

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3009 of 2018

Hajari Lal Rathor S/o. Late S.L. Rathor, Aged About 52 Years Presently
Working As Assistant Internal Audit And Taxation Officer, Janpad Panchayat,
Dantewada, District Dantewada (Chhattisgarh) **---- Petitioner**

Versus

Chief Executive Officer Janpad Panchayat, Dantewada, District
Dantewada Chhattisgarh., District : Dantewada, Chhattisgarh
--Respondents

For Petitioner	:	Mr. Somkant Verma, Advocate
For State	:	Mr. Ramakant Mishra, Dy. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13.04.2018

Heard.

1. The petitioner has challenged the order dated 20.12.2017 by which his relieving has been refused on the ground that the officer who has been posted in place of the petitioner has not joined.
2. Learned counsel for the petitioner submits that in view of order passed by this Court on 25.10.2017 in earlier round of petition, the liberty given by this Court excluded the reason that the reliever has not joined because that aspect has already been considered by this Court in the case of **Ms. Manisha Agrawal Vs. State of Chhattisgarh and Others, 2015(4) C.G.L.J.182**, and while disposing off the petition, this Court clearly directed that the transfer order has to be implemented though the State has the option to cancel, vary or modify or keep in abeyance. Therefore, it is argued, non-joining of reliever could not be a ground to reject the representation.
3. On the other hand, learned State counsel submits that since this Court had given the liberty that if there is any administrative exigency impeding the petitioner's relieving, the petitioner shall be informed in writing. It was also given liberty that it will remain open for the respondents to reconsider the issue

of transfer on account of any administrative exigency. Therefore, it is submitted, the representation of the petitioner was considered on the ground that reliever has not joined, his relieving has been refused.

4. After hearing learned counsel for the parties, I am of the clear opinion that the authority has not understood the order in its true perspective.

5. In the case of *Ms. Manisha Agrawal (supra)*, the issue which arose for consideration was whether refusal to relieve on the ground that reliever has not joined is permissible. It was held as below :

“6. Though according to the respondents, one Ku. Jayshree has been posted in place of the petitioner but till date she has not joined. The respondents have utterly failed to establish as to what steps they have taken against said Ku. Jayshree for not carrying out the order posting her in place of the petitioner. Merely posting a person in place of the petitioner on paper will not justify the stand of the State Government that the petitioner cannot be relieved for want of reliever. If the State Government is so serious to post someone in place of the petitioner, then it is their bounden duty to ensure enforcement of the order posting the person in place of the petitioner. Further, as informed by the petitioner, posting of supervisors after fresh recruitment is under process and as such, considering the administrative exigency, the respondents can take immediate steps for posting any of such recruittees in place of the petitioner for execution of petitioner's transfer order.

7. It would not be out of place to mention here that the guidelines issued by the State Government in relation to transfer of the employees are merely executive instructions and are not enforceable by the Court of law. Thus, only on the strength of any guideline mentioned in the transfer policy, the State Government cannot take a stand that unless the reliever is posted in place of the petitioner, the petitioner cannot be relieved. Once the employee has been transferred, execution of the said order is to be ensured by the State Government unless and until the said order is varied by the State Government, either by cancelling or modifying it. In the present case, the transfer order of the petitioner has neither been modified nor been cancelled. Under the facts and circumstances of the case, the State Government is under an obligation to ensure enforcement of the transfer order. In the matter of *Sreedam Chandra (supra)* has been observed by the Apex Court in para 6 as under :

“6. It is then contended that the transfer orders are to be enforced by the Government as per the rules in vogue and the High Court cannot interfere with these orders. We are unable to appreciate this contention also. When the Government views non-compliance of the transfer order as a serious indiscipline on the part of the erring officer and when the person complains of the non-compliance to the Court, the Court necessarily has to give effect to the order and give directions for enforcement thereof. Under these circumstances, we do not find any merit in the petition.”

6. Therefore, it is clear that non-joining of reliever could not be a ground to refuse relieving if the order of transfer still remains in force and has not been cancelled, varied, modified or kept in abeyance.

7. The liberty which was given was with regard to any administrative exigency other than the ground that reliever has not joined. This is so because while disposing off the petition earlier, this Court has clearly relied upon the decision in the case of *Ms. Manisha Agrawal (supra)*. Therefore, it is clear that the liberty given in para 5 of the said order related to other ground except the ground of non-joining of reliever.

8. Therefore, in these circumstances, the order is completely baseless and the same is set aside. The petitioner shall be relieved forthwith.

9. The petition is disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge