

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2805 of 2015

1. G. R. Ansari S/o Abdulrahman Ansari, Aged About 54 years AG II, O/o Janpad Panchayat Wadraf Nagar, Wadraf Nagar, Tehsil & Police Station Wadraf Nagar, District Balrampur-Ramanujganj, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Department Of Panchayat And Social Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Collector, District Balrampur-Ramanujganj, Balrampur, Chhattisgarh
3. Janpad Panchayat- Wadraf Nagar, Through Its Chief Executive Officer, Wadraf Nagar, District Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

And

WPS No. 2819 Of 2015

1. M. M. Mall S/o Vijay Shankar Mall Aged About 57 years AG III, O/o Janpad Panchayat Wadraf Nagar, Tehsil & P.S. Wadraf Nagar, District Balrampur - Ramanujganj Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Department Of Panchayat And Social Welfare, Mantralaya, Mahandi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Collector District Balrampur - Ramanujganj, Balrampur Chhattisgarh

3. Janpad Panchayat Wadraf Nagar, Through Its Chief Executive Officer, Wadraf Nagar, District Balrampur - Ramanujganj Chhattisgarh

---- Respondent

And

WPS No. 2812 Of 2015

1. Pandav Yadav S/o Late Shri Bandhan Yadav Aged About 50 years AG- II, O/o Janpad Panchayat Shankar Garh, Tehsil And Police Station Shankar Garh Distt: Balrampur-Ramanujganj, Chhattisgarh.

---- Petitioner

Vs

1. State Of Chhattisgarh Thorugh Department Of Panchayat And Social Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt: Raipur, Chhattisgarh.
2. Collector District Balrampur - Ramanujganj, Balrampur, Chhattisgarh.
3. Janpad Panchayat Shankargarh Through Its Chief Executive Officer, Shankargarh, District Balrampur - Ramanujganj, Chhattisgarh.

---- Respondent

And

WPS No. 2810 Of 2015

1. Sablayak Singh S/o Chandrma Singh Aged About 52 years AG III, O/o Janpad Panchayat Balrampur, Tehsil & Police Station Balrampur, Distt: Balrampur - Ramanujganj, Chhattisgarh.

---- Petitioner

Vs

1. State Of Chhattisgarh Through Department Of Panchayat And Social Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt: Raipur, Chhattisgarh.
2. Collector District Balrampur - Ramanujganj, Balrampur, Chhattisgarh.
3. Janpad Panchayat Balrampur, Through Its Chief Executive Officer, Balrampur, District Balrampur - Ramanujganj, Chhattisgarh.

---- Respondent

And

WPS No. 2814 Of 2015

1. Smt. Nayantara Singh W/o Shyamdeep Singh, Aged About 50 years AG II, O/o Janpad Panchayat Balrampur, Tehsil & Police Station Balrampur, District Balrampur-Ramanujganj, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Department Of Panchayat And Social Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Collector, District Balrampur-Ramanujganj, Balrampur, Chhattisgarh
3. Janpad Panchayat- Balrampur, Through Its Chief Executive Officer, Balrampur, District Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

And

WPS No. 2806 Of 2015

1. P. Sharma S/o Late Shri Aditya Kumar Sharma Aged About 57 years AG II, O/o Janpad Panchayat Wadraf Nagar, Wadraf Nagar, Tehsil & P.S. Wadraf Nagar, District Balrampur - Ramanujganj Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Department Of Panchayat And Social Welfare, Mantrayaa Mahandi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Collector District Balrampur Ramanujganj, Balrampur, Chhattisgarh
3. Janpad Panchayat Wadraf Nagar, Through Its Chief Executive Officer, Wadraf Nagar, District Balrampur - Ramanujganj Chhattisgarh

---- Respondent

And

WPS No. 2808 Of 2015

1. Manmasih Tirki S/o Kotwar Ram Tirki, Aged About 49 years (In The Impugned Order Name Has Been Mentioned Wrongly As N Masih), AG II O/o Janpad Panchayat Rajpur, Tehsil And Police Station Rajpur, District Balrampur-Ramanujganj, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Department Of Panchayat And Social Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Collector, District Balrampur-Ramanujganj, Balrampur, Chhattisgarh
3. Janpad Panchayat- Rajpur, Through Its Chief Executive Officer, Rajpur, District Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

For Petitioners

For Respondent/State

Shri R.S. Baghel, Advocate

Shri P.K. Bhaduri, GA, Shri Shashank Thakur,
GA and Shri Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

05/08/2015

1. With the consent of learned counsel for the parties, all the petitions are heard finally.
2. In the present batch of writ petitions, the petitioners, who are the employees of Janpad Panchayat, have been transferred from one Janpad Panchayat to another Janpad Panchayat in the following manner :

WPS No.	Name and designation of the petitioner	Present Janpad Panchayat	Transferred Janpad Panchayat
2805/2015	G.R. Ansari, AG II	Wadrafnagar	Kusmi
2806/2015	P. Sharma, AG II	Wadrafnagar	Balrampur
2808/2015	Manmasih Tirki, AG II	Rajpur	Balrampur
2810/2015	Sablayak Singh, AG III	Balrampur	Wadrafnagar
2812/2015	Pandav Yadav, AG II	Shankargarh	Ramanujganj
2814/2015	Smt. Nayantara Singh AG II	Balrampur	Wadrafnagar
2819/2015	M.M. Lall, AG III	Wadrafnagar	Rajpur

3. Learned counsel for the petitioners would submit that the petitioners are not subordinate to and are not working under the Collector of the concerned District because they are the employees of Janpad Panchayat and their 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 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 petitioners. 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).
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, has no authority to 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. It is equally settled proposition of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.
9. The Supreme Court in **Meera Sahni v. Lieutenant Governor of Delhi and Others**, held thus :

35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In

1 (2007) 13 SCC 154

this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala wherein it was held as under: (SCC pp. 432-33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under: (IA pp. 381-82)

‘where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindh Pradesh and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

10. For the foregoing, the impugned order, in respect of the petitioners, is quashed, however, the competent authority would be at liberty to pass fresh order keeping in view the administrative exigency.

11. Accordingly, all the writ petitions are allowed to the extent indicated above.

Sd/-

Judge

Gowri

Prashant Kumar Mishra