

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1320 of 2017

1. Rupesh Kumar Pandey S/o Shri Mathura Prasad Pandey, Aged About 45 Years Working As Chief Executive Officer, Janpad Panchayat, Chhuikhadan, District Rajnandgaon (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, New Raipur, P. S. Rakhi, District Raipur (Chhattisgarh).
2. Chief Executive Officer, Zila Panchayat, Rajnandgaon (Chhattisgarh).
3. The Collector, Rajnandgaon (Chhattisgarh).

---- Respondent

For Petitioner

Shri Gautam Khetrapal, Advocate

For Respondent/State

Shri Adiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

30/10/2017

1. Petitioner would assail the impugned order whereby he has been transferred from the office of the Chief Executive Officer, Janpad Panchayat, Chhuikhadan, Dist. Rajnandgaon to the post of Assistant Project Officer, Zila Panchayat, Bastar.

2. In the interim order dated 17-3-2017 passed by this Court it is observed that the petitioner has been transferred to a post outside his cadre of CEO, therefore, the petitioner shall not be relieved and continue at the present place of posting.
3. The respondents would defend the order, on submission, in the return, that the post of Assistant Project Officer is to be filled up by 50% from direct recruitment and remaining 50% by posting the personnel on deputation, therefore, the impugned order is, in fact, an order of deputation sending the petitioner to work as Assistant Project Officer in the Zila Panchayat, Bastar. It is also stated by the learned counsel for the State that the grade pay of both the posts is same and, as such, the order impugned is just and proper.
4. Having considered the matter, it appears the impugned order deserves to be set aside for more than one reason. Firstly; any order of deputation to a different cadre has to be made after obtaining consent of the Government servant, which has not been done in the matter at hand. Secondly; the impugned order does not say that the petitioner is sent on deputation to the post of Assistant Project Officer. On the contrary the impugned order specifically says that the petitioner is transferred to the post of Assistant Project Officer.

5. It is the well settled proposition of law that the deputation cannot be made without consent of the person to be deputed.
6. The Supreme Court in **Umapati Choudhary v. State of Bihar and Another**¹ held thus at para 8 :

“8. Deputation can be aptly described as an assignment’ of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation.....”

(Emphasis added)

7. The impugned order stating that the petitioner is sent on transfer to work as Assistant Project Officer, the ground of defence stated in the return that the subject order is, in fact, deputation appears to be an afterthought. It is settled in the matter of **Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi**² that the order passed by any administrative authority has to be decided on the basis of

1 (1999) 4 SCC 659

2 AIR 1978 SC 851

reasoning assigned in the order and no fresh reasons can be assigned in the counter affidavit to defend the order.

8. For all the above-stated reasons, the impugned order deserves to be and is hereby set aside.

9. Accordingly, the writ petition is allowed to the extent indicated above.

Sd/-

Judge

Prashant Kumar Mishra

Gowri