

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1223 of 2018**

Tulsidas Markam S/o S/o Shri Ramchandra Singh, Aged About 30 Years Posted As Tahsildar, Tahsil Office, Bhaiyathan, District Surajpur (Chhattisgarh).

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Revenue And Disaster Management Department, Mantralaya, Mahanadi Bhawan, New Raipur (Chhattisgarh).
2. The Joint Secretary, Revenue And Disaster Management Department, Mantralaya, Mahanadi Bhawan, New Raipur (Chhattisgarh).
3. The Collector, District Surajpur (Chhattisgarh).
4. Suresh Rai, Posted As Incharge, Tahsildar, Odgi, District Surajpur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Gautam Khetrapal, Advocate.
For State	:	Shri Shashank Thakur, G.A. and Shri Sangharsh Pandey, Dy. GA.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/03/2018**

1. The present writ petition has been filed assailing the order dated 28.12.2017 (Annexure P/5) whereby the services of the petitioner was placed under suspension. The petitioner seeks a direction to the respondents to revoke his suspension and to permit him to resume his duties at Tehsil Office Ambikapur.
2. The challenge to the said suspension order is primarily on the ground that the order of suspension is vindictive, arbitrary and with malafide. According to him, the same has been passed on account of repeated

writ petitions that the petitioner had filed against the decision of the respondents and in each of the cases, the petitioner having got an interim order in his favour has caused annoyance to the respondents because of which the impugned order has been passed. The petitioner had been appointed as Tehsildar in the year, 2013 and was posted at Tehsil Office, Ambikapur. Subsequently, he was posted at Tehsil Office Sitapur. According to the petitioner, vide order dated 30.06.2016 the services of the petitioner was transferred from Ambikapur to Tehsil office Bhaiyathan which the petitioner immediately complied with and assumed charges on 26.09.2016. Immediately thereafter the petitioner was again transferred vide order dated 21.06.2017 from Tehsil office Bhaiyathan to Tehsil office Premnagar, District Surajpur.

3. This transfer order dated 21.06.2017 was questioned by way of a writ petition vide WPS No.2900 of 2017. The High Court while admitting the petition gave an interim protection to the petitioner vide its order dated 21.07.2017. Subsequently, the said writ petition got disposed of as withdrawn. Shortly thereafter i.e. on 27.09.2017 the respondents issued another order of transfer transferring the petitioner from Bhaiyathan to District Sukma.
4. The petitioner again preferred a writ petition vide WPS No.5282 of 2017 and the High Court again vide order dated 06.10.2017 directed that the petitioner shall not be relieved till the next date of hearing. It is submitted that immediately after passing of this order, the petitioner was relieved exparte and his charge was handed over to

one Suresh Rai. The said writ petition again came up for hearing on 05.01.2018 on which date the petition was finally disposed of with a direction to the respondents to consider the case of the petitioner for posting him outside the schedule area in terms of Clause-1.3 of the circular dated 03.06.2015. The petitioner also got an interim protection that till the matter is decided by the respondents, the petitioner shall be allowed to continue at the present place of posting. However, since the petitioner was not granted joining at Bhaiyathan inspite of interim order dated 06.10.2017, the petitioner preferred a contempt petition vide Contempt Petition No. 675 of 2017. The said contempt petition was disposed of with a direction to the Collector to verify from the records whether the petitioner has been relieved before 06.10.2017 or not and if he is found to be working, he shall be allowed to continue work and pay salary for the intervening period.

5. According to petitioner, all these orders which the petitioner have been able to obtain has drawn an annoyance of the authorities at Secretariat and it would have been this reason that the impugned order of suspension has been passed on 28.12.2017 i.e. immediately after the order in the contempt petition was passed. According to him, since the petitioner has been obtaining interim protection repeatedly on the frequent transfer orders being passed by the State, the respondents have initiated a co-ercive method.
6. It is further contended by the petitioner that subsequently on a representation being made by him, the respondents have issued a fresh order of transfer on 22.02.2018 and the petitioner now has

been transferred to Mungeli instead of Sukma. This order reflects the petitioner to have been transferred from Bhaiyathan to Mungeli. This according to the petitioner is sufficient indication to show that he has not been relieved from Bhaiyathan and he continues to be posted as Naib Tehsildar at Bhaiyathan or else an order of transfer would have been shown him to be transferred from Sukma to Mungeli.

7. According to petitioner, now that since he has resumed his duties at Mungeli, the grievance of the petitioner so far as transfer and posting is concerned, stands redressed and as such the suspension order should also have been revoked and thus prayed for revocation of his suspension order.
8. The counsel for the petitioner to further show the malafide and vindictive approach of the respondents, submit that the respondent No.4 meanwhile had also filed an FIR against the petitioner for the offence under Section 186,188,189,193,196 and 211 IPC which would further establish the fact that the respondents had malafide against the petitioner and were biased against him all along and they were bent upon to remove the petitioner from Bhaiyathan at all costs. For all these reasons, the petitioner prays for quashment of order of suspension dated 28.12.2017.
9. Per contra, learned counsel for the State opposing the petition submits that all the allegations put forth by the petitioner is totally misconceived and baseless. There is no malafide whatsoever against the petitioner. The petitioner has been placed under suspension for more than one reasons and that he cannot relate non compliance of

the transfer orders to be the only grounds for placing him under suspension. A plain reading of impugned order (Annexure P/5) itself would reveal that there are two grounds reflected for placing the petitioner under suspension. First being the non compliance of order of transfer transferring the petitioner from Ambikapur to Sukma. This ground for placing the petitioner under suspension does not survive any further in the light of the transfer order getting modified and the petitioner having been posted at Mungeli and which has since been complied with by the petitioner.

10. The State counsel further submits that the other ground for suspension which is very serious is also reflected in the order i.e. the various irregularities on the part of the petitioner in the capacity of Tehsildar while he was posted at District Surajpur. According to him, on 14.09.2017 i.e. much before the order of transfer while the petitioner was posted at Bhaiyathan, an inspection was made in the office of the petitioner by the Additional Collector as well as by Deputy Collector jointly. In the course of inspection, various irregularities were detected. After conducting inspection, a report was submitted to the Collector on 14.09.2017 which shows that there are large scale of misinformations being released by the petitioner while giving reports to the higher authorities in respect of pendency of old cases in the office of Tehsildar. Similarly, there has been also serious allegations of irregularities in the mutation proceedings pending before the petitioner's court. Likewise, there were also irregularities detected in demarcation cases.

11. Based upon this enquiry report, the petitioner has been suspended.

According to State counsel, the said order of suspension is only an administrative decision of the competent authority and the same is also appellable order in the department by way of departmental appeal. No strong case for interference of this court in exercise of writ jurisdiction is made out and thus prayed for rejection of the writ petition.

12. Having heard the rival contentions put forth on either side and on perusal of records, what is undisputed is the fact that order of suspension reflects two allegations which led to the petitioner being placed under suspension. The first ground as has been conceded by the State counsel no longer survives in the light of order of transfer of the petitioner from Bhaiyathan to Sukma having been recalled and the petitioner being transferred from Bhaiyathan to Mungeli and the petitioner also having joined at Mungeli.

13. However, so far as second ground is concerned, in the opinion of this court the allegations or the grounds for placing the petitioner under suspension are matters which have to be proved into or inquired upon by the authorities in the department to reach to the conclusion whether such irregularities in fact have been committed by the petitioner or not. The same thus is exclusively an administrative decision. In the event of petitioner having been placed under suspension contemplating departmental enquiry, he is supposed to prove his innocence by facing said enquiry, if any.

14. This court in exercise of its power under Article 226 of the

Constitution of India would not substitute itself as a disciplinary authority to conduct a threadbare enquiry from the documents to reach to a conclusion whether misconduct has been committed by the petitioner or not?

15. It is settled position of law that the order of suspension is not a punishment in itself. Looking to the nature of allegations levelled in the order of suspension, this court at this juncture is not inclined to entertain the writ petition leaving it open for the respondents to proceed with the departmental enquiry, if any. It would also be open for the petitioner to prefer an appeal to the appellate authority under rules ventilating his grievance.
16. Given the aforesaid facts, the writ petition being devoid of merit deserves to be and is hereby dismissed. No order as to cost.

Sd/-
(P. Sam Koshy)
Judge