

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3388 of 2016**

Smt. Kamayani Kashyap W/o Sanat Kumar Kashyap, Aged About 42 Years R/o C/o Ravindra Kumar Verma, In Front Of Ramanuj Pratap Singh Deo College, Odgi Naka Chowk, Baikunthpur, District Koriya (Chhattisgarh); Occupation District Education Officer, Baikunthpur, District Koriya (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of School Education, Mantralay, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. Joint Secretary, Department Of School Education, State Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
3. Collector, District Koriya (Chhattisgarh)
4. Rakesh Pandey, Presently Posted As District Education Officer Mahasamund, District Mahasamund (Chhattisgarh)

---- Respondents

Shri Mateen Siddiqui, counsel for the petitioner/s.
 Shri R.K.Gupta, Dy.A.G. for the State.
 Shri A.S.Rajput, counsel for respondent No.4.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****25/01/2017**

Heard.

The petitioner has filed this petition aggrieved by order dated 30/07/2016 transferring her from the office of District Education Office, Koriya to Rajya Shikshak Anusandhan and Parikshan Parishad, ELTI, Raipur.

2. The petitioner has assailed the order mainly on two grounds.

a) That the petitioner has been transferred where there is no post vacant to adjust the petitioner.

b) The petitioner could not be transferred during the pendency of the other petition i.e. WPS No.2029/2016, wherein, an interim order was passed in favour of the petitioner on 31/05/2016 staying the order of deputation.

3. Learned counsel for the petitioner argued that the petitioner has been transferred from the office of District Education Officer to an institution where there is no vacancy to accommodate the petitioner. It is submitted that all the posts in State Council of Educational Research & Training (SCERT), Raipur are filled up and this is clear from memo dated 19/10/2016 of the Director, Public Instructions addressed to the Secretary, School Education Department, in which, it has been categorically stated that presently, all the posts have been filled up. It is submitted that the respondents have misled the Court by making incorrect statement that ELTI is a wing of SCERT and there is one post of Professor vacant in ELTI and against that vacant post, the petitioner can draw salary. It is also submitted that even in the note sheets, it was proposed to modify the transfer order of the petitioner by clearly recording that there is no post vacant to accommodate the petitioner.

Reference has also been made to letter dated 01/08/2016 of the SCERT to the petitioner that there is no post vacant of Professor in ELTI wing, however, against other post of Professor, her salary can be drawn.

The other ground is that once there was interim order in favour of the petitioner, respondents ought not to have disturbed the petitioner without leave granted by this Court in the pending writ petition.

4. On the other hand, learned State counsel submits that ELTI is a wing of

SCERT. It is submitted that the respondents in their return have clearly stated that there exists a vacant post of Professor where the petitioner can be allowed to join and she will not suffer in terms of service career including salary.

5. As far as challenge to the transfer order on the ground that during pendency of other petition, the petitioner could not be transferred, the contention is liable to be rejected. In earlier round of litigation, the issue was whether the petitioner could be attached at SCERT. Infact, the case of the petitioner in that case was that a Government employee could only be transferred against vacancy but could not be attached against the vacant post. The impugned order has been passed in which large number of employees have been transferred which includes the petitioner also. The order does not say that the petitioner is attached. Therefore, I do not think that pendency of earlier writ petition or the interim order should come in the way of the respondent authority in passing transfer order of the petitioner. Infact, the action of the respondents only shows that the respondents realising attachment could not be done, proceeded to pass transfer order.

6. It is a case where the employee insist that she is being transferred to a place without there being vacancy whereas the employer has come out with a stand that there is a post vacant to allow the petitioner to join. It is stated on affidavit by the respondent that there is vacant post of Professor in ELTI where the petitioner could be joined.

In para 6 and 8 of the return filed by the respondents, it has been categorically averred that ELTI is a wing of SCERT. It has been stated that in the set up, there are six posts of Professor and two posts of Professor are lying vacant. Therefore, the salary of the petitioner would be drawn against the

vacant post of Professor. This has been reiterated in para 8 of the return also.

7. I find that despite categoric stand taken by the State in the return regarding existence of vacancy of two posts of Professor, some of the officers of the Government have written communication which has been made a basis by the petitioner to contend that there is no vacancy.

8. Learned State counsel submits that in communication dated 01/08/2016 (Annexure P/7) of the Director, it has been stated that there is no post of Professor in ELTI because of confusion on the part of the said officer with regard to existing vacant post in SCERT along with ELTI. Similarly, it was contended that communication dated 19/10/2016 of the Director was also incorrect assessment. Lastly, it is submitted that noting made in the note sheets that there is no post vacant in ELTI, SCERT also does not appear to be correct (to be understood in the context that Shri N.Kujur has joined on 01/10/2010 and till that time, post was vacant).

9. Once the State has taken stand before the Court that there is vacant post against which the petitioner can join and draw salary and the petitioner could not dispute that ELTI is a wing of SCERT, the petitioner cannot dispute the position to insist that there is no vacant post. Infact, during pendency of this petition, the petitioner has been allowed to join and categoric stand has been taken that the petitioner can draw salary against one vacant post in the SCERT or its wing ELTI.

10. In view of above, I think that petitioner's interest is fully protected. Therefore, in these circumstances, I am not inclined to pass any other order in the matter except that now the petitioner shall be allowed to continue against

post of Professor and paid her salary.

11. Before parting with the case, it is considered necessary to issue direction to the State to hold enquiry against those officers who have made incorrect statement which has turned out to be false in the return that there existed vacancy.

12. With the said observation, the petition is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge