

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2498 of 2015

1. Bhopal Tande S/o Shri Aman Tande aged about 53 years, Principal R/o Village & Post Chhuri via Jamnipali, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Assistant Commissioner, Tribal Welfare Department, Korba (C.G.)
4. Upper Collector, Korba District Korba (C.G.)

Respondent

For Petitioner	Mr. Ajay Shrivastava, Advocate
For Respondent/State	Mr. P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10.08.2015

Heard learned counsel for the parties.

2. The petitioner has assailed the said part of the impugned order , whereby, while revoking his suspension and reinstating him in the services, he has been posted at a place different than the one, where he was posted at the time of issuance of the order of suspension.

2. The petitioner, who was working as Principal, Government

Higher Secondary School, Buthiya, Block Basna District Mahasamund (wrongly mentioned as BEO in Annexure P/2), was placed under suspension by the order passed by the State Government in exercise of powers under Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. By the said order, his headquarter during the period of suspension was placed at the office of District Education Officer, Mahasamund. Subsequently, by order dated 10.06.2015, the State Government revoked the order of suspension, however, the decision to constitute a Departmental Enquiry remained intact.

3. Learned counsel for the petitioner would submit that on the date of issuance of the order of suspension, the petitioner was posted as the Principal, Government Higher Secondary School, Buthiya, Block Basna, District Mahasamund, whereas, while revoking the order of suspension, he is posted as Principal, Government Higher Secondary School, Komakhan District Mahasamund, which is a different place, therefore, the said part of the order is illegal in view of the decision rendered by this Court in the matter of Prakash Narayan Tiwari vs. The State of Chhattisgarh and others (W.P.(S) No.217 of 2015 decided on 07.07.2015).

4. Learned counsel for the State would submit that even if the lien is maintained at the same place, the competent authority is entitled to transfer and post the petitioner at any other place, depending upon the administrative exigency, therefore, there is no illegality.

5. The issue fallen for consideration has been decided by the Division Bench of the High Court of Madhya Pradesh in **Kendriya**

Vidyalaya Sangthan and others v. Dr. R.K. Shahstri and another¹,

wherein the following has been held :

10. The order dated 6/8-7-2002 is not passed by the authority who passed the order of suspension, but by the Appellate Authority in exercise of appellate power, while dealing with an appeal filed by the employee. While exercising the appellate power under Rule 23 read with Rule 27 (1), the Appellate Authority can either confirm the suspension or revoke the suspension. Therefore the second respondent while passing the order dated 6/8-7-2002, could not have transferred the employee or make the revocation of suspension subject to the employee reporting at the place of transfer. The order of the Appellate Authority to the extent it subjects the revocation of suspension conditional to reporting to duty at K.V., Karimganj is therefore illegal and inoperative.

It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled position that the station of posting immediately before suspension would be the headquarter vis-a-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending enquiry, is to be filled by a reservist and where a reservist is not available by officiating appointment. Therefore on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7-2002 to the extent it posts the first respondent to Karimganj and makes the revocation of suspension effective from the date of reporting at

1 2005 (4) MPHT 352 (DB)

K.V., Karimganj, is invalid and liable to be quashed.

Emphasis supplied

6. In the case at hand, on the date of suspension the petitioner was posted as the Principal, Government Higher Secondary School, Buthiya, Block Basna, District Mahasamund and his headquarter during the period of suspension was fixed at the office of the District Education Officer, Mahasamund, however, while revoking the suspension order he has been assigned the new place of posting, which is other than the place of original posting or his headquarter during the period of suspension.

7. In view of the observation made by the Division Bench of the High Court of Madhya Pradesh in **Dr. R.K. Shahstri** (supra), such recourse is not available to the authority who has revoked the suspension.

8. Accordingly, such part of the impugned order whereby the petitioner has been posted as the Principal, Government Higher Secondary School, Komakhan District Mahasamund, is quashed. However, the respondents would be at liberty to pass fresh order with regard to petitioner's posting depending upon the administrative exigency.

9. As a sequel, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

