

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 461 of 2017

Dr. Pushpa Sontake W/o Rajesh Sontake, Aged About 43 Years Presently Working As Medical Officer At Primary Health Center, Bangoli, Block Tilda, Distt. Raipur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Health And Family Welfare Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur, (Chhattisgarh)
2. The Under Secretary, Health And Family Welfare Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur, (Chhattisgarh)
3. The Collector, Raipur, Distt. Raipur, (Chhattisgarh)
4. The Chief Medical & Health Officer, Raipur, Old Nurses Hostel, D K S Bhawan Premises Raipur, Distt. Raipur, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Sunil Sahu, Advocate
For State	:	Shri R.K. Gupta, Dy. Advocate General

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/01/2017

Heard on admission.

1. The transfer order dated 1.10.2016 (Annexure P-1) has been challenged by the petitioner on the ground of violation of Govt. Policy dated 26.3.2014 by which attachment beyond a particular period has been banned.
2. Learned counsel for the petitioner submits that the Chief Medical and Health Officer (CMHO) under the instructions of the Collector has passed the impugned order by which the petitioner has been transferred from Primary Health Center (PHC), Bangoli to Community Health Centre, Kharora. It is submitted that this is an order of attachment because the petitioner has been

asked to work at the new place of posting. The Collector and Chief Medical and Health Officer did not have the jurisdiction to pass this kind of attachment order without any limitation of time. It is submitted that as per policy dated 26.3.2014, an attachment beyond seven days could be done only by the Officer of the divisional level and if this attachment is required necessary beyond 15 days, it could be done only by the State Government.

3. On the other hand, at the outset, learned counsel for the State draws attention of this Court to the order dated 1.10.2016 which shows that the arrangement of posting has been done in the meeting dated 3.8.2016 under the chairmanship of the Secretary of the Health Department.
4. This by itself shows that the order has not been passed on the basis of any decision taken at the level of the CMHO or by the Collector but in a meeting held by the Secretary of the Department. That means the order of posting of the petitioner is as per the decision taken in a meeting chaired by the Secretary of the Department. Therefore, there does not appear to be any violation of the policy dated 26.3.2014. In any case, the violation of the guidelines of transfer and posting, by itself, is not enforceable in Law unless it results in any illegality or has an outcome of malice or any grave or demonstrably prejudicial to administrative exigency of public interest.

Though it has been argued that on account of shifting of the petitioner from PHC- Mangoli to CHC Kharora, no doctors would be left at PHC, Mangoli, it is for the respondents to decide, in a given situation, whether it would be preferable in administrative exigency, to continue posting of a Doctor in a CHC than in a PHC. The PHC, by its common knowledge, are under a limited area, whereas CHC caters the need of a larger territory which may include many PHC. Be that as it may, it is, essentially, the matter of administrative consideration and it is not for the writ Court to dwell into these aspects. In the absence of any illegality, malafide or any other grounds made out for interference, this Court is not inclined to interfere with the transfer order.

5. The petition is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge