

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 18 of 2016

Mohd. Shahadat Ansari S/o Late Jamaluddin, aged about 59 years, posted as Assistant Engineer, Rural Engineering Services, Dantewada Division, District Dantewada (C.G.).

---Petitioner

**Versus**

1. State of Chhattisgarh, through the Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.).
2. The Chief Engineer, Rural Engineering Services, Office of Development Commissioner, Chhattisgarh, New Raipur (C.G.).
3. The State of Madhya Pradesh, Department of Panchayat and Rural Development, Vallabh Bhawan, Bhopal (M.P.).
4. Union of India, through the Secretary Personnel, Public Grievance and Pension Mantralaya, Personnel & Training Department, Third Floor, Lok Nayak Bhawan, Khan Market, New Delhi.
5. The Executive Engineer, Rural Engineering, Engineering Services, Dantewada Division, District Dantewada (C.G.).

---Respondents

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| For petitioner      | : | Shri Bharat Rajput, Advocate.             |
| For respondent No.3 | : | Shri Malay Shrivastava, Advocate.         |
| For respondent No.4 | : | Shri Rajkumar Gupta, Advocate.            |
| For State           | : | Shri Chandresh Shrivastava, Panel Lawyer. |

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Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/07/2018

1. The challenge in the present Writ Petition is to the impugned orders Annexure-P/1 and P/12 dated 15/12/2000 and 30/11/2015 respectively.
2. Vide Annexure-P/1 dated 15/12/2000, the petitioner stood allocated to the State of Madhya Pradesh and vide Annexure-P/12 dated 30/11/2015,

pursuant to the allocation made in the year 2000, the petitioner has been relieved to resume his duties in the State of Madhya Pradesh.

3. The facts of the case in brief is that, the petitioner was appointed as a Sub-Engineer under the erst while State of Madhya Pradesh in the year 1981 in the Rural Engineering Services Department. On the date when the State of Chhattisgarh was carved out the petitioner was working at Dantewada as a Sub-Engineer. The petitioner on account of bifurcation in the two States had opted for the State of Madhya Pradesh so far as the allocation is concerned. The respondents exceeded to his option and published a posting order on 15/12/2000 – Annexure-P/1 posting the petitioner from Dantewada to Jhabua whose name finds place at Sr.No.27. Pursuant to the order – Annexure-P/1, the Chief Executive Officer, Janpad Panchayat, Dantewada issued an order on 31/10/2001 relieving the petitioner from the forenoon of 31/10/2001 for giving his joining at Jhabua (M.P.).

4. Lateron, vide order dated 28/11/2001 (Annexure-P/3), the Government of Chhattisgarh issued an order so far as the petitioner's case is concerned and held that, until the final allocation list is published, the petitioner should not be relieved from the services of the Janpad Panchayat, Dantewada. By virtue of the cancellation of the relieving order, the petitioner continued to work with the respondents till 17/08/2015.

5. The respondents again issued an order asking the Executive Engineer, Rural Engineering Services, Dantewada to relieve the petitioner from

Dantewada to the services under the Madhya Pradesh Government at Jhabua.

6. This order dated 17/08/2015 was put to challenge in a Writ Petition i.e. WPS No.3364/2015 which stood dismissed holding that, since the order of allocation was not challenged, the subsequent relieving order could not have been challenged.

7. Subsequently, a Writ Appeal was preferred which stood dismissed as withdrawn.

8. Lateron, the respondents again issued a fresh order of relieving the petitioner from Dantewada and asking the petitioner to report for duty in the office of Development Commissioner, Bhopal (M.P.). It is this order which is under challenge in the present Writ Petition.

9. According to the counsel for the petitioner, by virtue of the petitioner's option that he had given for allocation to the State of Madhya Pradesh, the respondents had immediately relieved the petitioner from Chhattisgarh to Madhya Pradesh. The State of Chhattisgarh itself had refused to relieve the petitioner vide Annexure-P/3 dated 28/11/2001 on the ground that, till the final allocation of the petitioner is made to the State of Madhya Pradesh, the services of the petitioner should not be relieved.

10. Perusal of record would show that, none of the parties before this Court had been able to show as to whether the petitioner has been finally allocated to the State of Madhya Pradesh or not? The allocation list showing the petitioner to have been allocated to the State of Madhya Pradesh is not available with any of the parties before this Court including the petitioner

who states that no final allocation of the petitioner has been published till date. If we peruse Annexure-P/1 dated 15/12/2000, it is not an allocation list, but is only an order of posting by virtue of the option which the petitioner had exercised while creation of the new State of Chhattisgarh.

11. Right from the date of the creation of the State of Chhattisgarh with effect from 01/11/2000 onwards, the petitioner has been permitted to discharge his duties within the State of Chhattisgarh till 31/05/2017 and on 01/06/2017, the respondents again issued an order relieving the petitioner from Janpad Panchayat, Dantewada to the Rural Engineering Services, District Jhabua in Madhya Pradesh. Thereafter, the petitioner has not been permitted to discharge his duties in the State of Chhattisgarh.

12. What is pertinent to take note of is the fact that, on 28/12/2016, the General Administration Department of the State of Chhattisgarh had issued a circular which was passed pursuant to the consultation and acceptance of between the two States i.e. the State of Madhya Pradesh as well as the State of Chhattisgarh wherein it has been decided by either of the States that, all those employees who were to retire within 2 years from the cut off date of 01/04/2016 shall not be relieved from their respective States where they were working.

13. Since, the petitioner according to the date of birth in his service record was attaining the age of 60 with effect from 30/06/2017, the petitioner would definitely be one of those employees who stands permitted as per the circular dated 28/12/2016 and he could not have been issued with the

circular dated 01/06/2017 which has been brought on record by the petitioner by way of Annexure-P/17 along with the rejoinder.

14. The said order of relieving dated 01/06/2017 also would not be proper, legal and justified for the simple reason that, once when the respondent/the Chhattisgarh Government had as early as on 28/11/2001 taken a decision that, till the final allocation list is not published showing the petitioner to have been allocated to the State of Madhya Pradesh, he should not be relieved. In the absence of final allocation being published showing the petitioner to have been finally allocated to the State of Madhya Pradesh, the relieving order relieving the petitioner from the services of the State of Chhattisgarh to Madhya Pradesh is without any basis, authority and the same thus is not sustainable.

15. Another aspect which cannot be lost sight of is the fact that, the petitioner at the first instance had opted for going to the State of Madhya Pradesh. The option of the petitioner was exceeded to by his employer as early as on 15/12/2000 where the petitioner who was posted within the territories of Chhattisgarh was posted back to the territories falling within the State of Madhya Pradesh. It was the State of Chhattisgarh which intervened in between and refused to relieve the petitioner from Chhattisgarh to Madhya Pradesh till the final allocation list is published.

16. For the said circumstances, until there is a final allocation list published and the petitioner having duly been intimated of the final allocation if any, the respondent/the Chhattisgarh Government could not have unilaterally issued

an order relieving the petitioner from the State of Chhattisgarh to the State of Madhya Pradesh.

17. The impugned action on part of the respondents in issuing the relieving order dated 01/06/2017 so also the relieving order earlier passed on 30/11/2015 both being without authority and without there being any formal order of allocation of the services of the petitioner from State of Chhattisgarh to the State of Madhya Pradesh or vice-versa is not sustainable and the same deserve to be and is accordingly set-aside.

18. The respondents are directed to immediately take back the petitioner into service at the place where he was discharging his duties prior to 30/11/2015 and 01/06/2017 i.e. the date of relieving (Annexure-P/12 & P/17) and the petitioner would be permitted to continue in his service till he attains the age of 62 which is the age of superannuation in the State of Chhattisgarh.

19. It is made clear that, since there is no final allocation of the petitioner allocating him to the service of Madhya Pradesh Government, the petitioner for all practical purpose have to be considered and treated as if he was an employee of the State of Chhattisgarh and he shall be entitled for all reliefs which an employee under the State of Chhattisgarh would have got.

20. The interim order granted earlier in favour of the petitioner gets merged with this order.

21. The Writ Petition accordingly stands allowed.

Sd/-  
(P. Sam Koshy)  
JUDGE