

C-F-1001



Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR (C.G.)

Writ Petition (S) No. 4162 of 2014

PETITIONER

Kripashankar Prasad son of late
Shri Ram Prasad, aged about 48
years, resident of Quarter No. T-
36/2, M. I.T.I. Colony, Koni,
Police Station-Koni, District-
Bilaspur (C.G.)

P.R.No. WPS-4162/14
Presented by Shri Sunita Jain
dated 11/06/14

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary, Technical
Education, Man Power
Employment, Science and
Praudhyogiki Department,
Mahanadi Bhawan, Mantralaya,
New Raipur (C.G.)
2. The Deputy Secretary, Technical
Education, Man Power
Employment, Science and
Praudhyogiki Department,
Government of Chhattisgarh,
Mahanadi Bhawan, Mantralaya,
New Raipur (C.G.)
3. The Director, Directorate
Employment and Training,
Women Polytechnic Premises,
Baron Bazar, Raipur (C.G.)
4. The Principal, Government
Industrial Training Institute,
Koni, District-Bilaspur (C.G.)
5. Banshilal Kashyap, posted as
Training Officer (Hindi
Language), Industrial Training
Institute, Bastar, District-Bastar
(C.G.)
6. Transfer Examination
Committee, through the
Chairman, Government of
Chhattisgarh, Mahanadi



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Bhawan, Mantralaya, New
Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition (S) No. 4162 of 2014

PETITIONER

Kripashankar Prasad

VERSUS

RESPONDENTS

State of Chhattisgarh and others

Shri Prateek Sharma, counsel for the petitioner.

Shri Shashank Thakur, Govt. Advocate. for the
State.

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

ORDER
(10.02.2015)

Vide order dated 10.07.2014 the petitioner who is working as Training Officer in Industrial Training Institute, Koni, Bilaspur has been transferred to Industrial Training Institute, Bastar as reliever of respondent No.5.

2. The aforesaid order was assailed by the petitioner before this Court in Writ Petition (S) No.3284 of 2014. The said writ petition is disposed of by this Court on 17.07.2014 holding that the transfer is an incidence of service and in view of various pronouncements of the Apex Court the same cannot be interfered with. However, while disposing of the writ petition liberty was

granted to the petitioner to file representation before the competent authority of the respondents and the competent authority was directed to decide the same within four weeks and interim protection was also granted for a period of four weeks.

3. According to the petitioner, as per the transfer policy itself the competent authority is the Transfer Examination Committee constituted by the State of Chhattisgarh and therefore, the petitioner filed the representation before the said committee on 24.07.2014 vide Annexure P-5, giving a copy of the same to the Secretary of the Department. Before the Committee could decide the representation of the petitioner, the same has been decided by the Secretary of the concerned department i.e. Technical Education Department on 04.08.2014 (Annexure-P/2). It is this order and the original transfer order dated 10.07.2014, which have been challenged by the petitioner in the instant writ petition.

4. Counsel for the petitioner submits that once there was a specific direction to the petitioner to file representation before the competent authority and he filed the same before the Transfer Examination Committee duly constituted by the State of Chhattisgarh under the transfer policy itself, the representation ought to have been decided by the said committee. He submits that though a copy of the representation has been given to the Secretary of the Department, but in all fairness the Secretary

should have waited for the decision of the Committee before rejecting the representation of the petitioner.

5. Replying to the arguments advanced by counsel for the petitioner, it has been argued by the State Counsel that the Secretary of the Department is the highest authority and he has rightly decided the representation of the petitioner. He submits that letter dated 04.08.2014 (Annexure-P/2) issued by Deputy Secretary is merely a communication of the order of the Secretary by which the representation of the petitioner has been decided.

6. While referring to Annexure- R/1 an attempt has been made by the State counsel that after due consideration the representation of the petitioner has been decided by the Secretary. Further relying upon Annexure- R/2 i.e. supplementary transfer policy of the State Government dated 21.07.2014, it has been argued by the State counsel that the Secretary was competent to consider the representations of 5% of the transfers made in a particular year and thus, even if the representation has not been considered by the Committee it hardly makes any difference. He further argues that subsequently on 11.12.2014 vide Annexure D-2 while considering the representation of the petitioner, it has been observed by the Committee that as per order dated 17.07.2014 of this Court the competent authority was

directed to decide the representation and therefore the Secretary, Technical Education Department to decide the representation and as such, there was no need to decide the representation by the Committee.

7. Heard counsel for the parties and perused the documents available on record.

8. While disposing of the Writ Petition (S) No.3284 of 2014, this Court had directed the petitioner to file representation before the Competent Authority. As per the transfer policy, the Competent Authority is the Transfer Examination Committee duly constituted by the State Government under transfer policy itself. Once the petitioner has made his representation to the Committee, it could have decided the same. Though it has been submitted by the State Counsel that the representation of the petitioner has been decided by the highest authority *i.e.* the Secretary of the Department, but no such order has been filed by the State and only the document which is on record is the letter dated 04.08.2014 issued by the Deputy Secretary addressed to the petitioner. From the said letter, it appears that it is nothing but a communication issued by the Deputy Secretary informing the petitioner that his representation has been decided.

9. The order dated 11.12.2014 of the Committee (Annexure D-2) reveals that the Committee has not decided the

representation of the petitioner. Though there may be some substance in the argument of the State counsel that once the representation of the petitioner has been rejected by the Secretary of the Department, even if it has not been considered by the Committee it hardly makes any difference, but considering the fact that the State Government itself has constituted the Transfer Examination Committee for considering the representations of the employees, in all fairness it is the Committee which should have decided the representation of the petitioner. The order dated 11.12.2014 of the Committee further reveals that the opinion of the Department was sought but as the same was not given to the Committee, the Committee refrain itself from deciding the same.

10. Considering all the facts and circumstances of the case, the Transfer Examination Committee is directed to decide the representation (Annexure-P/5) of the petitioner afresh without being influenced by any further order passed by the Department. The petitioner is directed to submit a copy of the writ petition along with annexures and the present order before the Committee within a week from today and on that being done, it is expected of the Committee to pass appropriate orders on the representation of the petitioner, within three weeks there-from. It is further directed that till four weeks from today the petitioner shall be allowed to continue in his present place of posting.



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11. This Court has not commented on the merits of the case and the Committee would be free to decide the representation of the petitioner on its own merits, in accordance with law

Sd/-
Pritinker Diwaker
Judge

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13/06/2011

