

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 127 of 2017**

Pyarelal Sahu S/o Late Shri Ramsingh Sahu, aged 59 years, R/o R.K.Nagar, Ward No. 45, In front of Police Training School, Behind Dipika Vidya Mandir, Rajnandgaon, District Rajnandgaon, (Chhattisgarh).

---- Appellant**Versus**

1. State of Chhattisgarh, through the Secretary, School Education Department, Ministry, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. The District Education Officer, Rajnandgaon, Post Rajnandgaon, PS Rajnandgaon, District Rajnandgaon, Chhattisgarh.
3. Mr. Kishore Kumar Mehara, Lecturer, Government Women Physical Education Training College, Pendra, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Alok Dewangan, Advocate
For Respondents/State	: Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P Sam Koshy, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****19/04/2017**

1. We have heard the learned counsel for the Appellant who is the writ petitioner. We have also heard the learned Deputy Advocate General.
2. The Appellant challenged the transfer order dated 30.07.2016. He had raised three grounds of attack. The first was that the Minister of the Department had not seen and issued orders in conformity with the

requirement of clause 2.2 of the transfer policy. This was found against by the learned Single Judge after adverting to the undisputed photocopies of the relevant pages of the note file. Incidentally, the discrepancy in the Note file was also explained by the learned Single Judge going by the chronology of the events that followed by the so called over-writing. The second issue sought to be raised was that the transfer is made in excess of the permissible 15% quota. The learned Single Judge, has quite rightly held that such a plea cannot stand when the matter is essentially in the realm of the transfer policy and relates to exigencies of service and administrative requirements. There is no rule of percentage relating to transfers which can be understood as a condition of service which can be made the subject matter of a legal right to sue as against an order of transfer. Thirdly, the Appellant contended before the learned Single Judge that the transfer order is actuated by malice and is a malafide exercise of administrative powers merely to provide opportunity to the 3rd Respondent to come back to the station of his choice. The learned Single Judge found that the said plea is omnibus and vague. Such a plea ought to be specific on facts and material particulars. The finding in that regard in the impugned judgment stands. Such a plea can never be countenanced from the Petitioner who himself has served in one station for more than three years. It is for this reason also, that the learned Single Judge has refuted the plea in that regard.

3. Before parting, we may place on record our utmost dissatisfaction in the manner in which the Petitioner has asserted on affidavit before the learned Single Judge that the orders of the Minister were not obtained. The superfluous statement that enquiry was made in the office of the Government and somebody in the hierarchy had told him that the Minister has not seen or passed the order is insufficient to start adjudication

process on the allegation that the Minister had not passed the orders. Government servants are not expected to make allegations without being sure that those allegations would stand scrutiny of cross-check, if needed by cross-examination, regarding contents of the affidavit. The learned Single Judge having found that the Minister had in fact seen the file and had also passed the order, it is abundantly a fit case where we would have considered directing initiation of proceedings in criminal jurisdiction or at least by awarding exemplary costs against the Appellant, who continues to be a government servant after having levied such a challenge in writ jurisdiction. Yet, acceding to the very persuasive request of the learned counsel for the Appellant, we dissuade from doing so; also because we hereby decline to interfere with the order of costs imposed by the learned Single Judge, which again is a discretionary matter.

4. In the result, the writ appeal fails and it is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE