

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5032 of 2017

Dwarika Lahre S/o Shri Chetan Das Lahre, Aged About 48 Years
R/o Vrindawan House No. 97, Krishna Vihar, Colony, Bemetara,
Police Station And District Bemetara Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, School Education
Department, Mahanadi Bhawan, Police Station New Raipur, Tahsil
Raipur, Civil And Revenue District Raipur Chhattisgarh,
Chhattisgarh
2. Collector, Bemetara, District Bemetara, Chhattisgarh, District :
Bemetara, Chhattisgarh
3. Shri A. K. Bhargwa, District Education Officer, Bemetara, District
Bemetara, Chhattisgarh, District : Bemetara, Chhattisgarh

---- Respondents

WPS No. 5059 of 2017

Ramesh Kumar Thakur S/o Late Shri Garud Singh Thakur Aged
About 58 Years R/o B T I Colony Kobiya Ward No 10 Raipur Road,
Bemetara District Bemetara Chhattisgarh. , Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary School Education
Department Mahanadi Bhawan Police Station New Raipur Tahsil
Raipur Civil And Revenue District Raipur Chhattisgarh. ,
Chhattisgarh
2. Collector Bemetara, District Bemetara Chhattisgarh. , District :
Bemetara, Chhattisgarh
3. Shri A K Bhargawa , District Education Officer , Bemetara Distrcit
Bemetara Chhattisgarh. , District : Bemetara, Chhattisgarh

---- Respondents

For Petitioner : Mr. Vaibhav A. Goverdhan, Advocate.

For State : Mr. Majid Ali, Dy. GA

For Res. No. 3 : Mr. R. K. Gupta, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

31/01/2018

1. These two petitions have been filed by one teacher and other non ministerial staff of Government Boys Higher Secondary School, Bemetra impugning their respective transfer orders on the allegation and grounds similar in both the cases. For this similitude, these two petitions are being disposed off by this common order. A complaint was made by petitioners against the principal of the School on the allegation that he has extracted extra money from the students. This complaint was inquired into. After enquiry the complaint was not found sustainable. therefore, it was recommended that these two petitioners be transferred from the said school, resulting in issuance of the respective transfer orders.

2. Learned counsel for the petitioner would submit that findings recorded in the report and opinion formed by the District Education Officer clearly shows that the transfer of the petitioner was in lieu of punishment. He would submit that aforesaid two documents constitute formation of the opinion that the petitioners are involved in misconduct and therefore, as a measure of punishment, the petitioners were subjected to transfer. The said transfer, therefore, is malafide exercise of power as held by the Hon'ble Supreme Court in the case of **Somesh Tiwari Vs. Union of India And Others, 2009 (2) SCC 592.**

3. On the other hand, learned State counsel would submit that transfer is not in lieu of punishment but on account of exigencies of service arising in the best interest of smooth functioning of the Education Institution, wherein , petitioners were found to have made a complaint against principal which was found to be unsustainable. He would submit that there is no formation of opinion against the petitioners that they have committed any misconduct, therefore, present case is of administrative exigency and not a case of transfer in lieu of punishment.

Learned counsel for the State has also placed before this Court the original note-sheets relating to the transfer of the petitioner. This Court does not find any material in the said note-sheet to interfere with the transfer order on the ground that it has been actuated with any extraneous or malafide consideration. After perusal, the relevant not sheets be returned to Mr. Majid Ali, Dy. GA for the State.

4. It is well settled legal position that the transfer order does not alter any condition of service but transfer is necessary for smooth functioning of the institution. Where transfer order is illegal or without jurisdiction or actuated by malafide, it is susceptible to challenge. However, as to when exercise of power of transfer could be said to be malafide, would depends upon the facts and circumstances of each case and no straight jacket formula can be laid down in that regard.

Transfers can be made in public interest and administrative exigencies. There is a clear line of distinction between transfer by way of punishment and transfer in public interest and administrative exigencies. Where an employee is subjected to transfer only with a view to punish him without there being any administrative exigencies or public interest, It would be malafide exercise of power. However, there can be circumstances where transfer of an employee may be necessary for smooth functioning of the institution or with similar objective of efficient functioning of public institution. If the transfer is actuated with that object, it cannot be said to be a malafide exercise of power.

5. In the present case the petitioners made certain complaints against the head of the institution i.e. Principal making allegations of extracting extra money. This complaint was inquired into by one member committee of Principal of the another school constituted under the orders of the Secretary of the Department of School Education. The committee after making enquiry formed an opinion that the complaints were not supported by the so called complainants and they denied signing on the complaints and that the allegation against the Principal was not found proved and the petitioners Ramesh Kumar Thakur and Dwarika Lahre were found prosecuting the said complaint. The committee, therefore, recommended that it would be in interest of the institution that the petitioners are transferred. On the basis of said report, the District Education Officer vide his memo dated 20-04-2017 made recommendation which resulted in transfer of the two petitioners to another schools, though in the same District. The transfer order is innocuous as it does not contain any stigma that the transfer of the petitioners are being made on complaints against them.

6. There is specific finding in the enquiry report, that the petitioners are involved in making complaint which was found to be false. Therefore, it appears that the transfer of the petitioners was found necessary in administrative exigency and smooth functioning of the institution because

the petitioner were complainants and the complainants against Principal was found without any material. The principal happens to be the head of the institution. Therefore, the transferring authority was right in forming such opinion taking into consideration the administrative exigency, to transfer the two petitioners one being teacher and other being ministerial staff.

7. In the considered opinion of this Court that was the administrative exigency, without there being any finding of guilt or any formation of opinion that the petitioners should be punished therefore, transfer is required by way of or in lieu of punishment. Therefore, the transfer order does not warrant any interference. Accordingly, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)

Judge