

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3761 of 2016

Mahinath Mandal S/o Manindranath Mandal, Aged About 29 Years R/o Village Digma, Ambikapur, Tahsil Ambikapur, Civil And Revenue District Surguja Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Health & Family Welfare Mantralaya, Naya Raipur Chhattisgarh
2. Director Medical Education, Directorate Of Health Services, Raipur Chhattisgarh
3. Collector, Ambikapur District Surguja Chhattisgarh
4. Chief Medical & Health Officer, District Surguja Chhattisgarh
5. Dean, Government Medical College, Ambikapur, District Surguja Chhattisgarh
6. Medical Superintendent, Hospital Government Medical College Ambikapur District Surguja Chhattisgarh

---- Respondents

For Petitioner	:	Shri Amarnath Pandey, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/03/2017

1. This petition has been filed by the petitioner challenging the transfer order dated 22.7.2016 on following grounds:-
 - (i) That the petitioner is being transferred without completion of one year of posting in the Government Medical College at Ambikapur which is in violation of transfer policy dated 11th June, 2016.
 - (ii) That at the time of establishment of Medical College at Ambikapur, the staff and infrastructure of district hospital and nearby Primary Health Centre was transferred under the control of Director, Medical Education, therefore, in these circumstances, the petitioner could not be transferred

to the Primary Health Centre wherefrom he was brought earlier vide order dated 29.7.2015.

(iii) That the petitioner is being transferred to a Primary Health Centre only to accommodate one Nawrang Lal, Compounder working in Primary Health Centre, Dumardih, whereas in the establishment of Medical College, there is no post of Compounder.

(iv) That the transfer is contrary to the administrative exigency, because in the medical College at Ambikapur, there are only five sanctioned posts of Pharmacists and at present, if the petitioner is transferred, number of Pharmacists will be reduced to four.

(v) That the transfer of the petitioner is being made to the same Primary Health Centre where he has already remained posted for three years from 2012 till he was transferred to Medical College at Ambikapur.

2. According to learned counsel for the petitioner though the petitioner is an employee of the Health Department, in view of order dated 2.5.2014, services of the petitioner and all those working in the Health Department were placed at disposal of the Govt. Medical College, Ambikapur and thus, they have now become the employee of the Medical Education Department and not of the Health Department. Therefore, the Collector had no jurisdiction to transfer the petitioner because the petitioner is under the control of the Director, Medical Education. According to him, the petitioner is a Pharmacist and transfer of the petitioner in place of Nawrang Lal, who is only a Compounder, only shows that an attempt has been made to adjust Nawrang Lal in the Govt. Medical College at Ambikapur even though there is no post of Compounder. This transfer would be contrary to the exigency of service because the Medical College requires number of Pharmacists, as compared to Primary Health Centre. He further submits that once the Govt. has framed a policy that the transfer shall not be made unless a Govt. servant completes one year of service, in the absence of there being any complaint of the working of the petitioner, the petitioner could not be transferred without completion of one year by the impugned order.
3. On the other hand, learned counsel for the State submits that the transfer is an exigency of service to meet out the requirement of a Pharmacist in a Primary Health Centre. The petitioner continuous to be an employee of the Health

Department and his services have not been transferred by an order of the Govt. The petitioner's posting as Pharmacist and the posting of Nawrang Lal as Compounder have no connection. Nawrang has not been made a party.

4. As far as implementation of the transfer policy is concerned, it is too well legal settled position that a transfer policy, by itself, is not enforceable in the Court of Law. Transfer is only an incident of service. The policies of transfer are made only to regulate power of transfer. Mere violation, without anything more, would not give an indefeasible right.

The submission that the services of the petitioner have been transferred to Medical Education Department by virtue of order dated 2.5.2014 is liable to be rejected because there is no order of the State Government transferring the services of the employee of the Health Department. The order dated 2.5.2014 only indicates that as long as an employee of the Health Department is posted in the Medical College, he will be acting under the administrative control of Director, Medical Education. This, by itself, does not mean that there is permanent transfer of services of the employees of the Health Department to the Medical Education Department.

The administrative exigency shown by the State is that in the Primary Health Centre Dumardih, there is need of Pharmacist, therefore, the petitioner was required to be sent. There is nothing on record to show that there are more than one Pharmacists already working in the Primary Health Centre where the petitioner is being transferred. Whether a Pharmacist is required to be provided in a Primary Health Centre at the cost of reducing the number of Pharmacist in the Medical College is entirely a matter of consideration of the transferring authority. Administrative consideration in this regard can only be done by the transferring authority and not by the Court. Though there are sweeping allegation of malafide, neither Nawrang Lal nor the Collector has been made a party by name. In the reply, it has been stated that the transfer of the petitioner and posting of Nawrang Lal are not interconnected because Nawrang Lal is a Class-IV employee and the petitioner is Class-III Employee.

5. The reason for deviation from policy by transferring the petitioner within one year has been explained by the respondent. If there is any exigency, nothing restricts the transferring authority from effecting transfer without completion of one year of normal tenure of service. The prescription of normal tenure of one year is made only to ensure that unless there is any other administrative

exigency, normally an officer would continue for a period of one year.

6. Submissions have been made that the administration of the Govt. Medical College has already communicated to the Collector that transfer of the petitioner may adversely affect the working of the Medical College. This is essentially the matter of consideration by the Collector.
7. Since the communication has already been made, this Court would refrain from making any comment on it and leave it open for the Collector to decide whether the petitioner should be posted in the Primary Health Centre or in the Medical College.
8. In view of the observations made hereinabove, I do not find any merit in the petition warranting interference by this Court.
9. The petition is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge