

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.3790 of 2016**

- Nirdesh Kumar Banjara S/o D. R. Banjara, Aged About 47 Years
Presently Working As Head Master, Govt. Middle School, Sambalpur,
District Bemetara (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Education Department,
Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur
(Chhattisgarh)
2. Collector, Bemetara District Bemetara (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri CJK Rao, Advocate
For Respondent/State	:	Shri R. K. Gupta, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****14/02/2017**

Heard.

2. The petitioner has placed before this Court rejoinder with an affidavit bringing on record two circulars dated 14-07-2014 and 30-10-2015.
3. On the last date of hearing, learned counsel for the petitioner was granted time to inform this Court regarding number of students in the institution, where the petitioner is proposed to be transferred under the impugned order. State counsel was also granted time to seek instructions, whether some other Head Master is proposed to be posted or has been posted at the place, wherefrom the petitioner is being transferred.

4. Learned counsel for the petitioner draws attention of this Court to certificate (Annexure P/2) of the Head Master of the School, where the petitioner is presently working, number of students is 270, whereas in the rejoinder, it has been stated on affidavit that the school, where the petitioner is being transferred, number of students are 120.

5. In the additional submission made by the State counsel on affidavit on 31-01-2017, it has been stated that the government has proposed to be given charge of the Head Master of the school, where the petitioner is presently posted, to a Lecturer, Incharge of the Government Higher Secondary School, Sambalpur, District Bemetara.

6. Challenge to the transfer order is founded on the statutory norms of the Right of Children to Free and Compulsory Education Act, 2009 (In short "the Act of 2009") and the rules made thereunder and according to Act of 2009, in case, strength of school is 100 students, there has to be one Head Master. In the school, where the petitioner is being transferred, there are 120 students without any Head Master. The place, where the petitioner is presently working, number of students are 270 and transfer of the petitioner will result in institution without any Head Master. Therefore, it is found that transfer of the petitioner, in any case, would necessarily involve violation of the statutory norms of keeping one Head Master, where the strength of school students is more than 100 and choice being between two institutions where the petitioner is presently working or the other where the petitioner is being transferred.

7. Considering the aforesaid situation and circumstances, it is directed that the transferring authority shall examine this aspect and take a decision in the matter keeping in view the statutory requirements under the Act of 2009 of

keeping one Head Master for over 100 students by whatever arrangements they intend to make and also to ensure that number of teachers in the institution should be proportionate to number of students. The institution, where the petitioner is presently working are 270 students and the institution, where the petitioner is being transferred, number of students are 120 students.

8. Having regard to statutory norms under the Act of 2009, this petition is finally disposed off with a direction to respondents to take a decision in the matter as early as possible. Till the appropriate decision is taken in the matter and corrective measures are taken towards compliance of Act of 2009 and rules made thereunder, the petitioner shall be allowed to continue in the present institution. This order shall not come in the way, but only to dispel any apprehension, it is made clear that in the ensuing transfer season, the State Government may issue fresh transfer order in this matter.

SD/-
(Manindra Mohan Shrivastava)
Judge