

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2693 of 2015**

- Ibne Safi Ansari S/o Kamruddin Ansari, Aged About 47 years Assistant Grade-II Office Of Janpad Panchayat Bhaiyathan, R/o Village And Post Bhaiyathan, Tahsil Bhaiyathan, Civil And Revenue District Surajpur (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh Through: Secretary Panchayat & Rural Development Department Mahandi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Commissioner, Surguja, Commissionaire Ambikapur (C.G.)
3. Collector Surajpur, District Surajpur Chhattisgarh
4. Chief Executive Officer Zila Panchayat Surajpur District Surajpur Chhattisgarh

---- Respondents

For Petitioner	Ms. Meena Shastri, Advocate
For Respondent/State	Shri P.K. Bhaduri, GA

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****29/07/2015**

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner, who is working as Assistant Grade-II in the Office of Janpad Panchayat, Bhaiyyathan, has suffered transfer in the same capacity to Janpad Panchayat, Surajpur under the impugned order passed by the

Collector, Surajpur on 20.07.2015 (Annexure-P-1).

3. Learned counsel for the petitioner would submit that the petitioner is not subordinate to and is not working under the Collector, District Surajpur because, he is an employee of Janpad Panchayat, Bhaiyyathan and his controlling department is the Department of Panchayat. He would submit that even otherwise, under Rule 27 of the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Service) Rules, 1999 as amended on 30.11.2012, the authority to issue inter panchayat transfer order is the Chief Executive Officer of the Jila Panchayat, therefore, the impugned order is without jurisdiction.
4. Learned State counsel would refer to the transfer policy of the State Government for the year 2015-16 vide Annexure-P-4 to submit that the services of Class-III (non gazetted) and Class-IV employees can be transferred by the Collector within his jurisdiction, therefore, the Collector is competent to pass the impugned order.
5. Admittedly, the Collector of the district is not the appointing authority of the petitioner. Proviso to Rule 27 of the Rules, 1999 confers power on the Jila Panchayat to transfer any employee of a panchayat to any other panchayat within his jurisdiction and thus, an order of transfer can only be made in exercise of such power by the authority mentioned therein and not otherwise.
6. It is settled law that the transfer policy issued by the Government has no statutory backing as the same is mere guideline and the guidelines being advisory in character *per se* do not confer any legal right. (See : **Poonam Verma and others v. Delhi Development Authority**¹).

1 (2007) 13 SCC 154

7. Similarly, it is equally settled that the provisions of any policy or guideline or circular cannot over ride the statutory provisions, be it in the form of an act of legislature or subordinate legislation. Thus, the Collector of the district, in purported exercise of power conferred upon him by the transfer policy, cannot issue transfer order concerning a panchayat employee, who is governed by the Rules, 1999 and the statutory authority to pass a transfer order concerning him, is the Jila Panchayat.
8. For the foregoing, the impugned order is quashed, however, the competent authority would be at liberty to pass fresh order keeping in view the administrative exigency.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA