

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION [S] NO. 4260 /2014

PETITIONER:

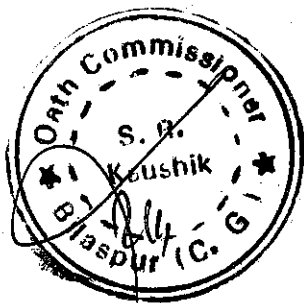
Ravindra Gendle, son of Shri A.S. Gendle, aged about 30 years, Occupation-Service, Posted as Drug Inspector, office of the Dy. Director, Food & Drug Administration, Bilaspur, resident of Qtr. No.90; Gitanjali Nagar, Uslapur, Bilaspur.

Civil & Revenue District Bilaspur

Vs

RESPONDENTS:

1. State of Chhattisgarh Through: the Secretary, Department of Medical Education, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur.
2. Deputy Director, Food & Drugs Administration, Mahasamund, Dist. Mahasamund.
3. Deputy Director, Food & Drugs Administration, Bilaspur, Dist. Bilaspur.
4. Rajesh Kshatri, Drug Inspector, Office of the Deputy Director, Food & Drugs Administration, Mahasamund.



Shailendra Shukla

(2) 6

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA



114

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition (S) No. 4260 of 2014

PETITIONER

Ravindra Gendle

VERSUS

RESPONDENTS

State of Chhattisgarh and others

Dr. N.K. Shukla Sr counsel with Shri Shailendra Shukla Adv. for the petitioner.

Shri Prasoon Bhaduri GA for respondents No. 1 to 3.

Shri B.P. Sharma and Shri Sameer Uraon counsel for respondent No. 4.

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

ORDER
(06.01.2015)

Vide order dated 15.7.2014 (Annexure P-2) passed by the State Government the petitioner who is working as Drug Inspector was transferred from District Mahasamund to District Bilaspur. By the same order respondent No.4 was also transferred from District Bilaspur to District Mahasamund. On 31.7.2014 another order (Annexure P-1) was issued by the same authority cancelling/modifying the earlier order dated 15.7.2014 (Annexure P-2). As per this order the petitioner has again been posted at District Mahasamund whereas respondent No.4 has been posted at District Bilaspur. It is this order dated 31.7.2014 which is under challenge in this petition.

2. Counsel for the petitioner submits as under:

(i) that after passing of the order dated 15.7.2014, on 1.8.2014 vide Annexure P-4 the petitioner was relieved from District Mahasamund and he gave his joining on the same day at Bilaspur District and that once the transfer order dated 15.7.2014 has been executed, same cannot be modified/cancelled by passing the subsequent order dated 31.7.2014 (Annexure P-1).

(ii) In the rejoinder it has been stated by the petitioner that he is resident of Lormi (Mungeli Tehsil) and with effect from 15.8.2012 Mungeli District has been carved out from District Bilaspur and thus Bilaspur no more remains the home district of the petitioner. Information to this effect was also given by the petitioner on 16.6.2014 vide Annexure P-6 to the Accounts Officer, Food and Drug Administration, Raipur.

(iii) According to the counsel for the petitioner, in number of cases the persons have been posted in home districts which is evident from document of Annexure P-7. He submits that petitioner is not at all involved in the recent mishap taken place in Bilaspur District in which about 15 women died on account of sterilization operations.

(iv) Counsel for the petitioner submits that respondent No.4 had filed Writ Petition (S) 4521/2014 challenging the

order of the Deputy Director, Food and Drug Administration by which he was asked to hand over the charge to the petitioner and the said writ petition has already been dismissed by this Court.

3. Case of the State Government is that home district of the petitioner is Bilaspur but by mistake he was transferred to that district and when the said mistake came into the notice the State Government, order impugned dated 31.7.2014 (Annexure P-1) has been passed rectifying the said error. According to the State counsel, the State Government was fully empowered to rectify its mistake occurred while issuing the order dated 15.7.2014. He submits that the petitioner had not informed the competent authority regarding change of the home district and being so the order dated 31.7.2014 (Annexure P-1) is in accordance with law. Counsel for the State further submits that the appointment order of the petitioner was issued by the Controller, Food and Drug Administration and if the petitioner wanted to take the advantage of the home district, he should have informed the same to him immediately so that a correct entry could have been made in his service book. State counsel submits that unless the service book of the petitioner is corrected, he cannot draw any benefit of formation of District Mungeli. He submits that letter dated 16.6.2014 (Annexure P-6) has been addressed to Accounts Officer which is in relation to publication of seniority list and it has



117

4

nothing to do with the change of home district of the petitioner. According to the State counsel, being the Drug Inspector the role of the petitioner in the recent mishap of Bilaspur District where about 15 women lost their lives, is under investigation. He however submits that being the in-charge of Drug Store of CMHO the petitioner cannot escape the liability of the said mishap. State counsel further submits that the petitioner gave his joining at Bilaspur on 1.8.2014 and before that on 31.7.2014 the order impugned was issued modifying the place of transfer of the petitioner and the respondent No.4. According to him, the transfer is an incidence of service which the Government can always do keeping in mind the administrative exigency and therefore the modification/cancellation of earlier order resorted to by order impugned is fully justified.

4. While adopting the arguments of the State Government it has been submitted on behalf of respondent No.4 that even till date he is working in Bilaspur district under the authority of Deputy Director, Food and Drug Administration. Referring to document of Annexure – B filed along with the application dated 24.12.2014 (IA No.5) it has been argued that Deputy Director, Food and Drug Administration, Bilaspur had passed an order on 4.9.2014 directing respondent No.4 to work under the said authority.

5. Heard counsel for the parties and perused the documents

on record.

6. Though the order impugned (Annexure P-1) has been issued on 31.7.2014 but from the seal affixed thereon it appears that the said order was received by the office at Mahasamund on 12.8.2014 and much before that i.e. on 1.8.2014 the petitioner was relieved from there and joined on the same day in Bilaspur district. Thus for getting himself relieved from the Mahasamund and joined at Bilaspur the petitioner cannot be blamed. In other words, it can be said that the transfer order (Annexure P-2) was executed by the petitioner on 1.8.2014. In number of cases though it has been held by this Court that executed transfer order cannot be cancelled/modified, it does not mean that a fresh transfer order cannot be issued. The stand of the State Government that transfer order dated 15.7.2014 was issued by mistake and the petitioner being a resident of Bilaspur district could not have been posted there, appears to be fully justified. Record shows that Mungeli district was carved out from Bilaspur district on 15.8.2012 and thus for all practical purposes it can be said that now the home district of the petitioner is Mungeli and not Bilaspur. However, unless record of the State Government is corrected, it was fully justified in treating the home district of the petitioner as Bilaspur. If home district of the petitioner has changed, it was the duty of the petitioner to inform the competent authority for making correction in his service book and this could

have been done by him by making appropriate application before the Controller, Food and Drug Administration which happens to be his appointing authority. Annexure P-6 filed by the petitioner is of no help to him because this has been addressed to the Accounts Officer and that too in relation to certain entries made in the gradation list. Subject matter of Annexure P-6 also makes it clear that the same was in respect of the gradation list and not for correction of home district in his service book/record.

7. Yet another point which is required to be taken note of is the additional affidavit dated 10.12.2014 of the OIC of the case wherein it is stated that role of the petitioner in the recent mishap where about 15 women died after sterilization operation in Bilaspur district, is very much there as at the relevant time he was the in-charge of Drug Store of CMHO Bilaspur. Of course, this is one of the serious issues but this Court refrains itself from passing any comment because the matter is already being investigated by the State authorities.

8. So far as the writ petition No. 4521/2014 filed by respondent No.4 is concerned, the same has no bearing in the present case because after dismissal of the said petition the petitioner has already taken over the charge of the post of Drug Inspector, Bilaspur and respondent No.4 is working in the office of Deputy Director, Food and Drug Administration, Mahasamund.



120

9. Thus considering the facts and circumstances of the case and keeping in mind the fact that the transfer order dated 15.7.2014 has already been carried out by the petitioner as he had joined at Bilaspur in pursuance of the same, the order impugned dated 31.7.2014 (Annexure P-1) is liable to be quashed and it is done accordingly. However, looking to the fact that in the official record the home district of the petitioner is still Bilaspur and an unfortunate incident took place leading to the death of about 15 women after sterilization operation where the petitioner was posted as Drug Inspector, liberty is given to the State Government to pass a fresh order in respect of the petitioner and respondent No.4 if required in the administrative exigency.

10. Petition is accordingly allowed.

**Sd/-
Pritinker Diwaker
Judge**

[Handwritten signature]