

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5358 of 2016**

- Budhram Dewangan S/o Ratan Lal Dewangan, Aged About 52 Years
Post Amin, R/o Village Birra, Police Station And Tahsil Champa, District
Janjgir Champa (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Water
Resources, Mahanadi Bhavan Mantralaya, New Raipur (Chhattisgarh)
2. Chief Engineer, Minimata (Hasdev) Bango Project, Bilaspur
(Chhattisgarh)
3. Executive Engineer, Hasdev Canal Water Management Division, Janjgir,
District Janjgir Champa (Chhattisgarh)

---- Respondents

And**WPS No.5394 Of 2016**

- Prahlad Prasad Dadsena S/o Sonau Ram Dadsena, Aged About 56
Years Post Amin Osted At Office Of Land Acquisition, Hasdev Project,
Janjgir, R/o Village Birra, Police Stiaton And Tahsil Champa, Distirct
Janjgir Champa Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department, Of Water
Resources Mahanadi Bhavan Mantralaya, New Raipur Chhattisgarh
2. Chief Engineer, Minimata Hasdeo Bango Project, Bilaspur Chhattisgarh
3. Collector, Janjgir Champa, Distirct Janjgir Champa Chhattisgarh

---- Respondents

For Petitioners	:	Shri Ravindra Sharma, Advocate
For Respondent/State	:	Shri R. K. Gupta, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board**

23/02/2017

The aforesaid two petitions i.e. W.P.(S)No.5358 & 5394 of 2016 are being disposed off by a common order as both the petitioners are similarly situated and have challenged the common order dated 16-09-2016, by which, they have been attached to work in a project.

2. Both the petitioners namely Budhram Dewangan and Prahlad Prasad Dadsena substantively hold the post of Amin in the Department of Water Resources and posted at Village Birra, District Janjgir-Champa under the Executive Engineer, Canal Water Management Division, Janjgir. The petitioners have assailed order dated 16-09-2016 passed by the Chief Engineer, Minimata (Hasdeo) Bango Project, Bilaspur, by which, both the petitioners have been transferred from the jurisdiction of Executive Engineer, Canal Water Management Division, Janjgir to the jurisdiction of Executive Engineer, Kelo Project Construction Division, Lakha.

3. Learned counsel for the respective petitioner argued that by the impugned order dated 16-09-2016, the petitioners have been attached under the jurisdiction of another Executive Engineer without there being any post of Amin to accommodate them. According to learned counsel for the petitioner, the impugned order amounts to attachment, because there is no post to accommodate the petitioners at the new place, where they are being transferred. Therefore, this kind of attachment is prohibited under GAD circular dated 04-06-2001 (Annexure P/3). Next submission of learned counsel for the petitioner is that the impugned order could not be passed, because after the transfer season was over, as per transfer policy dated 11-06-2016, there is ban on transfer and therefore, in the garb of attachment, the petitioners have been transferred without there being any post to accommodate them. Further

submission is that the petitioners case are not covered by Clause 4 of the Transfer Policy, which provides exemption from transfer and posting during ban period. Lastly, it is submitted that during ban period, the petitioners could be transferred only under the procedure of coordination, which has not been followed.

4. On the other hand, learned State counsel opposed the relief sought in the petition on the submission that shifting of the petitioners is due to administrative exigency because the petitioners services were required in a project. According to him, even if, there is no post to accommodate them, in exigency of service, the petitioners could always be asked to work at any other place, whether it is transfer or attachment. Learned State counsel further submits that under the provisions of the PWD Manual, the Chief Engineer is empowered to make such transfer from one place to other place within his jurisdiction.

5. In this case, when the State came out with the stand that the Chief Engineer has power to transfer and post the employee from one place to other place, the State counsel was directed to seek clear instructions as to whether the Chief Engineer has power to transfer during ban period from one office to another office under the provisions of PWD Manual without there being any post to accommodate the officer. But, on this aspect, no specific affidavit has been filed. This Court also required to explain as to whether the petitioners could be attached at any place during ban period on the ground that their services are required, because circular dated 04-06-2001, which prohibits attachment, makes no such exception. On this aspect also, no specific affidavit has been filed.

6. It is not in dispute that the petitioners are being transferred from the jurisdiction of the Executive Engineer, Canal Water Management Division,

Janjgir to the jurisdiction of Executive Engineer, Kelo Project Construction Division, Lakha, District Raigarh, because the project where the petitioners are being sought to be shifted is in Raigarh District, that means shifting of the petitioners from one district to another district.

7. Learned State counsel could not dispute that the place where the petitioners are being shifted, there is no post of Amin to accommodate them. There is nothing in the return that the place where the petitioners are being shifted, there is vacant post of Amin or there is any other higher post where the petitioners are being allowed to join.

If that be the factual position on record, it clearly amounts to attachment. Transfer involves movement of an employee, who is working against the sanctioned vacant post of any cadre to sanctioned post of either own cadre or outside his cadre or his posting on any other vacant post, which is either equivalent or higher post. Therefore, it is clear that the impugned order seeks to attach the petitioners in the office of Executive Engineer, Kelo Project Construction Division, Lakha, Raigarh, without there being any sanctioned post of Amin.

8. Otherwise also, the State vide its circular dated 04-06-2001 has completely banned attachment by clearly stating that the Officer, who is passing attachment order, is liable to punitive action. The only contingency regarding passing of an order of attachment is provided under Clause 4 of Circular dated 04-06-2001, under which, with the approval of General Administration Department, an Officer/employee can be attached in the Mantralaya (Secretariat). Present is not a case where the petitioners with the prior approval of the General Administration Department are sought to be attached in the Mantralaya.

Learned State counsel could not point out before this Court that either generally or particularly in the cases of the petitioners, circular dated 04-06-2001 has been relaxed so as to permit the Chief Engineer to pass an order of attachment.

9. Even transfer policy dated 11-06-2016 imposed ban on transfer, after the transfer season is over. It is an admitted position that general transfers are banned after 31-07-2016. The impugned order has been passed on 16-09-2016. Learned State counsel also could not come out with any material that the petitioners were transferred from one vacant post to other vacant post during ban period, after taking approval in coordination. No other circular permitting this type of attachment during ban period could be brought to the notice of this Court. In the present case, when the stand was taken by the learned State counsel in the return that the transfer has been made by the Chief Engineer in exercise of his power of transfer under the provisions of PWD Manual, this Court specifically directed the learned State counsel to seek instructions whether the ban on transfer as per transfer policy dated 11-06-2016 and prohibition of attachment under circular dated 04-06-2001 has been relaxed by any general or special order permitting the Chief Engineer to attach Officers from one office to another office without there being any post, under the provisions of PWD Manual. Nothing was brought to the notice of this Court that in such cases, transfer policy dated 11-06-2016 and circular dated 04-06-2001 will not apply and the power of Chief Engineer provided under administrative instructions of PWD Manual would override the government policy dated 04-06-2001 and 11-06-2016.

10. In these circumstances, the impugned order dated 16-09-2016 (Annexure P/1) is held illegal and unsustainable in law and therefore, set aside. As the

petitioner of aforesaid two petitions are continuing by virtue of interim order, no further orders required to be passed.

11. In the result, both the petitions i.e. W.P.(S)No.5358 & 5394 of 2016 are allowed. A copy of this order be placed in the connected matter also.

SD/-
(**Manindra Mohan Shrivastava**)
Judge