

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.6930 of 2016**

- Smt. Namita Vishwas W/o Shri Taapas Vishwas Aged About 52 Years
Occupation, L.H.V/ Ledi Health Vhijitar Sector Nayapara Samudayik
Swasthya Kendra Bilha R/o Gram Bilha Thana Bilha, District Bilaspur
(Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Swasthya Avm Pariwar Kalyan
Vibhag State Of Chhattisgarh Mantralay, Mahanadi Bhawan, Naya
Raipur, District Raipur (Chhattisgarh)
2. Director, Swasthya Sewaye Chhattisgarh, Indrawati Bhawan, Naya
Raipur (Chhattisgarh)
3. Sambhagiya Sanyukt Sanchalak, Swasthya Sewaye Bilaspur, District
Bilaspur (Chhattisgarh)
4. Collector, District Bilaspur (Chhattisgarh)
5. Chief Medical And Health Officer, Karyalay Mukhya Chikitsa Avm
Swasthya Adhikari Bilaspur, District Bilaspur Chhattisgarh
6. Block Medical Officer, Samudayik Swasthya Kendra Bilha District Bilaspur
(Chhattisgarh)
7. Kumari P. Saloman D/o Late David Saloman Aged About 48 Years
L.H.V./ Ledi Health Vijitar Sector Nayapara Samudayik Swasthya Kendra
Bilha, District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Abdul Wahab Khan, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, PL
For Respondent No.7	:	Shri Ashwani Shukla, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****01/08/2017**

Heard.

2. The petitioner has assailed assailed legality and validity of order dated

24-08-2016, by which, the petitioner has been treated as surplus and transferred from Sector Nayapara to Sector Sardha.

3. Only submission made by learned counsel for the petitioner is that the petitioner was posted at Nayapara Sector on 25-07-2008, whereas respondent No.7 was posted at Tifra Sector under the orders of Chief Medical Officer passed on 26-05-2008, though there was no Sector like Tifra. He submits that in this manner, the petitioner was senior in posting at Nayapara Sector, therefore, the petitioner could not be treated as surplus and one, who was posted subsequent to the petitioner, should have been treated as surplus and transferred.

4. Learned counsel for the respondent No.7 denied the claim of the petitioner and submits that vide order dated 26-05-2008, respondent No.7 was posted at Tifra Sector, Community Health Centre, Bilha, but that order was not correct, because there is no Sector like Tifra. Therefore, in these circumstances, the Block Medical Officer directed the respondent No.7 to join at Nayapara Sector, where respondent No.7 joined on 02-06-2008. Therefore, it is respondent No. 7, who is senior and not the petitioner, therefore, the order has been passed. It is further submitted that the respondent No. 7 had earlier filed a petition, when she was wrongly treated as surplus and therefore, this Court vide order dated 21-06-2016, had directed consideration of her representation. Therefore, the impugned order has been passed in compliance of the order passed by this Court.

5. There is no dispute between the parties that one, who was posted at subsequent point of time, has to be treated as surplus. The issue is whether the petitioner is surplus or respondent No. 7.

6. The petitioner was posted vide order dated 25-07-2008 at Nayapara Sector. Respondent No. 7 was posted at Tifra sector vide order dated 26-05-2008. The respondents admitted that there was no sector named Tifra. Thereafter, no order was passed by Chief Medical Health Officer till 25-07-2008, posting respondent No.7 at Nayapara Sector. Vide order dated 25-07-2008, it was the petitioner, who was posted at Nayapara Sector by the order of Chief Medical Health Officer. Therefore, it appears that the Block Medical Officer, without there being any order of Chief Medical Health Officer, directed respondent No.7 to submit her joining at Nayapara Sector. This cannot be accepted, because there was no order of posting of respondent No.7 at Nayapara Sector. This is so because, unless the petitioner is removed from Nayapara Sector, respondent no.7 could not be posted in place of the petitioner. The conclusion, therefore, is that the petitioner was posted at earlier point of time at Nayapara Sector and therefore, it was not the petitioner, but respondent No.7, who ought to be treated as surplus.

7. In view of above, the petition is allowed and the impugned order dated 24-08-2016 (Annexure P/3) is hereby quashed. The Official respondent would be at liberty to post respondents No. 7 at any other place.

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