NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5967 of 2016

- Smt. Suman Pandey W/o Shri Ashish Pandey Aged About 36 Years R/o House No. 95 Years, Jawahar Nagar Durg District Durg, (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of Panchayat & Rural Development, Mantralaya, Mahanadi Bhawan, Naya Dhamtari, District Dhamtari, (Chhattisgarh).

2. Chief Executive Officer, Zila Panchayat Durg, District Bilaspur, (Chhattisgarh).

3. Chief Executive Officer, Zila Panchayat, Dhamtari, District Dhamtari, (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Mateen Siddiqui, Advocate
For Respondent/State	:	Shri R.K. Gupta, Dy. Advocate General
For Respondent No.2	:	Shri Shashank Thakur, Advocate
For respondent No.3	:	None appears though served

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/03/2017

1. Heard.

2. This writ petition is preferred by the petitioner challenge to cancel the order dated 28/06/2016 passed by the respondent No. 2 raise on the sole ground that the petitioner having joined an executed transfer order it could not be cancelled. Reliance has been placed in this matter by this Court in ***W.P.(S) No. 2964 of 2014 'Syed Nurul Kadir vs. State of Chhattisgarh and others***' decided on 03/07/2014.

3. Learned counsel for the petitioner submits that despite the legal position stated and settled by this Court in large number of orders, executed transfer order of the petitioner has been cancelled by the respodnent No.2, which is illegal and without jurisdiction. It is further submitted that after transfer order was passed on 28/06/2016 the petitioner was relieved from Zila Panchayat, Dhamtari and the petitioner submitted her joining on 31/05/2016 before the

Zila Panchayat, Durg, therefore, the order once executed could not be cancelled.

4. Learned counsel appearing for respondent No. 2 submits that though the petitioner had submitted her joining, her joining was not accepted, therefore, it cannot be expected that order was executed, therefore, in this circumstances it is contended that the transfer order could be well cancelled. He next submits in fact the petitioner had not correctly stated before the authority with regard to status of the husband. Learned counsel for the respondent No. 2 further submits that, in fact, the petitioner submitted misleading application in which she only declared that her husband was working in Health Department as Pharmacist without disclosing the place of posting. He submits that on this declaration, the petitioner mislead the authority that her husband was also posted at Durg, whereas, in fact, petitioner's husband is posted at Balod district, therefore, the order was rightly cancelled.

5. As it has not been deputed before this Court that the petitioner was relieved from Dhamtari and submitted her joining at Durg on 31/05/2016, in the considered opinion of this Court, executed transfer could not be cancelled. The execution of the transfer order could neither be nullified nor deferred by the respondent No. 2 by refusing to accept joining. If that contention is accepted, it will lead to situation where the authority may keep sitting over the matter and then cancel the order.

6. Therefore, only on this short ground, the impugned order is held illegal and set-aside. This Court has observed that the husband of the petitioner is not posted at Durg district but at Balod district which perhaps was the ground to cancell order of transfer. Therefore, the competent authority would be at liberty to pass fresh transfer order.

7. Accordingly, the writ petition is allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Kamde