

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 6606 of 2016**

P. R. Vishwakarma S/o Shri L. P. Vishwakarma, Aged About 54  
Years (Assistance Engineer) Presently Working As Sub Divisional  
Officer Sub Division No. 02 Water Resources Department  
Bagbahara, District Mahasamund (Chhattisgarh)

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Water Resources  
Department, Mahanadi Bhavan, Mantralaya, Naya Raipur, District  
Raipur (Chhattisgarh)
2. Deputy Secretary, Water Resources Department, Mahanadi Bhavan,  
Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
3. Engineer In Chief, Water Resources Department, Sihava Bhawan,  
Raipur, District Raipur (Chhattisgarh)
4. Chief Engineer, Mahanadi Godawari Kachhar, Water Resources  
Department, Raipur District Raipur (Chhattisgarh)
5. Shri K. S. Mishra Executive Engineer Water Resources Department  
Raipur, District Raipur (Chhattisgarh)

**---- Respondents**


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|---------------------|---|------------------------------------------------------------|
| For Petitioner      | : | Mr. Manoj Paranjpe and<br>Mr. Hemant Kesharwani, Advocates |
| For State           | : | Mr. R.K. Gupta, Dy. A.G.                                   |
| For respondent No.5 | : | Mr. Amrito Das, Advocate                                   |

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**Hon'ble Shri Justice Manindra Mohan Shrivastava****Order On Board****23/01/2017**

Heard.

1. The order dated 26.11.2016 (Anenxure P/1) is under challenge. The petitioner was earlier transferred vide order dated 30.07.2016 from Raipur to Bagbahara. In compliance of the order of the Court, the petitioner was relieved from the place of posting at Raipur and transferred to Bagbahara. The petitioner joined at Bagbahara on 10.08.2016. Thereafter, it is contended, order dated 26.11.2016 has been passed whereby the earlier

order dated 30.07.2016 is modified, by which, the petitioner has now been sent to Panduka and transfer order of respondent No.5 has been cancelled.

2. Submission of learned counsel for the petitioner is that the petitioner had complied with the transfer order and joined at Bagbahara. He submits that even though the petitioner had complied with the earlier order 30.07.2016, transfer of respondent No.5 from Bagbahara to Panduka was cancelled which could not be done because the petitioner had complied with the order. It is next submitted that it is now well settled legal position of law that once the transfer order has been executed, it could not be cancelled/modified. According to learned counsel for the petitioner, the petitioner having complied with transfer order, it was not permissible under the law for the respondents to cancel the order in a manner that respondent No.5 is to be continued on the same place where the petitioner has now joined. The modification is as a result of cancellation. If cancellation could not be done, it is argued, modification also, consequently, could not be done.

3. On the other hand, learned State counsel submits that in so far as the petitioner is concerned, it is only a case of modification of the transfer order and as a result of this modification, an occasion arose for cancellation of transfer of respondent No.5. He submits that it is a case on administrative exigency and the impugned order has been passed in coordination. Therefore, in these circumstances, order may not be complied with.

4. Learned counsel for respondent No.5 firstly submits that in fact the transfer order has not been cancelled but only modified and now he has been sent to Panduka. As far as respondent No.5 is concerned, he did not proceed with the transfer order, therefore, to that extent, his transfer order has been cancelled, therefore, decisions relied upon by the petitioner are not applicable in the present case. Learned counsel for respondent No.5 further submits that right to transfer, modification or cancellation, transfer is necessary corollary of power of transfer which is only an incident of service and which does not affect any condition of service and that no prejudice is caused to the petitioner.

5. As far as legal position is concerned, once a transfer order is executed, it could not be cancelled. This view has been taken by this Court, in the cases of **Brajendra Singh Vs. State of Chhattisgarh & Ors.** [WPS

**No.5012/2009, decided on 09.03.2010], Dr. Toshan Lal Todar Vs. State of Chhattisgarh & Ors [WPS No.855/2012, decided on 27.02.2012] and Khubchand Verma Vs. State of Chhattisgarh & Ors. [WPS No.1054/2012, decided on 02.03.2012].**

6. The petitioner complied with transfer order and he joined at Bagbahara. The fact that the petitioner was relieved from Raipur and he submitted his joining at Bagbahara is not disputed. According to learned counsel for respondent No.5, the petitioner was not handed over charge.

7. To my mind, once an officer is relieved and submits his joining at the place of posting as far as his part is concerned, it is completed and therefore, in that sense, it can be said that the transfer order has been executed by concerned officer. Therefore, the petitioner had executed the transfer order. The modification of petitioner's transfer order is as a result of cancellation of transfer of respondent No.5. Therefore, if upon execution, this order cannot be cancelled, it also follows as necessary corollary that transfer of respondent No.5 cannot be cancelled in a manner which would affect the posting of the petitioner. The modification is as a result of this cancellation of transfer of respondent No.5. Therefore in view of the above settled legal position applied to the facts and circumstances of the present case, the impugned order cannot be given effect to.

8. With the liberty to the State to pass fresh transfer order, the petition is disposed off.

**Sd/-**

**(Manindra Mohan Shrivastava)  
Judge**