

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3677 of 2016

- Pyarelal Sahu S/o Late Shri Ramsingh Sahu, Aged About 59 Years
R/o R.K. Nagar, Ward No 45, Infront Of Police Training School Behind
Dipika Vidya Mandir, Rajnandgaon, District Rajanandgaon
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education
Department, Ministry, Mahanadi Bhavan, New Raipur District Raipur
Chhattisgarh
2. The District Education Officer, Rajnandgaon Post Rajanndgaon P.S.
Rajnandgaon, District Rajnandgaon Chhattisgarh
3. Mr. Kishore Kumar Mehara, Lecturer, Government Women Physical
Educaiton Training College, Pendra, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Alok Kumar Dewangan, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate
For Respondent No.3	:	Shri Varunendra Mishra, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

06/02/2017

1. Heard.
2. This petition has been filed by the petitioner challenging the transfer
order on the following grounds :-
 - (i) That, before issuance of transfer order dated 30/07/2016, approval
of the Minister in-charge Department, as required under Clause 2.2
has not been taken, therefore, the order is without competence.
 - (ii) That, the order has been passed to accommodate the respondent

No. 3.

(iii) That, the total number of officers subjected to transfer exceeds 15% which is against the contemplation of clause 2.12 of the transfer policy dated 11/06/2016.

3. Learned counsel for the petitioner submits that the petitioner has filed an affidavit stating that to the best of his knowledge and information, gathered from the higher officers of the department, the approval of the Minister in-charge has not been taken before issuance of order dated 30/07/2016, therefore, the order is illegal. Learned counsel for the petitioner further submits that the transfers are to be made within the limit of 15%. It is also submitted that if once, the transfer order exceeds 15%, it results in violation of the transfer policy and is, therefore, bad. Lastly, it is argued that in fact, the main operative reason to the transfer from the present place to Pendra was only to accommodate the respondent No. 3, who was earlier transferred from Rajnandgaon to Pendra and now he has again been sent back Rajnandgaon.

4. On the other hand, learned State counsel submits that the allegation that the prior approval of the Minister in-charge was not taken, is factually incorrect. Placing before the Court, copies of the relevant note-sheets as also producing the original records, it is submitted that the approval of the Minister in-charge was given only on 30/07/2016 and immediately thereafter the order was issued and dispatched. It is also submitted that the allegation of accommodation of respondent No. 3 is not made out, because the petitioner has served for three years at the present place of posting and it is only thereafter he has been transferred. The transfer upon the completion of normal tenure itself constitutes administrative exigency as the petitioner has to be shifted, the petitioner was transferred to place of respondent No. 3. It is also

submitted that the prescription of limitation on transfer to 15% is subject to administrative exigency, as and when necessary. Out of the list of 20 officers who have been transferred, four officers have been transferred on their own request, therefore, for that reason, it would not provide any legal ground to the petitioner to assail the transfer order.

5. After hearing learned counsel for the parties, in my view, this petition is liable to be dismissed for the following reasons.
6. The petitioner filed an affidavit in this case, stating in para 3 of his affidavit that to the best of his knowledge and information gathered from the higher officers of the department, he has been informed that the petitioner's name was neither sent for transfer nor any proposal was sent for recommendation before the concerned Minister of the School Education Department. The statement made before this Court to seek grant of interim relief was that the approval of the Minister has not been taken. This ground has neither been raised in the petition nor the supplementary affidavit. The petitioner has not specifically stated in the affidavit that the approval of the Minister in-charge has not taken. The statement of fact is made in para in the affidavit that his name was not sent nor any proposal was sent before the concerned Minister.
7. Upon perusal of the original record, which has been placed before this Court, the averments made by the petitioner turn out to be completely incorrect. The note-sheet clearly shows that the list on the proposal of the Minister itself was sent to scrutiny and after scrutiny, the list of transfer was proposed and it was proposed to be placed before the Minister on 30/07/2016.
8. Suppression has been made on certain overwriting which only appears to be correction, because in all subsequent notes made in the note-

sheet, after noting made by the Minister of the Department, date 30/07/2016 is written and it also appears in the dispatch date on 30/07/2017.

9. Moreover, the petitioner having not made any specific allegation that the Minister did not grant any approval, except this no further enquiry in this regard is necessary. This Court found no reason to doubt the correctness of the noting made in the note-sheet of the various officers, Secretary and Minister itself. It appears that the petitioner in a very casual to get relief on the ground has made wild allegation.

10. The other two grounds that while making transfer, the number of officers has exceeded 15% is only a policy in the matter of transfer, which is not enforceable in the Court. Unless the order is passed by incompetent authority or by impugned order any of the service terms and conditions are altered to the prejudice of the employee merely because there has been some deviation from the transfer policy, that by itself, without anything more, would not make the transfer illegal and liable to be interfered by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution. Moreover, the deviation is not such as to warrant interference by this Court as it does not reflect how the deviation has resulted in any grave hardship to the petitioner. Once the petitioner's transfer is found to have been based on administrative exigency because he has completed more than 3 years tenure.

11. The ground of transfer order having been vitiated on account of malice equally does not meant acceptance as there are no clinching material on record to support malafide exercise of power. It is well settled legal principle that in order to substantiate the allegation of malice, the burden is heavy on the person who make such allegation. Merely

because respondent No. 3 is shifted to petitioner's place, without anything more, no inference of malice could be drawn. In the instant petition, it is nowhere stated as to what was tenure of respondent No.3 at Rajnandgaon. Once the petitioner has served three years of service and he has been subjected to transfer, he cannot raise any such grievance on the allegation of mala fide accommodation.

12. Some personal ground relating to the age of the petitioner and medical ailment have also been taken. This matter is only for consideration of administrative authority not by the Court. Moreover the petitioner has not been transferred to such a hard station where serious prejudice to his health appears, in the absence of acute illness.

13. In the result, I do not find any merit in the petition, hence this petition is dismissed with cost of Rs.2500/-.

Sd/-
(Manindra Mohan Shrivastava)
Judge