NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 940 of 2017

Ghanshyam Singh Chandel S/o Late Shri Triveni Singh Chandel, Aged About 57 Years R/o Ward No. 12, Village & Police Station North Jhagrakhand, District Koriya (Chhattisgarh) **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh)

2. The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh)

3. The Commissioner, Tribal Development, Surguja Division, Surguja, Ambikapur, District Surguja (Chhattisgarh)

4. The Assistant Commissioner, Tribal Development, Koriya, District Koriya (Chhattisgarh)

5. The Collector (Tribal Development), District Koriya (Chhattisgarh)

....Respondents

For Petitioner : Ms. Sharmila Singhai, Advocate
For State : Mr. R.K. Gupta, Dy. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/02/2017

Heard on admission.

1. The petitioner has filed this petition aggrieved by order dated 24.08.2015 by which, upon revocation of suspension, he has been posted at a place, different than the place wherefrom he was suspended.

2. Earlier when the petition was filed, the petitioner was granted opportunity to file an appeal against the order and the petition was dismissed as withdrawn with the said liberty. Thereafter, the petitioner preferred an appeal but as the appeal has remained pending and no order has been

passed, now the petitioner has been reverted back to the Court with this petition seeking quashment of order dated 24.08.2015.

3. At the outset, learned counsel for the petitioner submits that the consistent view has been taken by this Court in large number of cases that, once suspension order is revoked, the employee is liable to be posted at the same place wherefrom he was suspended. Therefore, in these circumstances, appropriate direction may be issued.

4. On the other hand, learned State counsel objects to the maintainability of the petition by submitting that the second petition would be barred by *res judicata* because earlier petition was dismissed as withdrawn with liberty to file appeal and the petitioner having filed an appeal, cannot seek adjudication on merits during the pendency of the appeal.

5. I am afraid, the submission of learned counsel for the State, is misconceived in law. The petitioner was permitted to withdraw earlier petition with liberty to file appeal. The appeal was filed by the petitioner but when the appeal has not been decided till date, the petitioner has again approached this Court seeking quashment of the order, against which, the appeal has been filed. It is a matter of discretion of the writ Court under Article 226 of the Constitution of India. Merely because the appeal is pending, the writ Courts are not restricted to issue a direction, to which a person, may be entitled. Ordinarily, a matter is not entered into merits when there is a remedy of appeal and appeal has been preferred and pending. But this is not an inviolable. In appropriate cases, even though the appeal has remained pending, nothing deters the writ Court from examination of merits.

6. In the exceptional circumstance, I am inclined to quash the impugned order. The legal issue raised in the petition is very well settled by this Court in various decisions and large number of orders passed by this Court directing that an employee who has been suspended and thereafter suspension is revoked, is to be posted at the same place wherefrom he was suspended. This view has been taken by this Court in the case of **Bhopal Tande Vs. State of Chhattisgarh and others [W.P.(S) No.2498 of 2015 decided on 10.08.2015].** Therefore, in view of the above, I am inclined to dispose off this petition with similar direction as issued by this Court in WPS No.934 of 2017 (Usha Soni Vs. State of Chhattisgarh and others) and many other cases that

the respondent shall now amend the petitioner's order of posting as per the judicial verdict in the case of **Bhopal Tande (supra)** to post the petitioner at the place wherefrom he was suspended.

7. It is made clear that it would not come in the way of the respondent in transferring the petitioner to other place in future.

8. The petition is accordingly disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha