

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4079 of 2017**

Smt. Gopa Roy W/o Shri Tapas Kumar Roy, Aged About 56 Years Principal
Government Higher Secondary School, Sambalpuri, Block Raigarh, R/o
Lochan Nagar, South Chakradhar Nagar, Raigarh, Police Station Chakradhar
Nagar, District Raigarh Chhattisgarh., Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of School Education,
Mantrayala, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh,
Chhattisgarh
2. The Collector, Raigarh, District Raigarh Chhattisgarh., District : Raigarh,
Chhattisgarh
3. District Education Officer, Raigarh, District Raigarh Chhattisgarh., District :
Raigarh, Chhattisgarh
4. The Block Education Officer, Block Pusaur, Raigarh, District Raigarh
Chhattisgarh., District : Raigarh, Chhattisgarh
5. The Principal, Government Higher Secondary School, Kondhpali, Block
Pusaur, District Raigarh Chhattisgarh. , District : Raigarh, Chhattisgarh
6. Shri Ratan Kumar Mitra, Principal, Government Higher Secondary School,
Kondhpali, Block Pusaur, District Raigarh Chhattisgarh. , District : Raigarh,
Chhattisgarh

---- Respondents

Shri Roop Naik, counsel for the petitioner/s.
Shri Syed Majid Ali, Dy.G.A. for the State.
Shri Awadh Tripathi, counsel for respondent No.6.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****22/01/2018**

By this petition, the petitioner has assailed correctness and validity of transfer
order dated 14/08/2017 by which, the petitioner has been transferred from
Government School, Sambalpuri, Raigarh to Government School, Kodpali, Raigarh.

2. Learned counsel for the petitioner would argue that the Government has framed a transfer policy on 11/07/2017 which clearly provide in Clause 1.8 thereof that while considering the request for transfer on own request, condition of having remained posted at one place for two years should be followed. As respondent No.6 has not completed two years of posting, he would not be entitled for consideration for transfer on his own request.

3. Learned counsel for the petitioner would submit that respondent No.6 has been transferred because respondent No.6 is interested in seeking posting at Sambalpuri because at that place, family member of respondent No.6 runs a poultry farm. It is lastly submitted that from the transfer order, it appears that respondent No.6 has not been transferred but one Ratan Kumar Sharma has been transferred. Learned counsel further submits that if the petitioner is required to undergo the transfer, the petitioner will suffer inconvenience because her mother resides with her who is aged about 74 years.

4. On the other hand, learned counsel for respondents submit the transfer policy dated 11/07/2017 was subsequently amended vide another circular dated 24/07/2017 by which period of normal stay was reduced from two years to one year. Therefore, clause 1.8 is required to be interpreted in the light of subsequent amendment in the policy. Next submission of learned State counsel is that respondent No.6 was transferred on his own request and there was no impediment because the petitioner had already completed two years at the present place. Next submission is that the petitioner otherwise has been transferred to a place which is only 40 – 45 kms away. The objection to transfer of respondent No.6 on own request on the ground that at Sambalpuri, family of respondent No.6 carries on business of Poultry Farm, cannot be at this stage, to be in conflict with the duty of teaching in the school.

5. The transfer order is challenged on the ground of violation of policy. In Clause 1.8 of the policy, it has been provided that while considering application for transfer on own request, condition of two years posting should also be fulfilled.

According to the State counsel, the condition of two years of stay at one place provided in Clause 1.8 of the policy was in the light of the then provision under Clause 1.8 of policy dated 11/07/2017 which relates to a minimum tenure of posting. The submission that once the period of two years has been reduced to one year under Clause 1.6 of the policy, the provisions contained in Clause 1.8 on its rational consideration would mean that the request for transfer on own request after completing posting of one year would be permissible. At the first place, transfer of the petitioner has been effected when the petitioner had already completed two years of posting at the present place. Admittedly, the petitioner was posted at the present place on 07/07/2015 and transfer order has been passed on 14/08/2017 i.e. after two years. Therefore, the petitioner had become due for transfer under the present policy. When the policy was initially promulgated on 11/07/2017, normal period of stay at one station for the employee could be treated as having become due for transfer after completion of two years. Later on, vide another circular dated 24/07/2017, period of two years was reduced to one year. That means, after one year, transfers become due. Therefore, the petitioner had become due for transfer.

6. There appears to be violation of clause 1.8 of the transfer policy because that part has not been amended. The argument of the State counsel that clause 1.8 would also stand automatically amended, cannot be accepted. The Government may have framed a policy of normal tenure of transfer and at the same time, it may also carry policy of considering transfer on own request only after completion of two years of posting. Therefore, unless there is express stipulation in the transfer policy, it cannot be read into.

7. Therefore, mere violation of transfer guidelines is not enough to set aside in every case unless the order itself appears to be so arbitrary and causing such hardship to the petitioner when the Writ Court would interfere with the transfer and posting. The transfers are only matters of administrative exigency. It is not a case that the petitioner has been transferred to a far off place. The petitioner has been transferred to a very short distance after having completed two years of posting. On facts, mere violation of guidelines will not be enough to interfere with the transfer order. In the absence of there being any other circumstances warranting interference by this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, I am not inclined to interfere with the transfer order. The petition is accordingly dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge