

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2284 of 2017

Santosh Kumar Mahto S/o Shri B. P. Mahto, Aged About 42 Years Posted As Additional Superintendent Of Police, Police Headquarter, Raipur, District Raipur Chhattisgarh, Permanent R/o Village Barpali, Via Bhaisma, District Korba Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Home Department, Mahanadi Bhawan, Mantralaya, New Raipur, P. S. Rakhi, District Raipur Chhattisgarh.
2. State Of Madhya Pradesh, Through The Secretary, Home Department, Vallabh Bhawan, Bhopal Madhya Pradesh
3. The Principal Secretary, Government Of Chhattisgarh Home (Police) Department, Mahanadi Bhawan, Mantralaya, New Raipur, P. S. Rakhi, District Raipur Chhattisgarh.
4. The Under Secretary, Government Of Chhattisgarh, Home (Police) Department, Mahanadi Bhawan, Mantralaya, New Raipur, P. S. Rakhi, District Raipur Chhattisgarh.
5. The Director General Of Police, Chhattisgarh State, Police Headquarter, Sector -19, New Raipur Chhattisgarh.
6. The Inspector General Of Police (Administration), Police Headquarter, Sector-19, New Raipur Chhattisgarh.
7. The Assistant Inspector General Of Police (Administration), Police Headquarter, Sector-19, New Raipur Chhattisgarh.
8. The General Administrative Department, Through Its Secretary, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, New Raipur, P.S. Rakhi, District Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Mr. V.R. Tiwari, Advocate along with Mr. Varunendra Mishra, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.
For respondent No.2	:	Mr. Ashish Surana, Advocate
Present in person	:	Mr. Dashrath Prasad Koushal, Under Secretary, Home (Police) Department, Govt. of Chhattisgarh

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/06/2018

1. The challenge in the present writ petition is to the impugned orders (Annexure P/1) issued by the respondent-State of Chhattisgarh dated 02.05.2017 and also the letter dated 03.05.2017. Vide the said two

impugned orders the respondents have initiated proceedings against the petitioner for cancellation of his change of cadre from the State of Madhya Pradesh to the State of Chhattisgarh.

2. The brief facts which led to filing of the present writ petition is that the petitioner is an officer, who was appointed directly as a Deputy Superintendent of Police vide order dated 04.03.2002 from a recruitment process conducted by the Madhya Pradesh Public Service Commission in the year 1999-2000.
3. The petitioner by virtue of his order of appointment assumed the duties on the post of Deputy Superintendent of Police and in due course of time, the petitioner also got promoted to the post of Additional Superintendent of Police in the State of Madhya Pradesh itself.
4. The petitioner had moved an application before the Government of Madhya Pradesh seeking for a change/transfer of his cadre from the State of Madhya Pradesh to the State of Chhattisgarh as the petitioner was a domicile of the State of Chhattisgarh and by virtue of change of cadre he would be able to attend his old parents, who are also natives of the State of Chhattisgarh. On the said application being made, the State of Madhya Pradesh forwarded the letter to the State of Chhattisgarh seeking their consent, which was processed by the State of Chhattisgarh. Later a letter was issued to the Principal Secretary, Home Department, Government of Madhya Pradesh by the State of Chhattisgarh on 03.05.2013 seeking the consent from the State of Madhya Pradesh in respect of the change of cadre of the petitioner from Madhya Pradesh to Chhattisgarh. The Madhya Pradesh Government, Home Department vide their letter dated 13.07.2015 issued a correspondence to the State of Chhattisgarh raising various

apprehension in respect of the status of the petitioner and also bringing the facts to the notice of the State of Chhattisgarh that the petitioner in due course of time has also become an Additional Superintendent of Police and whether the State of Chhattisgarh would be willing to accept the petitioner and also bare all financial liabilities that would be incurred on the petitioner being sent to the State of Chhattisgarh. To this letter the State of Chhattisgarh vide their correspondence dated 09.02.2016 (Annexure R 2/4) have categorically given an undertaking to the State of Madhya Pradesh, whereby they have stated that State of Chhattisgarh is willing to accept the petitioner by way of a change in cadre and they are also willing to bare the expenses and the financial burden, so far as the petitioner's service on the post that he was holding is concerned.

5. Based upon which, a consent was also sought from the petitioner, which he gave on 23.02.2016 (Annexure R 2/5) and based on the said consent, the Government of Madhya Pradesh vide its order dated 27.04.2016 have allocated the petitioner to the State of Chhattisgarh as a change of cadre with a note that the petitioner shall be given the seniority on the post of Additional Superintendent of Police in accordance with rules prevailing in the State of Chhattisgarh. The petitioner by virtue of which assumed his duties in the State of Chhattisgarh on the afternoon of 27.06.2016. Since then the petitioner is for all the practical purposes considered as an officer of the State of Chhattisgarh and he is posted at the Police Headquarter in the State of Chhattisgarh, at Raipur.
6. After the petitioner serving the respondents for a period of about one year, the respondents suddenly issued the impugned order (Annexure P/1), whereby they have now taken a stand that the allocation of the petitioner or the change of cadre of the petitioner from State of Madhya Pradesh to

the State of Chhattisgarh was not in accordance with the rules and that the petitioner's case could not have been considered, as the application for change of cadre was made beyond a cut off date prescribed by the State of Chhattisgarh, which was 31.03.2011. Since the application of the petitioner was beyond the cut off date the same has been wrongly entertained and allowed by the respondents and which the respondent-State of Chhattisgarh now intends to cancel.

7. The contention of the petitioner challenging the action of the respondent-State of Chhattisgarh is that while granting the allocation to the petitioner from Madhya Pradesh to Chhattisgarh by way of a change of cadre, the respondent-State of Chhattisgarh had considered it to be a special case and keeping all rules and procedures in abeyance the order for change of cadre for the petitioner was permitted and issued.
8. It was further the contention of the petitioner that the plain perusal of the order of the State of Madhya Pradesh dated 27.04.2016 would reveal that the petitioner's name has been struck off from the rolls of the State of Madhya Pradesh. That for all practical purposes the said post also does not remain vacant with the State of Madhya Pradesh and if the respondent-Chhattisgarh Government cancels the change of cadre of the petitioner from Madhya Pradesh to Chhattisgarh, it would create a situation where the petitioner would find it difficult in getting his services back in the State of Madhya Pradesh as they have already struck off his name from the cadre in the State of Madhya Pradesh.
9. The counsel for the petitioner also tried to allege malafides upon the officers of the Chhattisgarh Government alleging that the petitioner's change of cadre is being cancelled at the behest of some vested interests,

whose seniority may get affected if the petitioner is placed in the cadre of the Additional Superintendent of Police in the State of Chhattisgarh. He further alleges that though the petitioner is working in the State of Chhattisgarh since 2016, but till date the name of the petitioner has not been inserted in the gradation list of the Chhattisgarh Police.

10. It was also the contention of the petitioner that the action on the part of the respondents, initiated vide Annexure P/1 and P/2 also is bad in law for the reason that the State of Madhya Pradesh has not been taken into confidence before initiating such proceedings. It was lastly contended by the counsel for the petitioner that as was the case of the petitioner, there were a large number of persons of similar nature, who had also been appointed either along with the petitioner or subsequent to the petitioner's change of cadre to the State of Chhattisgarh permitted those persons to join the duties in the State of Chhattisgarh and whose names have also been brought into the gradation list in the State of Chhattisgarh and against whom no such action has been initiated. Thus the action on the part of the respondents also is violative of Article 14 of the Constitution of India and that the petitioner is being victimized and prayed for the quashment of the same.
11. Opposing the petition, the counsel for the State of Chhattisgarh submits that the case of the petitioner cannot be equated with those persons who have been allocated to the State of Chhattisgarh by way of a change of cadre as are those persons had applied much earlier to the petitioner and that at the relevant point of time there was an scheme in operation in the State of Chhattisgarh, where the change of cadre was permitted and that the cut off date was 31.03.2011. Since the application of the petitioner for the first time was moved beyond 31.03.2011 his case cannot be equated

with those persons who had already been allocated to the State of Chhattisgarh by way of change of cadre.

12. The counsel for the State of Chhattisgarh banked upon the cut off date of 31.03.2011 to support the impugned order stating that since the application of the petitioner was not prior to 31.03.2011, it appears that the case of the petitioner has been wrongly considered for allocation to the State of Chhattisgarh. Therefore the petitioner cannot take the plea of parity with the case of Sweta Shrivastava and other similarly placed persons as has been alleged in the writ petition.
13. The counsel for the State of Madhya Pradesh Mr. Ashish Surana on the contrary, taking an entirely different stand than what the State of Chhattisgarh has taken, submits that so far as the State of Madhya Pradesh is concerned, he has instructions to submit that the petitioner cannot now be considered of being sent back to the State of Madhya Pradesh. According to him the State of Madhya Pradesh had categorically informed and intimated the entire facts and circumstances of the case so far as the petitioner's appointment is concerned, the procedure of allocation to the State of Chhattisgarh is concerned, the status and the post which the petitioner was holding and had also sought for clarification as to the financial liability which would be incurred on the petitioner being sent to the State of Chhattisgarh.
14. The counsel for the State of Madhya Pradesh also submits that inspite of specific letters being issued to the State of Chhattisgarh, they had unconditionally accepted the petitioner's claim for change of cadre and had also willingly accepted to bare the financial liability, whatever that would come in the process of the services of the petitioner being transferred by

way of change of cadre from Madhya Pradesh to Chhattisgarh. He further referred to the documents Annexure R 2/1 to R 2/6 enclosed along with the reply of the State of Madhya Pradesh demonstrating the serious of correspondence that took place between the two States before the final order that was passed on 27.04.2016. Thus the State of Madhya Pradesh has taken a clear stand that the services of the petitioner cannot be now taken back into the services of the State of Madhya Pradesh as the post which fell vacant on the transfer of the petitioner already stands filled up.

15. Having heard the contentions put forth on either side and on perusal of record, the undisputed facts which culls out from the submissions and pleadings between the parties is, that undisputedly the petitioner is an officer appointed as an Deputy Superintendent of Police in the year 2002 and who stood promoted as an Additional Superintendent of Police in the year 2015. The petitioner had sought for a change of cadre in the State of Madhya Pradesh to the State of Chhattisgarh. The said application was processed through proper channel and a series of correspondences were made between the two States and where the entire factual matrix of the rules and the guidelines governing the change of cadre and the change of allocation of services between the two States were referred to and knowing fully well the consequences and the repercussions the respondent-State of Chhattisgarh had keeping in abeyance all the rules and guidelines governing the field had ordered for the change of cadre from the State of Madhya Pradesh to the State of Chhattisgarh. The relevant portion of the note-sheet in this regard is reproduced herein under:

“अन्य प्रकरणों के अनुसार इसे भी विशेष प्रकरण मानकर श्री संतोष कुमार महतो
उप पुलिस अधीक्षक म.प्र. की नियुक्ति राज्य पुर्नगठन के बाद होने पर भी निहित

प्रावधान को शिथिल करते हुए म.प्र. से छत्तीसगढ़ स्थानान्तरण की अनुमति देना चाहेंगे।”

16. So far as the contentions of the State of Chhattisgarh is concerned, as regards the contentions of cut off date is concerned, during the course of the hearing, the counsel for the petitioner referred to Annexure P/13 filed along with the rejoinder, wherein it has been specifically envisaged in the note-sheet that the cut off date so far as the application for change of cadre is concerned stood extended up till 31.03.2016.
17. During the course of the hearing the petitioner also produced before the Court, the circular of the State Government in this regard dated 28.12.2016 which clearly envisages that for new applications for change of cadre, the last cut off date has been fixed to be 31.03.2016. If that be so, if the application of the petitioner had been moved even after 31.03.2011, the same cannot now be held to have been moved or entertained beyond the cut off date as the State Government itself has subsequently extended the cut off date from 31.03.2011 to 31.03.2016.
18. So far as the contention of the counsel for the Chhattisgarh Government that the applicability of the circular dated 28.12.2016 would be in respect of those employees who were appointed prior to 01.11.2000, the same may not be sustainable for the simple reason that there is no change in the nature of the circular or the wordings in the circular on the basis of which the applications in the past in respect of other similarly placed persons were entertained except for the extending of the cut off date, neither does either of the circular i.e. exhibit D/10 along with affidavit filed by the Officer In-charge and the circular dated 28.12.2016 reflects that it would be applicable only to those persons who have been appointed either prior to

the State of Chhattisgarh being formed on 01.11.2000 or it would be applicable to those persons, who have been appointed subsequent but have applied prior to 31.03.2011. Thus from the perusal of these documents it clearly reflects that it would be applicable for all those persons, who were in service in the two States.

19. Moreover, in the instant case what is surprising is that the case of the petitioner is identically placed like the case of Smt. Sweta Shrivastava as also the case of Shri Rajshree Mishra, Amit Singh all of whom were working as Deputy Superintendent of Police in the State of Madhya Pradesh and on their applications they have been transferred to the State of Chhattisgarh. So also Vedram Sirmour with Dilip Kumar Soni who were working as Deputy Superintendent of Police have been permitted change of cadre. Likewise another officer namely Ms. Asha Tande, ASI (M) was also given change of cadre from the State of Chhattisgarh to the State of Madhya Pradesh. Thus it clearly reflects that it is not the first case of the petitioner which has been entertained by the respondents so far as the persons who have been appointed subsequent to 01.11.2000 i.e. the date on which the Chhattisgarh Government was carved.
20. Given the aforesaid facts and circumstances of the case, once when the change of cadre has been finalized after a series of correspondences between the two States, the State of Chhattisgarh now cannot be permitted to go back from its earlier stand, that it has taken and seek for the cancellation of the change of cadre. [The action also is impermissible as the said action could be detrimental to the interest of the petitioner substantially as the State of Madhya Pradesh has categorically come up with a stand that they cannot accept the services of the petitioner, who for all practical purposes stands allocated to the State of Chhattisgarh and

that the post which fell vacant on the petitioner moving from the Madhya Pradesh to Chhattisgarh also getting filled up.

21. Moreover the action of the State of Chhattisgarh is bad in law for the reason that the order of change of cadre of the petitioner from Madhya Pradesh to Chhattisgarh was after due correspondences being made between two States. Whereas while initiating the cancellation of the cadre, the State of Chhattisgarh has not taken the State of Madhya Pradesh into confidence and without which the proceedings drawn by the State of Chhattisgarh would not be sustainable. It was incumbent upon the State of Chhattisgarh to first take into confidence the Government of Madhya Pradesh and only after having received the consent of the State of Madhya Pradesh alone could the State of Chhattisgarh initiate any proceeding for change of cadre from Chhattisgarh to Madhya Pradesh. Moreover it had been done while sending the services of the petitioner from the Madhya Pradesh to the State of Chhattisgarh.
22. For all the aforesaid reasons, the impugned notices (Annexure P/1) dated 02.05.2017 and 03.05.2017 are not sustainable and the same deserves to be and is accordingly set-aside. As a consequence it is directed that the petitioner has to be treated for all practical purposes as an officer of the State of Chhattisgarh in the rank of Additional Superintendent of Police by virtue of his being allocated by way of change of cadre from the State of Madhya Pradesh to the State of Chhattisgarh.
23. The writ petition thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge