. It is however made clear that dismissal of this petition shall not come in the way of the petitioner in pursuing her representation ."

(4) The petitioner, thereafter, preferred a representation before the DEO along with the copy of the order passed by this Court in W.P.(S) No.4673 of 2014. The DEO allowed the representation and cancelled the order of rationalization posting. It appears the petitioner had preferred another representation before the CEO. The said CEO

dismissed the representation by order dated 10.03.2015. The said order has been approved by the Collector.

(5) In view of the two contradictory orders passed by two different officers of the Government, this Court directed the CEO to submit affidavit. In his affidavit dated 21.07.2015, the CEO has stated the following :

3. That, as per the guidelines issued by the School Education Department, the Committee was constituted under the administration of the District Collector, Bilaspur consisting of Chief Executive Officer, Zila Panchayat, Commissioner, Municipal Corporation, District Education Officer and Assistant Commissioner, Tribal Welfare Department. The Committee acted on the proposal prepared by the Block Level Committee and on the basis of options given by the concerned teachers. The Policy of Rationalization was adhered to as far as possible and making it administratively meaningful. Emphasis was on providing sufficient numbers of teachers in schools and also providing faculty for subjects being taught in those schools. The Committee decided on transfer of the teachers from one School to another School to achieve the teacher-student ratio and providing for the subject faculty. Various orders under the Policy of Rationalization issued after approval of the Committee.

4. That, the petitioner Smt. Dan Kumar Kaushik was transferred from Govt. Middle School, Rajendra Nagar, Bilaspur to Govt. Middle School, Tifra to teach science subject. A copy of option filled up by the petitioner herself is filed herewith as **ANNEXURE D-1**. Thus, the petitioner was transferred after seeking option of place of posting and the subject. Much to say there was no change of place of posting or subject other than the option given by the petitioner herself. Thus, the posting of the petitioner is in accordance with the Rationalization Policy.

(6) The contents of the affidavit of the CEO would clearly indicate that the petitioner was posted at Tifra after obtaining option from the petitioner vide Annexure D/1 with the affidavit.

(7) This Court in **Gajendra Hariharno and Others v. State of Chhattistarh and Others**¹ and other connected matters, after placing reliance on various decisions of the Supreme Court, held thus :

- 8. It appears the decision has been taken at the highest level in the Government after obtaining relevant data about the number of teachers working in the Department; the ratio of teacher-pupil; and the requirement of teachers in rural areas.
- 9. On a careful reading of the contents of the policy, it no where appears that the policy has been framed without application of mind or to achieve any oblique motive. In fact, the policy has been framed to facilitate teaching in the schools so that the poor students who study in Government schools/Panchayat Schools should obtain quality education, as intended by the legislature while enacting the Act, 2009.

xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx

- 13. In matters concerning administration the Court should be loathe to interfere when the Government is acting *bona fidely* to achieve the pious object of providing teachers in the rural areas and less teacher schools in the urban areas.
- 14. The argument concerning violation of set up of the department, contravening the provisions of the Act, 2009 or the Chhattisgarh Non-Gazetted Class III Education Service (School Level Service) Recruitment and Promotion Rules, 2008 (for short 'the Rules, 2008') have been made without elaborating the same as to in what manner the same have been violated. The petitioners have also not pointed out by referring to

1 WPS 3200 of 2014 (decided on 22-7-2014)

any particular provision of the Act or the Rules to challenge the policy.

xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx

16. Similarly, even if it is assumed that the impugned policy would ultimately have the effect of transfer/posting of teachers, the same cannot be struck down because it is within the exclusive domain of the Government to direct transfer/posting of teachers. The impugned policy is only guidelines without having any statutory force. It cannot be treated as executive instruction under Article 166 of the Constitution so that the Court can judiciously review the contents of the policy on the approved parameters on which judicial review is permissible.

xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx

18. Once the administration has felt that there are concentration of teachers in particular areas be it urban area or in a particular school, it is for them to decide the ways and means to rationalize the number of teachers and the writ Court has no power of judicial review to struck down the policy merely because large number of teachers would be effected and will be shifted to other schools by way of implementing the policy. It is settled law that a Government employee does not have any statutory or constitutional right to remain posted at a particular place.

(8) In the case in hand, the DEO was not competent to decide the petitioner's representation, because, earlier order of rationalization was issued on the recommendation of the District Level Committee headed

by the Collector. The DEO has acted improperly by not seeking approval of the Collector, whereas, the representation decided by the CEO has been approved by the Collector.

(9) For the foregoing, this Court does not find any substance in the impugned order. Accordingly, the writ petition is dismissed. No order as to costs.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri