

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4127 of 2017

P.D.Sonekar S/o Shri Daya Das Sonekar Aged About 57 Years Presently Posted And Working As Assistant Professor (History) Government Digvijay College, Rajnandgaon And R/o Stationpara, Ward No. 13, Near Teachers Colony, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Commissioner, Directorate Of Higher Education Chhattisgarh, Indrawati Bhawan, Section-3, 1st Floor, Naya Raipur, Chhattisgarh.
3. Principal Government Digvijay College, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Ashish Shrivastava, Advocate
For State	:	Mr. D.R. Minj, Dy. G.A, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/08/2017

1. Present writ petition has been filed by the petitioner assailing the order dated 14.08.2017 (Annexure P/1), whereby the petitioner, who was working as an Assistant Professor at the Government Digvijay College, Rajnandgaon has been transferred to Government Revti Raman College, Surajpur on administrative reason as also on the ground of substitution.
2. The ground of challenge is more than one; (i) the impugned order of transfer has been passed during the ban period, (ii) the petitioner is a Non-Commission Officer working also as incharge of NCC wing in the college at Rajnandgaon and holding the rank of Captain, (iii) the policy of transfer of the State Government envisages a clause for as far as possible accommodating husband and wife at the same place or nearby place. The wife of the petitioner is also a Government employee posted in district Rajnandgaon itself.

3. Counsel for the petitioner submits that the petitioner does not oppose the order of transfer, but only opposing the place of posting as the place where the petitioner has been posted does not have NCC unit and thereby the petitioner would not be able to provide the services towards the NCC. He further submits that it has been a policy of the State Government even under the erstwhile State of Madhya Pradesh and which has subsequently being adopted by the Chhattisgarh as well, for ensuring that whenever a transfer of an officer also incharge of NCC is transfered he should be transferred to a college where NCC is available and any transfer so made also needs prior approval of the Deputy Director, NCC for the State. In the instant case, no such prior approval has been taken and it is also contended that the college where the petitioner is posted does not have a NCC wing.
4. The contention of the petitioner further is that immediately on the impugned order being passed he had made representation to the respondents through proper channel vide representations dated 14.08.2017, 17.08.2017 & 21.08.2017, but till date no decision has been taken on those representations.
5. He further submits that the order of transfer also does not reflect the obtaining of prior approval of the competent authority required for transfer on administrative exigency during the ban period.
6. The State counsel however opposing the petition submits that it is an order of transfer made on administrative exigency and it is always a prerogative of the State Government to decide the place and tenure of an officer and which may not be subject matter of judicial review in exercise of writ jurisdiction of this Court, thus prayed for rejection of petition.
7. He further submits that even otherwise the petitioner seems to have served in the present place of posting for a considerable period of time which also is a ground not to interfere with the order of transfer.
8. Having heard the contentions put forth on either side and on perusal of the record, what is undisputed is the fact that the petitioner as on date was the NCC officer holding the rank of Captain, at Government Digvijay College, Rajnandgaon. The policy of the State

Government so far as the NCC officer is concerned clearly stipulates the facts that whenever a transfer is made, the authority should ensure that the college where the NCC officer is being transferred also has NCC wing.

9. Further it also reflects that the claim of the petitioner is also on the ground that the spouse is also posted at district Rajnandgaon. In addition, the order of transfer does not reflect the compliance of the transfer policy where the transfer is made during the ban period.
10. Be that as it may, this Court is of the opinion that ends of justice would meet if the petition is disposed of finally directing the respondent No.1 to decide the representations of the petitioner which he has filed in this regard. That while considering the representation, the authorities shall also keep in mind the aforementioned grounds raised by the petitioner which is reflected in this order. The authorities would also be at liberty to modify the order of transfer, if they so feel by transferring the petitioner to an institution which has an NCC wing subject to compliance of the guidelines framed in this regard. In addition, the petitioner shall also be at liberty to file a detailed representation afresh taking all these facts before the respondent No.1 in his representation supported with all relevant policies and guidelines in this regard.
11. Let the respondent No.1-Secretary take a decision in this regard as expeditiously as possible. Meanwhile the petitioner's services if he has not been relieved, let status quo as it exists today be maintained till the disposal of the representation of the petitioner. Accordingly, the writ petition stands disposed of.
12. The State counsel is directed to send appropriate information in respect of the order passed by this Court to the authority in the college for the compliance of the order in its letter and spirit.
13. Certified copy today.

Sd/-
(P. Sam Koshy)
Judge