

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 28.08.2017****Judgment Delivered on 08.09.2017****Writ Appeal No. 159 of 2017**

(Arising out of order dated 16.01.2017 in Case No. 6447/2016 of the learned Single Judge of this Court)

- Smt. Preeti Tiwari W/o Saurabh Tiwari, Aged About 27 Years Working As Assistant Programmer, At Municipal Council, Kanker, District Kanker, (Chhattisgarh)

---- Appellant**Versus**

1. State Of Chhattisgarh Through: The Secretary, Urban And Administration And Development Department, Mahanadi Bhawan, New Mantralaya, Raipur, (Chhattisgarh)
2. The Commissioner, Municipal Council, Kanker, District Kanker, (Chhattisgarh)

---- Respondents

For Appellant	:	Shri R.K. Kesharwani, Advocates
For State	:	Shri UNS Deo, Government Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****C.A.V. JUDGMENT****Per Sharad Kumar Gupta, Judge**

1. In this writ appeal, the challenge levied is to the order dated 16.01.2017 passed by the learned Single Judge of this Court in WP(S) No. 6447 of 2016 whereby the said writ petition was disposed of with certain directions.
2. This is admitted by the respondents that the petitioner was appointed as Assistant Programmer and was initially posted in the Municipal Council at Bijapur. Thereafter, she was transferred from Municipal Council, Bijapur to Municipal Council, Kanker on the same post vide Annexure P/2 order dated

18.4.2016 issued by respondent- 1. Thereafter, the same authority has again issued a transfer order transferring her back from Municipal Council, Kanker to Municipal Council, Bijapur without any change in the post vide Annexure P/1 order dated 22.11.2016, impugned in this appeal on the ground that the Municipal Council, Bijapur is her parent Municipal Council and she is posted in Municipal Council, Kanker, which is different one from her parent Municipal Council, i.e. Municipal Council, Bijapur. The appellant also admits that her parent Municipal Council is the Municipal Council, Bijapur.

3. In brief, the appellant's case is that she had joined Municipal Council, Kanker on 01.11.2016 pursuant to the order Annexure P/2. Just after 21 days of her joining, she was again transferred back to Municipal Council, Bijapur by order Annexure P/1. Therefore, the order Annexure P/1 is arbitrary, illegal and passed in violation of the transfer policy. Impugned order is an obstacle in the way of her marital life. Her husband namely, Saurabh Tiwari is posted as CMO at Charama, which is merely 25 km away from Kanker. As per the guidelines, the employee, husband and wife shall mandatorily be posted at same place, if the post are available. She being aggrieved by the order Annexure P/1 filed the writ petition which was disposed of with a direction not to give effect to the impugned order till the end of April, 2017 so far as the petitioner was concerned. That order of the learned Single Judge has been challenged through this appeal.
4. In nutshell, the respondents' case is that impugned order has been passed in the administrative exigency. An employee cannot claim as a right that he/she should be permitted to continue in a particular place of posting or office in accordance with his/her will and wish. The place of posting does not depend upon the choice of an employee. Appellant has failed to show that some

malafide intention is behind Annexure P/1 or it violates any statutory provision. Order Annexure P/1 has been issued pursuant to the recent policy decision of the State Government. Not only the appellant, but so many other employees have been sent back to their original Municipal Council vide the same order in pursuance of that policy decision.

5. Shri R.K. Kesharwani, learned counsel for the appellant has put forth the argument that there is no such policy made by the State Government to send the Municipal employees in their parent Municipal Council who were posted in different Municipal Councils. Order Annexure P/1 is discriminatory and violates the provisions of Article 14 and 16 of the Constitution of India because so many Municipal employees are still posted in places other than their parent Municipal Council. On the humanitarian ground, her case may be considered for continuation at the present posting place ie Municipal Council, Kanker.
6. Shri U.N.S. Deo, Government Advocate submitted that order Annexure P/1 is in accordance with the law and the recent policy decision. He supported the order passed by the learned Single Judge of this Court urging that no discrimination has been committed with the appellant.
7. In the case in hand, it is not disputed that the respondent-department i.e. Urban Administration and Development Department, was competent to pass the impugned order. It was passed under the volition of the State Government. Nobody has objected her transfer from Bijapur Municipal Council to Kanker Municipal Council. The appellant's present place of posting Municipal Council, Kanker is nearby Charama, where her husband is allegedly posted and it is far away from Bijapur. Thus, order Annexure P/2 has rather facilitated the appellant and her husband to lead a normal

conjugal life in staying and spending time together. It also provides a convenient working arrangement to them which is one of important object of the transfer policy. If the appellant is sent back to her parent Municipal Council at Bijapur, it would cause hardship to her and her husband and it would also cause problem and difficulty to both the spouses to lead a peaceful and normal life. If she is not sent back from Municipal Council, Kanker to Municipal Council, Bijapur, it would not result in any harm. Therefore, ends of justice requires that the case in hand should be treated as exceptional one on humanitarian ground and she should be permitted to continue in Municipal Council Kanker, following her earlier transfer given effect to by order Annexure P/2 from Municipal Council Bijapur to Municipal Council Kanker.

8. Consequently, the appeal is allowed. The order passed by the learned Single Judge impugned and the order Annexure P/1 so far as it relates to the transfer of the appellant are hereby set aside. No order for costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge