

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 152 of 2017**

Jermina Kindo W/o Y. Kindo, Aged About 45 Years R/o Ring Road, Namnakala, Ambikapur, District Surguja (Chhattisgarh).

---- Appellant**Versus**

1. State Of Chhattisgarh Through : Secretary, Tribal And Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh).
2. Director, Public Instruction, Directorate, Raipur, District Raipur, Chhattisgarh
3. Collector, Ambikapur, Surguja, District Surguja, Chhattisgarh
4. District Education Officer, Ambikapur, Surguja, District Surguja, Chhattisgarh

---- Respondents

For Appellant	: Shri Manoj Paranjpe, Advocate.
For Respondent/State	: Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****26/04/2017**

1. We have heard Learned Counsel for the Appellant and Learned Deputy Advocate General quite in extensio.
2. This appeal is filed challenging the dismissal of the writ petition in which the Appellant had impeached her transfer from Government Boys Higher Secondary School, Darima to Government Higher Secondary School, Bataikela. She is a Higher Secondary School teacher and now posted as Principal.
3. Learned Counsel for the Appellant argued that the impugned transfer order is a stigmatic one and has been issued after concluding that the Appellant is guilty

of misconduct stated in the transfer order. The next plea is that the authority to transfer her is the Government and the Appellant was actually transferred and posted in her present station by the State Government and therefore, the District Education Officer had no business to effect an order of transfer.

4. The Learned Single Judge has taken a view that the order cannot be treated as an order of transfer but only an order of posting within the district under the control of the 4th Respondent- District Education Officer, Ambikapur of District Surguja.

5. Learned Counsel for the Appellant may be justified in saying that an order of transfer and order of posting may not be much different from each other, for all incidents and purposes, having regard to the effect of such a decision. But, the fact of the matter remains that the transfer or posting as the case may be, has been done by the District Education Officer, District Surguja within his territorial jurisdiction that is, the jurisdiction of the District of Surguja over which the said District Education Officer has administrative control. There is no dispute on this point. Therefore, the only issue is as to whether the impugned order of transfer could be upheld on its face. It recites that disciplinary proceedings are on its way as against the Appellant and that there are acts of negligence or neglect of duties attributed to her. We see from the impugned order of transfer that the issuance of such an order pending further proceedings at the hands of Director, Public Instructions, who is the controlling authority, has also been communicated to the said authority, namely the Director, Public Instructions. That being so, it will be too hyper-technical to read the impugned order of transfer (Annexure P/1 in the writ petition) as one in which as there is a concluded finding of guilt and then proceed to hold that the resultant order is a punitive one, emanating from the District Education Officer. We are of the view that the said order, insofar as its contents are concerned only indicates the foundational reasons on the basis of which the District Education Officer had acted. That decision is absolutely subject to the

outcome of the enquiry which may ultimately be concluded, on the initiation of proceedings by the Director, Public Instructions and on the instructions of that authority.

6. However, we need to mention here that the learned counsel for the Appellant has pointed out that according to his client, no show cause notice has been issued and no disciplinary proceedings have been initiated. We are sure that the Director, Public Instructions and the District Education Officer knows that any disciplinary proceedings in the anvil cannot be made wait indefinitely since that would be against the public interest, notwithstanding the rights if any, of any of the delinquent employee involved therein. If at all there is any enquiry proposed by the concerned authority against the Appellant, that may have to be initiated within appropriate time frame. The 2nd Respondent will do the needful in this regard. Otherwise, the Appellant will be entitled to seek requisite relief from the State Government.

7. For the aforesaid reasons, we do not find our way to interfere with the ultimate verdict handed down by the Learned Single Judge. This appeal fails.

8. In the result, this writ appeal is dismissed in limine.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE