

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3292 of 2015

1. R. N. Divya S/o. P.R. Divya, Aged About 59 Years R/o E-1, Irrigation Colony, Ambikapur, Police Station & Post Ambikapur, Civil And Revenue District Surguja (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, Sihava Bhawan, Civil Lines, Raipur, Civil And Revenue District Raipur (Chhattisgarh)
3. S. K. Pathak, Superintending Engineer, Hasdeo Project Circle, Water Resources Department, Rampur/Korba, Police Station & Post Korba, Civil And Revenue District Korba (Chhattisgarh)

---- Respondent

For Petitioner	Shri Manoj Paranjape, Advocate
For Respondent/State	Shri P.K. Bhaduri, Govt. Advocate
For Respondent No.3	Shri Amrito Das, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

01/10/2015

1. The petitioner, who is Chief Engineer in the Water Resources Department, Ambikapur, would challenge the order dated 3-9-2015 whereby he has been transferred and posted in the

same capacity in the office of the Engineer-in-Chief (for short 'the E-in-C'), Water Resources Department, Raipur.

2. Shri Paranjape, learned counsel for the petitioner, would submit that there is only one post of Chief Engineer at Raipur, against which two Chief Engineers are already working, therefore, there is no vacant post of Chief Engineer at the Headquarter, Raipur. Learned counsel would also submit that the petitioner was posted at Ambikapur in February, 2015, therefore, the impugned order having been passed only within a period of 7 months amounts to frequent transfer and moreover, in his place one Superintending Engineer is assigned the current charge of Chief Engineer at Ambikapur. Learned counsel would next submit that as against 6 regular posts of Chief Engineer throughout the State many posts are officiated by lower rank officers, therefore, the impugned order is arbitrary. Shri Paranjape would lastly submit that the private respondent is not eligible to work as officiating Chief Engineer.
3. Per contra, Shri Bhaduri, learned Govt. Advocate appearing for the State, would submit that the petitioner is holding a super class I post, therefore, such highly placed officers can be transferred at the discretion of the State Government at any time. He would further submit that the impugned order has been

approved in coordination at the level of Hon'ble the Chief Minister, therefore, the existence of administrative exigency is inbuilt and the same is not open to challenge and scrutiny under Article 226 of the Constitution of India. Shri Bhaduri would also produce before this Court a copy of the order dated 8-9-2015, which is taken as part of the record, whereby the petitioner has already been relieved from Ambikapur to join at the transferred place of posting i.e. Raipur.

4. Having heard learned counsel for the parties and having perused the record, it would appear that by the impugned order the petitioner, who is working as Chief Engineer, Ambikapur, has been transferred and posted in the office of the E-in-C, Raipur. The impugned order clearly mentions that the order has been issued on administrative exigency. This Court under Article 226 cannot embark on judicial review to assess whether or not an administrative exigency exists in transferring the petitioner, who is holding the super class I post.
5. Ordinarily highly placed officers should not challenge the transfer orders unless it is violative of any statutory provisions or *mala fide* oozes from the order itself. Merely because some other person has been made In-charge Chief Engineer at Ambikapur, it would not reflect that the order is arbitrary or *mala*

fide. If petitioner's posting from Ambikapur to Raipur, is made on account of existence of administrative exigency, the post fallen vacant at Ambikapur has to be occupied by somebody, may be on officiating basis.

6. There being no allegation that the order has been passed to favour the private respondent nor any pleading or proof of malice in law having been alleged against the respondents, it is not open for the Court to interfere with an administrative transfer.
7. The concept of frequent transfer being itself arbitrary applies to employees in the lower rung of the cadre and not to senior officers unless frequent transfer is coupled with proved *mala fide*.
8. Be that as it may, 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, *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).

9. Petitioner has not raised any such ground which would compel this Court to exercise jurisdiction under Article 226 of the Constitution of India.
10. As a result, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Gowri

1 1974 (4) SCC 3
2 (1991) Supp 2 SCC 659
3 (1995) 3 SCC 270
4 (2007) 8 SCC 150
5 (2007) 8 SCC 212
6 (2009) 8 SCC 337