

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2905 of 2015

- Banshi Lal Kashyap S/o Late Shri Rameshwar Singh, Aged About 39 years R/o Village Dahkoni, Post Rasouta, Tahsil Baloda, Distt. Janjgir- Champa (Chhattisgarh), Present Address Quarter No. G-01, Govt. Industrial Training Institute Bastar, Distt. Bastar, (Chhattisgarh)

---- Petitioner

Versus

- State of Chhattisgarh Through The Secretary, Technical Education, Man Power Employment, Science and Technology Department, Mantralaya, Mahanadi Bhawan, Raipur, (Chhattisgarh)
- The Deputy Secretary, Technical Education, Man Power Employment, Science and Technology Department, Mantralaya, Mahanadi Bhawan, Raipur, (Chhattisgarh)
- The Commissioner- Cum- Director, Directorate of Employment & Training, Indrawati Bhawan First Floor, Block No.4, New Raipur, (Chhattisgarh)
- The Joint Director (Training) Industrial Training Institutes, Regional Office Bastar Area Jagdalpur, Distt. Bastar, (Chhattisgarh)
- The Collector, Jagdalpur, Distt. Bastar, (Chhattisgarh)
- The Principal, Govt. Industrial Training Institute Bastar, Distt. Bastar (Chhattisgarh)
- Kripashankar Prasad S/o Late Shri Ram Prasad, Aged About 48 Years R/o Quarter No. T- 36/2, M. I T I Colony, Koni, Police Station Koni, Distt. Bilaspur, (Chhattisgarh)

---- Respondent

For Petitioner

Mr. Rishi Rahul Soni, Advocate

For Respondent/State

Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/08/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner has preferred this writ petition seeking a direction to the respondents to comply the order dated 10.07.2014 (Annexure P/1), whereby, the petitioner, who is working on the post of Training Officer (Hindi), has been transferred from I.T.I., Bastar to I.T.I. (Women), Koni, District Bilaspur.

(3) Mr. Soni, learned counsel for the petitioner would submit that the petitioner is not relieved for the reason that Bastar is a scheduled area, where-from, a transferred employee is not relieved unless the reliever is available. He would submit that in the matter of **Smt. Mayanka Upadhyay vs. State of Chhattisgarh** and others (W.P.(S) No.5913 of 2014 decided on 02.03.2015), this Court has already concluded that non-relieving of a transferred employee from a scheduled area to a non-scheduled area on the ground of non-availability of reliever is illegal. He would submit that the said judgment squarely applies in the facts situation of the present case, therefore, a direction deserves to be issued to the respondents.

(4) Per contra, Mr. Bhaduri, learned Government Advocate, would submit that on 29.07.2015, the Joint Director (Training), I.T.I., Regional Office, Bastar, has passed an order posting the petitioner as Training Officer of the new I.T.I. to be opened at Darbha District Bastar, therefore, because of the said administrative exigency, now the petitioner's relieving is not possible.

(5) The order – Annexure P/14 passed by the Joint Director (Training), I.T.I., Regional Office, Bastar, posting the petitioner at the

new I.T.I., Darbha is an exercise only on account of the fact that the petitioner is compelled to remain at Bastar contrary to the State Government's order transferring him to Koni.

(6) In the considered opinion of this Court, if the State Government was of the opinion that posting of the petitioner in the scheduled area is required in administrative exigency, the Government should not have issued the transfer order. Even if some fresh administrative exigency has arisen after issuance of the transfer order, the Government was still competent to cancel the transfer order. It is a matter of common knowledge that decision of opening an I.T.I. at a particular place cannot be taken overnight. There has to be some proposal with sufficient budgetary provision for opening an institution like I.T.I., therefore, it is not possible that the State Government was not aware that I.T.I. at Darbha is to be opened in near future. If this was within the knowledge of the State Government and yet the petitioner has been transferred from Bastar to Koni, the State Government should blame itself for the exercise rather than compelling the petitioner to work at Bastar despite there being an order in his favour acceding his request for transfer from Bastar to Koni.

(7) The law laid down by this Court in **Smt. Mayanka Upadhyay** (supra) squarely applies in the facts circumstances of the case. Therefore, the writ petition is allowed at the motion stage itself. It is directed that the petitioner be relieved forthwith from I.T.I., Bastar so as to enable him to join at I.T.I. (Women), Koni, Bilaspur.

Sd/-
Judge

(Prashant Kumar Mishra)