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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2932 of 2015**

Iliyas Mohammed Sheikh S/o P. M. Sheikh Aged About 58 Years R/o New Shanti Nagar, Raipur, P. S. And Post Raipur, Civil And Revenue District Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, (Chhattisgarh)
2. Engineer-In-Chief, Water Resources Department, Sinhawa Bhawan, Raipur, District Raipur (Chhattisgarh)
3. Chief Engineer, Mahanadi Reservoir Project, Water Resources Department, Raipur, District Raipur (Chhattisgarh)
4. Executive Engineer, Water Management Division No.1, Raipur, District Raipur (Chhattisgarh)

---- Respondent**And****WPS No. 2934 Of 2015**

D. K. Pandey S/o Late S.P. Pandey Aged About 58 Years R/o D - 6, Gayatri Nagar Raipur P.S. & Post Raipur, Civil & Revenue District Raipur Chhattisgarh

---- Petitioner**Vs**

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahandi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur Chhattisgarh
2. Engineer In Chief Water Resources Department, Sinhawa Bhawan, Raipur District Raipur Chhattisgarh
3. Chief Engineer, Mahanadi Reservoir Project Water Resources

Department, Raipur, District Raipur Chhattisgarh

4. Executive Engineer Water Management Division No. 1, Raipur District Raipur Chhattisgarh

---- Respondent

And

WPS No. 2966 Of 2015

Deepak Dev S/o. Late Pradeep Dev Aged About 53 Years R/o. E- 7, Gayatri Nagar, Raipur, P.S. & Post Raipur, Civil And Revenue District Raipur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through : Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. Engineer-In - Chief, Water Resources Department, Sinhawa Bhawan, Raipur, District Raipur (Chhattisgarh)
3. Chief Engineer, Mahanadi Reservoir Project, Water Resources Department, Raipur, District Raipur (Chhattisgarh)
4. Executive Engineer, Water Management Division No.1, Raipur, District Raipur (Chhattisgarh)

---- Respondent

For Petitioners : Shri Manoj Paranjpe, Advocate.
For Respondents : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on :18/08/2015

1. In WPS No.2932/2015, petitioner, Iliyas Mohammed Sheikh, who is working as Sub Engineer in the Water Resource Division No.1, Raipur,

has been posted in the same capacity in the M.R. Phase-II, Division Raipur in the department of Water Resources.

2. In WPS No.2934/2015, petitioner, D.K. Pandey, who is working as Sub Engineer, has been posted from Water Resource Division No.1, Raipur to Water Resource Division, Raipur.
3. In WPS No.2966/2015, petitioner, Deepak Dev, who is working as Sub Engineer in the Water Resource Division No.1, Raipur has been posted from Water Management Division No.1 to Water Resource Division, Raipur.
4. In all the writ petitions, the petitioners have assailed their posting order by raising similar grounds, therefore, they are being disposed of by this common order.
5. Shri Paranjpe, learned counsel for the petitioners would submit that in the present order, the petitioners have been shifted from one division of the Water Resource Department to another division which necessarily requires sending of service book to the new division. Therefore, the order though styled as “Posting” is in effect the order of “Transfer”. However, since the State Government has issued ban on all kinds of transfer of employees holding substantive post of Class-I, Class-II and Class-III (Executive) in the transfer policy of the year 2015-16, the petitioners could not have been transferred. He would submit that the impugned order would refer to the transfer policy of the year 2014-15,

therefore, it would be apparent that the department itself is treating the order as transfer of the petitioners. He would further submit that the order has been issued to facilitate handing over officiating charge of SDO at Water Resource Division No.1 to one Shri Sanat Sharma, who is junior to the petitioners and is blue-eyed boy of the Hon'ble Minister, therefore, the impugned order has been passed in malafide exercise of powers.

6. It is strenuously put forth that the petitioner Iliyas Mohammed Sheikh has preferred another Writ Petition challenging handing over of charge of SDO to Shri Sanat Sharma, in which notices have already been issued, therefore, to overcome the order passed by the State Government whereby it is stipulated that ordinarily junior persons cannot be handed over charge of the office in the presence of senior officer, the impugned order has been passed.
7. Per contra, Shri Thakur, learned Govt. Advocate would submit that in the impugned order the petitioner's place/station of posting is not changed inasmuch as despite the order, the petitioners would remain at Raipur. It is a case of local shifting from one office to another although the office is known by the name division. He would submit that even if there is ban on Class-I, Class-II and Class-III (Executive) employees, the State Government or the head of the Department can always exercise its power to post one employee or officer from one office to another. The impugned order is an order of posting at local level,

therefore, no interference is called for.

8. Having heard learned counsel for the parties at length and on perusal of the documents, it would appear that despite the impugned order having been passed shifting the petitioners from one office to another, the fact remains that all the petitioners would remain at Raipur. Thus, there is no change in their headquarter. Thus, the impugned order cannot be termed as transfer order. Under FR 9 (17) transfer has been defined to mean that the movement of a Government servant from one headquarter station in which he is employed to another such station either (a) to take up the duties of a new post, or (b) in consequence of a change of his headquarters.
9. The plea of malafide viz. a viz. the posting of Shri Sanat Sharma, is very remotely related submission. If on account of posting/ reshuffling of employees available in the department, one or other office is left with some other officer who happens to be junior to anyone or all the petitioners, it does not mean that the entire exercise has been undertaken to favour a particular individual, who is not arrayed as party in these writ petitions.
10. The plea of malafide, in case of this nature, wherein none of the rights of the petitioners are affected, as it is not a case where their service conditions are altered to their detriment, it cannot be examined on mere bald submission that the impugned order is malafide. Similarly, mere

reference to the policy of the year 2014-15 would not vitiate the exercise of power if the authority issuing the order is otherwise empowered to issue posting order of the petitioners.

11. In the case at hand, this Court is not faced with serious service dispute like promotion or disciplinary action. It is a pure and simple case of posting of the petitioners from one office to another. Therefore, this plea need not take more time of this Court than it deserves.

12. The Supreme Court in **P.K. Palanisamy v. N. Arumugham and Another**¹, held thus :-

28. In *Ram Sunder Ram v. Union of India* it was held: (SCC pp. 260-61, para 19)

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.’ (See *N. Mani v. Sangeetha Theatre*, SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

¹ (2009) 9 SCC 173

29. In N. Mani v. Sangeetha Theatre it is stated: (SCC p. 280, para 9)

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

13. Thus it is settled that even if wrong provision or source of power is quoted in an order issued by the Government or authority, the same would not vitiate the exercise if the authority is otherwise empowered under some other statute.

14. For all the aforesaid reasons, this Court does not find any substance in any of the writ petitions, they fail and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve