

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3085 of 2015

- Smt. Kalpana Tiwari W/o V. N. Tiwari, Aged 55 Years Occupation Service, Presently Posted And Working As Upper Division Teacher, Government Boys Middle School, Kaparganj, R/o Near Hardevlal Mandir, Gole Bazar, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of School Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh).
2. Collector, Bilaspur, District- Bilaspur (Chhattisgarh)
3. District Education Officer, Bilaspur, Dist. Bilaspur (Chhattisgarh)
4. Block Education Officer, Bilha, Dist. Bilaspur (Chhattisgarh)
5. Block Education Officer, Kota, Dist. Bilaspur (Chhattisgarh).
6. Chief Executive Officer, Zila Panchayat, Bilaspur, Dist. Bilaspur (Chhattisgarh)
7. Chandrika Prasad Pandey, Upper Division Teacher, Government Middle School, Bandhwapara, Bilaspur, Dist. Bilaspur (Chhattisgarh)

---- Respondents

For Petitioner	Mr. Malay Shrivastava, Advocate
For Respondent/State	Mr. Y.S. Thakur, Dy. A.G.

Hon'ble Shri Justice Prashant Kumar Mishra

CAV Order

25 /08/2015

The petitioner would assail the legality and validity of the order dated 30.07.2015 passed by the Collector, rejecting her representation challenging the transfer order dated 13.08.2014, whereby, she has been transferred from Government Middle School, Kaparganj to Government Middle School, Karehapara.

(2) This is the third writ petition by the petitioner on the same subject. Her first writ petition i.e. W.P.(S) No.4554 of 2014 was disposed of on 3.9.2014, directing consideration of her representation by the competent authority and staying the effect and operation of the transfer order till the representation is decided. The representation was eventually rejected by the Chief Executive Officer, Zila Panchayat, Bilaspur on 10.03.2015, against which, the petitioner preferred W.P.(S) No.1179 of 2015, which was dismissed on 07.04.2015. The petitioner, thereafter, preferred Writ Appeal No.284 of 2015, wherein, the following order was passed on 14.05.2015 by the Division Bench :

“8. We therefore direct the District Magistrate, Bilaspur to examine the grievances of the Appellant, to the limited extent only as directed by us, and pass a reasoned and speaking order. Since the matter relates to transfer which has inherent urgency, the District Magistrate shall pass fresh appropriate orders within a maximum period of 10-14 days from the date of receipt and/or presentation of a copy of this order.”

The present impugned order, thus, being passed pursuant to the direction of the Division Bench of this Court.

(3) Learned counsel would submit that in the first counselling, the petitioner did not participate, therefore, the ground of challenge that male teachers were provided opportunity to participate in the

counselling prior to the petitioner is still available to the petitioner and this has not been considered by the Collector.

(4) In the impugned order, the Collector has specifically mentioned that the petitioner was afforded opportunity to appear ahead of the male teachers in both the counsellings. Nothing is placed before this Court to contradict the said observation made in the impugned order. If the petitioner failed to participate in the first counselling, she is to blame herself. Even otherwise, the place where the petitioner is presently posted under the transfer order is the place chosen by her in the second counselling.

(5) While exercising writ jurisdiction over the matter concerning rationalization and posting of teachers, this Court is not entitled to consider the same as if it is hearing a statutory appeal or a writ petition, wherein, any order having civil consequence has been passed against the petitioner. The matter still retains the character of an administrative order passed by the authorities posting the petitioner to a place which is not a far away place. It is informed that Karehapara is about 25 - 35 kms. from Bilaspur.

(6) It is a trite law that transfer/posting is an incidence of service. The Court should not interfere with the transfer/posting order unless there is malice, infringement of statutory rules and regulations. The employees may be posted anywhere at the instance of the employer in public interest and administrative exigency. Further, it is for the Government to post another person if any vacancy arises on account of transfer/posting of an employee. (See *E.P. Royappa v. State of Tamil Nadu and another*¹, *Shilpi Bose (Mrs.) and others v. State of Bihar & another*²,

¹ 1974 (4) SCC 3

² (1991) Supp 2 SCC 659

*State of M.P. and another v. S.S. Kourv and others*³, *Mohd. Masood Ahmad v. State of U.P. & others*⁴, *Chief Commercial Manager, South Central Railway, Secunderabad & others v. G. Ratnam & others*⁵ and *Airports Authority of India v. Rajeev Ratan Pandey & others*⁶).

(7) Having given anxious thought to the issue brought before this Court, I do not deem it appropriate to entertain the writ petition. The impugned order does not suffer from any malafide or violation of statutory rules nor the same has any adverse affect on any of the service conditions of the petitioner.

(8) Accordingly, the writ petition fails, it deserves to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri

3 (1995) 3 SCC 270

4 (2007) 8 SCC 150

5 (2007) 8 SCC 212

6 (2009) 8 SCC 337