AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.2791 of 2017

- Ku. Girija Patel D/o Shri Arun Patel Aged About 29 Years Presently Posted As Assistant Teacher (Panchayat) At Government Primary School Khokhara, District Raigarh, R/o Village Kavriya Tahsil Pusor, District Raigarh, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Panchayat And Rural Developoment Department, Mantralaya, Mahandi, Bhawan, Naya Raipur, Raipur, C.G.
2. The Chief Executive Officer, Zila Panchayat Raigarh, District Raigarh (Chhattisgarh).
3. The Chief Executive Officer, Janpad Panchayat, Pussore, District Raigarh, C.G.

---- Respondents

For Petitioner : Shri Mateen Siddiqui, Advocate
For Respondent/State : Shri Satish Gupta, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/07/2017

With the consent of learned counsel for the parties, the matter is heard finally and disposed off at the motion stage.

2. Challenge in the present petition is for grant of wages for the period with effect from 18-04-2016 to 05-01-2017, during which period, by an illegal order dated 18-04-2016, the petitioner had been transferred from District Raigarh to Baloda Bazar.

3. Brief facts of the case are that on 18-04-2016, the Chief Executive Officer,

Zila Panchayat, Raigarh had passed an order transferring the petitioner from District Raigarh to Baloda Bazar and also transferred other similarly placed persons. Similar order of transfer were passed by the Chief Executive Officer of other Zila Panchayat all over the State. Challenging such transfer orders, a bunch of writ petitions came up for hearing before this Court (WPS No.1273 of 2016 and batch of petitions). The petitioner's writ petition was registered as WPS No.1757 of 2016. All these writ petitions were allowed vide order dated 23-12-2016 along with WPS No.1273 of 2016 and batch of petitions. In the said judgment, the categoric finding of this Court is that the Chief Executive Officer of Zila Panchayat lacks competence and jurisdiction as also there is no statutory power conferred on him for passing the said transfer order and all the transfer orders were set aside. As a consequence of petitions being allowed, the petitioner was permitted to work at the place from where she was transferred. The petitioner joined her service at the original place of posting at Raigarh on 05-01-2017.

4. Grievance of the petitioner is that since transfer order of the petitioner was held illegal, salary for the intervening period with effect from 18-04-2016 to 05-01-2017 may be paid to the petitioner. It is the contention of learned counsel for the petitioner that since the impugned transfer order dated 18-04-2016 has been quashed by this Court vide order dated 23-12-2016 in WPS No.1273 of 2016 and batch of petitions, holding that the authority lacks competence and jurisdiction, the impugned transfer order is declared null and void. It is also submitted that after cancellation of transfer order, the petitioner joined at his original place of posting at Pussore, District Raigarh on 05-01-2017 (Annexure P/3) and he is entitled to full salary for the intervening period with effect from 18-04-2016 to 05-01-2017. Learned counsel for the petitioner relied upon the judgment of Supreme Court in the case of ***Commissioner, Karnataka Housing***

Board vs. C. Muddaiah[1] and draws attention of this Court to para 33 & 34 of the aforesaid judgment.

5. Per contra, learned State counsel submits that it is the case where the petitioner, at the initial stage, could not get interim protection, therefore, he was duty bound to obey the transfer order and resume duty at Baloda Bazar, only then, he would be entitled to salary. According to learned State counsel, since he did not obey the order passed by the competent authority, till it was ultimately struck down, it would be a case where principal of “No work no pay” should be applicable, therefore, he is not entitled to salary for the intervening period.

6. Having considered the rival submission of learned counsel for the parties, I have perused the records.

7. Admittedly, on 18-04-2016, the petitioner stood transferred from Raigarh to Baloda Bazar, which was challenged by the petitioner by filing writ petition registered as WPS No.1757 of 2016. The said writ petition was allowed vide order dated 23-12-2016 itself. Other salient feature is that quashment of the transfer order dated 18-04-2016 was on the ground that the authority, who has passed the order, is not having jurisdiction as also not competent to pass the order of transfer. The fact that the authority lacks competence and jurisdiction would clearly make the transfer order null and void. It is also the finding of the Court that the transfer order was passed in violation of the statutory provisions and service conditions. The striking down of the transfer order on the ground of competence and lack of jurisdiction has an effect of the transfer order never to have been in existence. As a consequence, the petitioner cannot be blamed or punished for not joining at the place of posting in compliance of the order, which

1 (2007) 7 SCC 689

was issued by an Officer, who was not having competence and jurisdiction. It is evident that an incompetent Officer without any jurisdiction had refrained the petitioner from discharging duties at her place of posting at Raigarh. But for the illegal order, the petitioner would have continued working at her original place of posting and would have also got all emoluments which she was entitled. Hence, she should not be denied her salary benefits by virtue of an illegal order which later has been struck down by the High Court. Therefore, this Court is of the opinion that the petitioner would be entitled for the consequential benefits of intervening period including wages i.e. 18-04-2016 to 05-01-2017.

8. The Supreme Court in para 6 of its judgment in the case of ***Nawabkhan Abbaskhan Vs. The State of Gujrat[2],*** held that the constitutional perspective must be clear in unlocking the mystique of 'void' and 'voidable' vis-a-vis orders under the Act. Again, in para 20 of the aforestated judgment, the Supreme Court holds that when a competent Court holds such official act or order invalid or sets it aside, it operates from nativity, i.e. the impugned act or order was never valid.

9. While discussing on the issue of the effect of null and void order, the aforesaid view has been further fortified from the judgment of the Supreme Court in the matter of ***Kendriya Vidyalaya Sangathan and Others Vs. Ajay Kumar Das and Others[3]***. It is an elementary principle of law that if an authority has no jurisdiction over the subject matter and in the process, if orders are passed, they are mere nullity and the effect would be that it was never in force.

10. In the case of ***Deepka Agro Foods Vs. State of Rajasthan & Others[4]***, the Supreme Court had made an observation that when an authority making

2 1974(2) SCC 121
3 2002 (4) SCC 503
4 2008(7) SCC 748

order lacks inherent jurisdiction, such order would be without jurisdiction, null non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties.

11. In the result, the petition is allowed. It is ordered that the respondents shall grant consequential relief including wages to the petitioner with effect from the date of transfer till the date, she joined her duty. Let necessary steps be taken in this regard within a period of 60 days from today.

SD/-
(**P. Sam Koshy)**
Judge

Tumane