

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 547 of 2016**

P.L.Tarak S/o Late Sarju Tarak, Aged about 61 years, Presently posted as Sub-Divisional Officer, Water Resources Construction, Sub Division, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh.

**---- Appellant****Versus**

1. State of Chattisgarh, Through the Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Thana Mandir Hasod, District Raipur, Chhattisgarh.
2. Executive Engineer, Water Resources, Construction Sub Division, Baloda-Bazar, District Balda Bazar-Bhatapara, Chhattisgarh.
3. State of Chhattisgarh, Through the Secretary, General Administration Department, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, Thana Mandir Hasod, District Raipur, Chhattisgarh.

**---- Respondents**


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For Appellant : Shri Abhishek Sinha, Advocate  
 For Respondent/State : Shri Ashish Surana, Panel Lawyer.

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**  
**Hon'ble Shri P Sam Koshy, J.**

**Judgment on Board****Per Thottathil B. Radhakrishnan, Chief Justice****03/04/2017**

1. We have heard the learned counsel for the Appellant/Petitioner and the learned counsel for the Respondent/State.
2. IA No. 3 of 2017, application for extension of time in incorporating the amendment, is allowed. Necessary amendments be incorporated during

the course of the day.

3. The Appellant is the writ petitioner. He challenged an order of transfer. That order is one by which he has been transferred from one sub-division to another sub-division in the same Division. Both offices are in Balodabazar. The challenge levied by the Appellant/Petitioner before the learned Single Judge is that the transfer should not have been made without the concurrence of a particular co-ordination committee headed by the Chief Minister, did not find favour with the learned Single Judge who held that such situation would arise only when there is an inter-divisional transfer.
4. As rightly pointed out by the learned Single Judge, transfer is an incidence of service and that the transfer is supported by the State Government as one made in exigencies of administration. It is also a fact that though the Appellant/Petitioner attempted to levy a challenge to the transfer on grounds of malice and malafides, there was no specific challenge in that regard based on specific facts and materials particulars worth cognizance. The learned Single Judge also noted that any person against whom malice and malafides are attempted to be focused is not impleaded, which is opposed to the settled position of law that such challenge cannot be raised without the person charged with malice or malafides being extended opportunity to meet such challenge. On the whole, we are satisfied that in terms of legal rights referable to the statutory provisions and the governing executive decisions, the writ petitioner was not eligible to any particular relief in his favour as a matter of right even in terms of Part III of the Constitution.
5. But examining the files, we find three glaring facts which have accrued with the passage of time. The writ petitioner obtained and had continued

to enjoy an interlocutory order in his favour during pendency of the writ petition. Pending this writ appeal, there is an order of status quo in terms of which the Appellant/Petitioner continues to officiate from the seat in which he was originally posted. The third persuading factor is that the Appellant is due to retire from service on superannuation by August, 2017. These three situations taken together persuade us to hold in writ jurisdiction, though through a writ appeal, that the status quo as of now regarding the office of posting of the Appellant need not be disturbed till the Appellant superannuates from service. This will subserve the scales of justice as between the employer-Establishment and the appealing employee. We also cannot forget that change of station of posting may have other repercussions including in the matter of expeditious finalization of retiral benefits.

6. For the aforesaid reasons, though there is no legal ground on which we would interfere with the impugned judgment of the learned Single Judge, this writ appeal is ordered directing that pursuant to the interlocutory order issued by this Court on 24.11.2016, the status quo obtained as on the date of that order will continue to operate and bind the parties to this appeal till the date of superannuation of the Appellant/Petitioner from service.
7. The writ appeal is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)  
**CHIEF JUSTICE**

Sd/-

(P. Sam Koshy)  
**JUDGE**