

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5880 of 2016

Shiv Charan Yadav S/o Late Shri Madan Singh Yadav, Aged About 57 Years
Working As Headmaster, Government Middle School, Mainpur, Charama Block
Charama, District North Bastar Kanker Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department, (Samvarg T), Mantralaya Mahandi Bhawan, New Raipur, Police Station Rakhi, District Raipur Chhattisgarh
2. The District Education Officer, North Bastar Kanker, District Kanker Chhattisgarh
3. The Block Education Officer, Charama, Distirct North Bastar Kanker Chhattisgarh

---- Respondents

Shri D.N.Prajapati, counsel for the petitioner/s.
Shri R.K.Gupta, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/02/2017

The petitioner has challenged order dated 15/09/2016 by which his transfer and posting in school at Mainpur, Block – Charama has been cancelled and he has been asked to comply with the earlier order dated 10/06/2016.

2. Learned counsel for the petitioner submits that vide order dated 10/06/2016 of the State Government, he was transferred from school at Bodeli to school at Mahla. The petitioner preferred a representation. The State Government, thereafter, passed another order on 30/07/2016 by which, the petitioner was then transferred at the option of District Education Officer, Kanker. The District Education Officer, Kanker then passed an order on 26/08/2016 posting the petitioner at Mainpur. The petitioner complied with the order and joined at Mainpur on 29/08/2016. In this way, the transfer order has

been executed. It is submitted that the order of posting at Mainpur has now been cancelled and the petitioner has been directed to comply with the earlier order of transfer dated 10/06/2016.

Learned counsel submits that as the petitioner has already executed the transfer order by which, he has been posted and transferred at Mainpur and as the petitioner has already joined, the order could not be cancelled for any reason whatsoever. The other ground is that petitioner's wife is posted at Primary School, Sidesar which is nearer to Mainpur as compared to Koylibeda.

3. Learned State counsel submits that the occasion for cancelling the order of posting at Mainpur arose because it was found by the District Education Officer that this posting of the petitioner was in violation of the Government's transfer policy as contained in Clause 2.8 of the circular dated 11/06/2016. He submits that the impugned order was passed in this background only to comply with the directions of the State Government.

4. After hearing learned counsel for the parties, I find that Clause 2.8 of the transfer policy dated 11/06/2016 could not be said to be violated because the petitioner never joined at Mahla under transfer order dated 10/06/2016 which was later on, modified vide order dated 30/07/2016. The said clause would have been applicable only in the event, the petitioner would have executed the transfer order and joined at Mahla. Otherwise also, in view of the settled legal position, once the transfer order is carried out and executed, it could not be cancelled, the impugned order is unsustainable in law and is quashed. The petitioner shall continue in the school at Mainpur.

Sd/-
(Manindra Mohan Shrivastava)
Judge