NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2903 of 2015

- Dr. (Mrs.) Sulabha Ahluwalia W/o Anurag Ahluwalia Aged About 49 years Occupation - Medical Officer, Primary Health Centre, Bodla, Development Block Bodla, District- Kabirdham- (Chhattisgarh)

---- Petitioner

Versus

- State Of Chhattisgarh Through- The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Mantralaya, Naya Raipur, District- Raipur - (Chhattisgarh)
- Collector, Kabirdham, District- Kabirdham - (Chhattisgarh)
- Chief Medical And Health Officer, Kabirdham, District- Kabirdham- (Chhattisgarh)

---- Respondent

(Cause title is reproduced as is available in the CIS Software)

For Petitioner	Dr. N.K. Shukla, Senior Advocate with Mr. Sudhir Verma, Advocate
For Respondent/State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

11/08/2015

Heard learned counsel for the parties.

(2) Petitioner has assailed the said part of the impugned order whereby, while revoking her suspension and reinstating her, she has been posted at a place different than the one where she was posted at the time of issuance of the order of suspension.

(3) From Annexure P/2, it is manifest that the petitioner, who is working as Medical Officer in the Primary Health Centre, Taregaon

Jungle and Incharge Block Medical Officer, Community Health Centre, Bodla was suspended on 29.04.2015. At that time, her headquarter during suspension period was fixed at Community Health Centre, Sahaspur-Lohara.

(4) The Collector, District Kabirdham by the impugned order dated 13.07.2015 has revoked the order of suspension, however, the petitioner has now been posted in the Primary Health Centre, Kshirpani Tahsil Pandariya .

(5) Learned counsel for the petitioner would submit that when an employee is suspended from a particular place of posting he retains the lien on the said post, therefore, on revocation of order of suspension the employee is required to be posted at the same place.

(6) 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.

(7) 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 another**[1], 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

1 2005 (4) MPHT 352 (DB)

> confirm the suspension or revoke the suspension. Therefore the second respondent while passing the order dated 6/8-72002, 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.
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> 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 vacanycy 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 K.V., Karimganj, is invalid and liable to be quashed.
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> Emphasis supplied

(8) In the case at hand, on the date of suspension the petitioner was posted as Medical Officer in the Primary Health Centre, Taregaon Jungle and Incharge Block Medical Officer, Community Health Centre, Bodla and her headquarter during the period of suspension was fixed at Community Health Centre, Sahaspur-

Lohara., however, while revoking the suspension order, she has been assigned the new place of posting, which is other than the place of original posting or her headquarter during the period of suspension.

(9) 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.

(10) Accordingly, such part of the impugned order whereby the petitioner has been posted in Primary Health Centre, Kshirpani Tahsil Pandariya, is quashed. However, the respondents would be at liberty to pass fresh order with regard to petitioner's posting depending upon the administrative exigency.

(1). As a sequel, the writ petition is allowed to the extent indicated above. No order as to costs. Sd/-

Judge

Prashant Kumar Mishra

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HEADLINES

While revoking suspension, the employee cannot be posted at a place different that at the place he was posted at the time of suspension.