NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.5605 of 2017

Dhirendra Singh S/o Late Shri Vishanu Singh, Aged About 53 Years Presently Posted As Patwari At P H N 40 Tifra, Tahsil And District Bilaspur, Chhattisgarh, R/o Vidya Nagar, Tahsil And District Bilaspur, Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Revenue And Disaster Management Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh, Chhattisgarh

2. Under Secretary, Revenue And Disaster Management Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

3. The Collector, Land Record District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

4. Sub Divisional Officer Revenue, Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

5. Smt. Achala Tamboli, Presently Posted As Patwari At P H N 25 Takhatpur, Tahsil And District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondents

For petitioner	:	Mr. Matten Siddiqui, Advocate
For State	:	Mr. Dhiraj Wankhede, GA for the State/respondent No.1 to 4.
For Respondent No. 5	:	Mr. B.P. Sharma with Mr. Sameer Oraon and Mr. M.L. Saket, Advocates

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Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

11/05/2018

1. There is an application for impleadment of State of Chhattisgarh through Department of General Administration. The application has been

moved mainly on the ground that since various departments have been issuing circular and the matter of issue is whether the transfer guidelines dated 11-07-2017 would be applicable to Revenue Department in the matter of within district transfer, State of Chhattisgarh is proposed to be impleaded through Department of General Administration. The State of Chhattisgarh has already been impleaded in the present petition, there is no need of impleading through another department, merely because the case involves consideration of circulars guidelines issued from different departments including Department of General Administration. The prayer for impleadment is therefore, liable to be rejected and is accordingly rejected.

2. By this petition, the petitioner has assailed the correctness and validity of transfer order dated 11-10-2017 as amended. Earlier when the State Government passed an order dated 14-08-2017 posting respondent No. 5 in place of the petitioner without there being any order of posting of the petitioner to any other station, the petitioner filed WPS No.4958/2017, in which, interim protection was granted to the petitioner, in view of the fact that though respondent No. 5 was posted in place of the petitioner, petitioner was not transferred anywhere else.

3. During the pendency of the aforesaid petition, the State passed an order dated 11-10-2017, which was amended on that very day to correct the place of posting, which has now been challenged in this petition. By the impugned order, the petitioner has been transferred from PH No. 40 Tifra, Tehsil- Bilaspur to Tehsil- Takhatpur within the same District of Bilaspur.

4. Learned counsel for the petitioner contended that the transfer order

is in violation of transfer policy dated 11-07-2017 in as much as during the ban period, transfer could not be made without following procedure of co-ordination and approval of the Chief Minister. Second submission of the learned counsel for the petitioner is that the transfer of the petitioner is not on any administrative exigency but only to accommodate and adjust respondent No.5, who gave the choice of posting and in order to accommodate her, the petitioner has been transferred. Learned counsel for the petitioner further contended that the order dated 21-01-2015 does not override the transfer policy promulgated on 11-07-2017 by order and in the name of the Governor. It is also argued that under clause 16 of the revenue book circular, if the revenue officer is to be transferred within the district, the said power can be exercised only by the Collector, when it is proposed to be transferred from one district to other district within the same revenue division, it could only be exercised by the Commissioner. Therefore, the State could not have usurped the power of the Collector to make transfer within the district and only in the event of transfer outside the revenue division, order could be passed by the State Government. Relying upon the judgment in the case of ***Mohinder Singh Gill and Another vs. Chief Election Commissioner, New Delhi and others, AIR SC 1978 851,*** it is argued that the transfer order can be justified only by the reasons stated in the order and not by supplying reasons which are not there in the transfer order.

5. Per contra, submission of the leaned State counsel is that the transfer in the State are generally made under transfer policy promulgated by the State in exercise of its executive power and for that purpose every year, State comes out with a transfer policy to lay down broad policy to undertake the exercise of transfer. As transfer is not a

condition but incident of service, only on the ground of violation of transfer policy, the transfer order could not be interfered with. He further submits that in so far as transfer of revenue Officers within the same district or division is concerned, in addition to the transfer policy, other existing policy of transfer under the provisions of the revenue book circular and separate institutions have been issued in this regard, as noted by this Court in WPS No.4378/16 decided on 02-09-2016. He would further submit that after appropriate clarification vide circular dated 21-01-2015, the transfer of revenue Officers is permissible and procedural requirements under transfer policy dated 11-07-2017 would not come in the way. He further submits that a clarificatory letter has also now been issued on 04-05-2018 by the Revenue Department, stating that the transfer has been made under clause 14 of the revenue book circular and those instructions are applicable even during ban period. He relies upon the earlier order passed by this Court on 02-09-2016 in WPS No.4378/2016.

6. Learned counsel for respondent No. 5 submit that the petitioner has remained posted at the present station since 2015, the respondent No. 5 is lady employee and because of her personal difficulty, she had applied for transfer on her own request. In transfer matters, adjustment of Officers on their own request is not unusual and only on that ground it can not be said that transfer order was actuated by malafide. He further submits that the petitioner has been transferred from one Tahsil to the other Tehsil which are adjacent and there is no hardship to the petitioner.

7. Having considered the rival submission of learned counsel for the parties, I am of the opinion that the writ petition should be dismissed.

8. The main contention of learned counsel for the petitioner is that in the matter of transfer of the petitioner during ban period, it was obligatory on the part of the State authorities to follow the procedure of co-ordination as laid down in the transfer policy dated 11-07-2017, which ought to have been followed. However, in the present case, it has to be noted that the present is a case of transfer within the district of a Patwari from one Tahsil to other Tahsil. In the matter of transfer of such officers within the district, special provisions have been made in the administrative instructions which would be operative whenever transfers are required to be made in exigency of administration and public interest. This Court had an occasion to examine this aspect in its judgment dated 02-09-2016 in WPS No.4378 of 2016 and it was held that such transfer in revenue department would be permissible under the administrative instructions applicable to the Revenue Department. In any case, in view of the subsequent clarificatory circular, transfers of Revenue Officers is permissible and the procedural requirement under transfer policy dated 11-07-2017 would not come in the way. This has been clarified by another order dated 04-05-2018 of the Revenue Department stating that in the present case, transfer has been made under Clause 14 of the Revenue Book Circular and administrative instructions guiding all Revenue Officers would continue to be applicable even during ban period.

9. An issue has been raised that under the Revenue Book Circular, transfers within the district could be made only by the Collector and within the division, it could be made by the Commissioner. It is further contended that it is only when the transfers are proposed to be made outside the division, the State Government could exercise the power of transfer. This argument is erroneous in law. The Revenue Book Circular

and all other circulars are issued by the State Government. The State Government is the ultimate repository of executive power. If the State delegates its power of transfer to the Commissioner or to the Collector, it does not mean that it is divested of its power after such delegation. The power of transfer whether it is within the district or within the division from one corner to other corner of the State, always rests with the State.

10. It is not in dispute that the petitioner has remained posted in the present place of posting in the year 2015. The respondent No.5 is a lady employee and she appears to have made a request for her transfer on personal grounds. That by itself, without anything more, cannot be said to be an aspect of malafide exercise of power, if she adjusted on her request.

11. The Supreme Court in the case of ***Shilpi Bose (Mrs) and others vs. State of Bihar and others, 1991 Supp.(2) SCC 659,*** held as under:-

> "In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public

interest. The High Court overlooked these aspects in interfering with the transfer Orders."

12. It has also been argued that the order impugned is required to be judged only from the reasons assigned in the order. Reliance placed on the decision of the Supreme Court in the case of ***Mohinder Singh Gill and Another*** (supra)***,*** is misconceived in law. Present is not a case of exercise of statutory power but it is only a case of exercise of administrative power. When administrative orders are impugned in the judicial proceedings, it is open for the authorities to justify the action and order by placing material facts and circumstances even if they are not specifically incorporated in the order. Present is a case of transfer and unless it is shown that the transfer order is vitiated by illegality and malafide, this Court normally would not interfere with the transfer order.

13. Moreover, it has to be seen that the petitioner has been transferred only to neighbouring Tahsil which is less than 30 KM. This is also one of the considerations for this Court not to invoke its jurisdiction under Article 226 of Constitution of India to interfere with the transfer order as there is no hardship.

14. In the result, the petition is without merit and therefore, deserves to be and accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

Rohit/Tumane