

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1504 of 2017

- Jermina Kindo W/o Y Kindo Aged About 45 Years R/o Ring Raod, Namnakala, Ambikapur, District Surguja, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through: Secretary, Tribal And Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
2. Director, Public Instruction, Directorate, Raipur, District Raipur, Chhattisgarh
3. Collector, Ambikapur, Surguja, District Surguja, Chhattisgarh
4. District Education Officer, Ambikapur, Surguja, District Surguja, Chhattisgarh

---- Respondent

For Petitioner	Mr. Manoj Paranjpe, Advocate
For Respondent /State	Mr. S.P. Kale, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

29/3/2017

1. Heard.
2. The petitioner would call in question the order passed by the

District Education Officer, Ambikapur, District Sarguja, whereby, she has been posted in the same capacity from Government Boys Higher Secondary School, Darima, District Surguja to Government Higher Secondary School, Bataikela, Block Batauli, District Sarguja. The assail is made on the ground that in the garb of posting, the District Education Officer has transferred the petitioner to a place about 50 kms away, even though the officer has no power to pass such transfer order under the extant Transfer Policy. It is also argued that the impugned order is stigmatic or punitive as it refers to negligence and irregularity committed by the petitioner, for which, no enquiry has yet been initiated. It is further put-forth that the District Education Officer is neither the Controlling nor Disciplinary Authority of the petitioner, therefore, he should not have passed the impugned order. Reliance is place on the judgment passed by the Supreme Court in the matter of **Somesh Tiwari Vs. Union of India and others, (2009) 2 SCC 592** .

3. Per contra, Mr. S.P. Kale, learned Dy. AG for the State, would submit that the order only refers to an enquiry in contemplation, however, the order is neither stigmatic nor punitive having not imposed any such punishment on the petitioner. He would submit that the order has been issued on approval by the Collector and it is posting within District, therefore, the Transfer Policy has no application.
4. In **Somesh Tiwari (supra)**, the Supreme Court was dealing with the transfer order made against the petitioner therein on the

basis of enquiry made on an anonymous complaint, however, in the case at hand, there appears *prima facie* material before the District Level Administrative Head of the concerned Department and the reference of a contemplated departmental enquiry is made in the order to demonstrate the acute and compelling administrative exigency and not for any other reason.

5. If the petitioner has not been served with any show cause notice or an enquiry has not been constituted against her, she should have no grievance at this stage. In any case, that is a different subject matter, but if the District Level Administrative Head, who is in control of the affairs of the Department within the District, is of *prima facie* opinion that there is some allegation of negligence and irregularities committed by the petitioner, which appears to be in the nature of financial irregularity concerning scholarship for the Assessment Year 2015-2016, reference to such irregularity is neither extraneous nor misplaced. The order itself refers to posting within the District and has not used the word "transfer".
6. In an ordinary situation, when an employee is simply posted to some other place without there being any foundational facts, there may be a case of passing a transfer order in the garb of posting, but when the foundational facts are available, which supports the action to be in administrative exigency, it is not a case of transfer, but is a case of simple posting. Even otherwise, the petitioner having been posted in the present place of

posting in the year 2013, has already completed more than ordinary tenure of 3 years, therefore, since the impugned order itself is neither punitive nor stigmatic, no interference is warranted in the said order.

7. The writ petition is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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