

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.312 of 2015**

Smt. Jasmine Raj Singh W/o late P.R. Singh, aged about 41 years,
R/o Jal Vihar Colony, Lal Bahadur Shashtri Ward, Bhatapara
District Baloda Bazar-Bhatapara.

---- Appellant

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, New Mantralaya, New Raipur, Chhattisgarh.
2. District Education Officer, Balodabazar Bhatapara, Chhattisgarh.
3. H.S. Bedi, Block Education Officer, Block Balodabazar Bhatapara, Chhattisgarh.
4. Principal Government Higher Secondary School, Tarenga Block Bhatapara, district Bhatapara Baloda Bazar, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Varun Sharma, Advocate.
For Respondent/ State	:	Shri U.N.S. Deo, Government Advocate.

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Judgment on Board**Per NAVIN SINHA, C.J.****25/6/2015**

1. The present appeal arises from order dated 8.5.2015 dismissing Writ Petition (S) No. 1785 of 2015 challenging the order of the Transfer Committee dated 2.5.2015, rejecting his representation.

2. Learned Counsel for the Appellant submits that in Writ Petition (S) No. 932 of 2015 filed by him earlier, the Court had granted liberty to represent before the competent authority. The representation has not been considered properly. The transfer committee has made no application of mind and has only acted at the behest of the report

submitted by the concerned administrative department which had ordered transfer. It is next submitted that the order of the Transfer Committee dated 2.5.2015 reflects that it was swayed by the fact that there were serious allegations against the Appellant and with regard to the same a preliminary enquiry been held. All this was done *ex parte* without any opportunity of defence to the Appellant. The transfer is therefore punitive.

3. Learned Counsel for the State submitted that this Court in Writ Petition (S) No. 932 of 2015 had declined to interfere on merits. The writ application was withdrawn to represent before the authorities. Any fresh order on the representation will not create a cause of action. The representation has been considered. The order dated 2.5.2015 reflects that the approval of the Chief Minister had also been obtained.

4. We have considered the submissions and have also gone through the order in Writ Petition (S) No. 932 of 2015.

5. Transfer and postings are normal incidence of service. Judicial restraint is called for in transfer orders passed by the administrator which must not be lightly interfered with. Unless there is violation of statutory rules or a clear case of *mala fide* is made out, there is loss of status or rank, reduction in pay, the Court must not interfere with the administrative discretion in such matters. Even if any administrative circular has been violated in ordering transfer order, the government servant is first required to join the transferred place of posting and then represent. Deviation from such circulars for administrative purpose is also inherent. In (2004) 11 SCC 402 (State of U.P. v. Gobardhan Lal) it was observed as follows:

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown

to be an outcome of a *mala fide* exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by *mala fides* or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of *mala fides* when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

6. This Court in Writ Petition (S) No. 932 of 2015 had declined to entertain the challenge to the order for transfer dated 16.3.2015 on merits. It is a common practice that when the litigant is unable to persuade the Court to interfere with the order under challenge, rather than to invite an adverse verdict against itself, the party prefers to withdraw the writ application to pursue other remedies including filing of a representation. The Courts normally grant that liberty. After the representation is filed, if relief is granted, so much better for the party. But, if the representation is rejected, it does not vest a fresh cause of action which stood extinguished on the first date when the writ application was declined to be entertained on merits. The past practice of passing such orders declining interference

on merits, giving observations to represent and then entertaining a fresh challenge on the order passed on the representation came to be considered in (2008) 10 SCC 115, (C. Jacob Vs. Director of Geology and Mining and another) observed as follows:

“8.Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/ petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/ tribunals proceed on the assumption, that every citizens deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/ writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/ High Courts routinely entertain such applications/ petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

11. When a direction is issued by a court/ tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action.”

7. The second contention that the Transfer Committee in its order dated 2.5.2015 has observed that there were complaints against the Appellant which made the order of transfer punitive without an opportunity

of defence, also does not appeal to us. From the discussion contained in paragraph 6 of the order it is apparent that this was considered purely as a matter in administrative exigency for the purposes of transfer only. We clarify that these observations cannot be considered or construed as opinion or finding adverse to the Appellant for any other service purpose whatsoever unless and until a proper enquiry is held in accordance with law granting due opportunity of defence to the Appellant and a finding is arrived at. The fact that in every such situation if a detailed enquiry is mandated, administration itself may become impossible fell for consideration in (2004) 4 SCC 245 (Union of India and Others vs. Janardhan Debanath and Another) observing as follows:

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs”.

8. We, therefore, find no merit in the appeal.

9. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE