

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3613 of 2018**

Smt. Durgawati D/o Late Shri Prem Sai Ram, Aged About 35 Years Presently Working As Panchayat Secretary, Gram, Panchayat, Maduwatikara, Janpad Panchayat, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Collector, Ambikapur, District Surguja Chhattisgarh.
3. Chief Executive Officer Zila Panchayat, Surguja, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
5. Awadhesh Kumar, Panchayat Secretary, Gram Panchayat, Keshgawan, Janpad Panchayat Udaypur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

WPS No. 3625 of 2018

Smt. Jyoti Gupta W/o Shri Mukesh Gupta, Aged About 32 Years Presently Working As Panchayat Secretary, Gram Panchayat, Majhapara, Janpad Panchayat, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Collector, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Zila Panchayat, Surguja, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
5. Awdhesh Kumar, Panchayat Secretary, Gram Panchayat, Keshgawan, Janpad Panchayat Udaypur, District Surguja Chhattisgarh.

---- Respondents

WPS No. 3626 of 2018

Indradev Rajwade S/o Shri Chandrika Ram Aged About 36 Years Working On Post Of Panchayat Secretary Village Panchayat Taparkela Janpad Panchayat Ambikapur District Surguja Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Mahanadi Bhawan New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer Zila Panchayat Surguja Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents**WPS No. 3665 of 2018**

Smt. Savita Singh W/o Umeshwar Singh Aged About 30 Years Working On Post Of Panchayat Secretary Village Panchayat Bartikara Janapad Panchayat- Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Panchayat And Rural Development Mahanadi Bhawan New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer, Zila Panchayat Surguja Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat- Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Indrajeet Pandey, Working On The Post Of Village- Panchayat Khamhariya Janpad Panchayat- Udaipur District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents**WPS No. 3669 of 2018**

Deenanath S/o Ramsewak Aged About 26 Years R/o Jarhadih, Post Salka, Block Udaypur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer, Zila Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Udaypur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

WPS No. 3680 of 2018

Dhir Sai S/o Prem Sai, Aged About 47 Years Working On Post Of Panchayat Secretary Village Panchayat Chhindkalo Janpad Panchyat Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh.

---- **Petitioner**

Versus

1. The Secretary Department Of Panchyat And Rural Development Mahanadi Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer Zila Panchayat Sarguja Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer Janpad Panchayat Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Nohar Sai Working On The Post Of Panchyat Secretary Village Panchyat Dawa Janpad Panchyat Udaipur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- **Respondents**

WPS No. 3681 of 2018

Nohar Sai S/o Atwar Sai, Aged About 42 Years Posted As Panchayat Secretary At Gram Panchayat Dawa, Janpad Panchayat Udaypur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department Mantralaya, Mahandi Bhawan, New Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer, Zila Panchayat Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Udaypur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- **Respondents**

WPS No. 3698 of 2018

Anil Kumar Singh S/o Devchand Ram, Aged About 42 Years R/o Village Latori, Post Jamgala, Tahsil Lakhanpur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer, Zila Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

3. Chief Executive Officer, Janpad Panchayat Udaypur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

WPS No. 3748 of 2018

Uma Singh S/o Late Thanu Ram Aged About 45 Years Working On Post Of Panchyat Secretary Village Panchyat - Koreya Janpad Panchyat Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Panchyat And Rural Development Mahanadi Bhawan New Raipur Chhattisgarh.
2. Chief Executive Officer Zila Panchyat Surguja Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchyat Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Ratan Ram Working On The Post Of Village - Panchyat Mohanpur Janpad Panchyat Udaipur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

WPS No. 3757 of 2018

Gorakhnath S/o Late Teju Ram Aged About 41 Years Working On Post Of Panchayat Secretary Village Panchayat- Parsodikhurd Janpad Panchayat- Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development Mahanadi Bhawan New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer, Zila Panchayat Surguja, Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

WPS No. 3956 of 2018

Ajesh Kumar S/o Dhani Ram Aged About 40 Years Working On Post Of Panchayat Secretary Village Panchayat Podikala Janpad Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development Mahanadi Bhawan New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Executive Officer, Zila Panchayat Surguja, Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Shivnath Singh Panchayat Secretary, Village Panchayat Podikala Janpad Panchayat Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Petitioners	:	Smt. Hamida Siddique, Shri CJK Rao and Shri A.N. Pandey, Advocates.
For Respondents	:	Shri SP Kale, Dy. Advocate General, Shri Satish Gupta and Shri Neeraj Pradhan, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board**06.10.2018**

1. In this batch of writ petitions, common order i.e. order dated 05.05.2018 is under challenge. Since the facts, the grounds and the stand of the respondents being identical, this court proceeds to decide this batch of writ petitions by this common order.
2. The sum and substance of the disputes raised by the petitioners in these petitions are whether the Chief Executive Officer (in short, the CEO), Zila Panchayat, Surguja, had the powers to transfer the Secretary of the Gram Panchayat from one Janpad Panchayat to another Janpad Panchayat within the same Zila Panchayat.
3. The petitioners in this batch of petitions were of the view that since their substantive appointment on the post of Secretary, Gram Panchayat was made by the State Govt., it would be only the State Govt. who would be competent for change of posting or transfer of the Gram Panchayat Secretaries.

4. The contention of the petitioners are that, the petitioners are the Secretaries of Gram Panchayats who have been substantively appointed and notified by the State Govt. on the said post and since they have been notified by the State Govt., their transfer and posting could only have been decided by the State Govt. and not the CEO of the Zila Panchayat concerned. The petitioners relied upon the provisions of Rule 27 of the Chhattisgarh Panchayat Services (Recruitment and General Conditions of Service) Rules, 1999 (in short, the Rules, 1999) envisages requirement of the consent of the two Panchayat Secretaries concerned to be obtained in the event of transfer being made from one Janpad Panchayat to another Janpad Panchayat and which in the instant case has not been complied with. Therefore, the order of transfer is bad.
5. It was further contention of the petitioners that by virtue of petitioners being sent from one Janpad to another, they would lose their seniority as is reflected from Rule 27 of Rules, 1999 where it is held that if such transfer is being made, the employee concerned would be given bottom seniority at the transferred place. The petitioners further relied upon the judgment of this court in WPS No.3236 of 2010 decided on 05.08.2011 in case of Omprakash Vs. State of Chhattisgarh & Ors. wherein an identical issue had cropped up and this court had in a very categorical terms held that the CEO does not have the competence. The petitioners, to further strengthen their arguments, relied upon the judgment of this court in case of Smt. Geeta Sukhdev Vs. State of Chhattisgarh & Ors. (WPS No.1273 of 2016, decided on 23.12.2016) wherein the similar view was taken by this court though the same was in respect of transfer of Shiksha Karmis from one Janpad to another. Thus, for the aforesaid reasons, the petitioners prayed for quashment of the order impugned.

6. The counsel appearing for the respondents opposing the petitions submitted that the impugned order has been passed by the competent authority under the Act and the Rules and therefore it does not warrant any interference. The impugned order has been passed by the CEO of the Zila Panchayat and he is the ultimate controlling authority of all the employees working under different Panchayats in the District and therefore it is within his powers and competence for deciding the place of posting of the employees working in different Janpad Panchayats and/or Zila Panchayat and he has also the powers for transferring the said Panchayat Secretaries from one Janpad to another Janpad.
7. The respondents further submits that so far as the seniority aspect is concerned, he makes a categorical statement that the petitioners' seniority and other benefits that they are enjoying at present would be protected even in the event of their joining at the transferred place. It was further contended that the order of transfer has been made taking into consideration the administrative exigency and there is no malafide or arbitrariness in the issuance of the order and the same therefore does not warrant any interference.
8. In addition, the counsel for the respondents referred to Annexure R/1 which is a scheme formulated by the State Govt. in the year, 2008 by which according to the respondents the guidelines have been framed for regulating the service conditions of the Panchayat Karmis in the district. The respondents referred to Clause 7 and 8 of the said guidelines which deals with the administrative control and also deals with transfer of the Panchayat Karmis. That under both the provisions it is the CEO of the Zila Panchayat who has been declared to be an officer who could exercise the powers. So far as seniority is concerned, the petitioners should not have

any apprehension as seniority is maintained district wise and therefore the petitioners would not be put to any loss of their seniority.

9. The respondents relied upon decision of this Court in case of WPS No.3814 of 2018, Smt. Sumitra Vs. State of Chhattisgarh, decided on 07.08.2018, so also in Vyasnarayan Lahre Vs. State of Chhattisgarh & Ors., WPS No.1121 of 2018, decided on 28.04.2018. They further relied upon the judgment in case of Hariom Rajput Vs. State of Chhattisgarh & Ors. 2002(3) MPHT 541 wherein this judgment was relied upon by the petitioner to canvass the point that substantive appointment of the petitioner was that of Shiksha Karmi and that it is only additional charge which has been given to the petitioners to work as Secretary of the Gram Panchayat and therefore, so far as the Panchayat Karmis are concerned, it is the CEO who would be the competent authority for deciding the place of posting/transfer.
10. Having heard the rival contentions put forth on either side and on perusal of records, from the documents which have been enclosed along with the writ petitions what is admitted factual position is that undoubtedly all the petitioners herein were substantively appointed as Panchayat Karmis, however, thereafter invoking the powers under Section 69(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, the State Govt. has appointed them as Secretary of the Gram Panchayat and have also notified them to be Panchayat Secretary. This by itself would mean that the petitioners have been appointed as Panchayat Secretary by the State Govt.
11. So far as the guidelines of 2008 is concerned, what is to be borne in mind is that prior to coming into force of the guidelines of the year, 2008 (Annexure R/1), it was the Gram Panchayat who was appointing the Panchayat Karmis and after these guidelines of 2008, it is the CEO of the

Zila Panchayat who has been given the power of issuing appointment orders for the Panchayat Karmis.

- 12.** So far as the issue involved in the case is concerned, this court finds that the judgment of this Court in case of Omprakash (Supra) to be on similar facts and circumstances and where the stand of the State Govt. also was one which has been taken by the respondents in this present batch of writ petitions also. This aspect could be established from the contents of the paragraphs 3 & 4 of said judgments which deals with the facts and stand of the respondents. Dealing with the aforesaid issue, this court in paragraphs 12 and 14 to 16 held as under:

12. Even if the Panchayat Karmi is appointed under the abovestated guidelines, which were framed in exercise of powers conferred under Section 70 read with Section 69 of the Adhiniyam, 1993, the Panchayat Karmi as well as the Panchayat Secretary became a member of Panchayat Service as defined hereinabove.

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14. Rule 27 of the Rules, 1999 provides that no employee of the Panchayat i.e. Janpad Panchayat or Zila Panchayat can be posted in the Panchayat service of other panchayat except by mutual agreement between the two Panchayats.

15. Condition (ii) under Rule 27 makes its clear that any person appointed in other Janpad Panchayat would be junior most for the purpose of seniority and, as such, if a member of Panchayat service of one Panchayat is appointed in other Janpad Panchayat without an agreement, the said employee would be prejudiced, as he would be placed at the junior most in the seniority list.

16. The instant case though it does not seem to be a case of posting from one Janpad Panchayat to other Janpad Panchayat. In that event it can either be a case of deputation or transfer. Transfer cannot be made from one Janpad Panchayat to other Janpad Panchayat, as the Panchayat Karmi is a member of Panchayat Service of a particular Janpad Panchayat.

- 13.** Based on the said findings, the High Court had quashed the order of transfer issued in the said writ petition holding that the CEO of the Zila Panchayat was not competent to issue the order of transfer. It would be relevant at this juncture to refer to the decision of MP High Court in case

of Ashok Kumar Kaurav Vs. State of MP & Ors. 1992(2)MPLJ729

wherein it has been held as under :

“The said Scheme in the clause as reproduced above, directs that in Panchayats other than in which Gram Sahayaks have been appointed by the State Government for carrying out the functions of Secretary, the Panchayat shall select a person at its own level in accordance with the terms contained in the scheme as full-time, part-time or contract employee and such a person shall be the honorary employee of the Panchayat and would be called "PANCHAYAT KARMI". Such Panchayat Karmi has been declared by the State Government under Section 69(1) to be the Secretary of the Panchayat concerned.

From the provisions in Sections 69 and 70, it is noticed that both sections act in distinct spheres; first in relation to the appointment of Panchayat Secretary while the second in relation to the appointment of other officers and servants of the Panchayat. Section 69 of the Adhiniyam provides for appointment of a Secretary only by State Government or the Prescribed Authority. Section 2(xxi) defines "Prescribed Authority" to mean such officer or authority as the State Government may, by notification, direct to discharge the functions of a prescribed authority under the provisions of the Act.....”

After discussing the said issue, finally the High Court was of the view that, “it is made clear that a Panchayat Karmi appointed under the scheme does not acquire the status of Secretary of the Panchayat under Section 69(1) unless specifically appointed by a competent authority under that provisions.”

14. If we take note of the aforesaid observations of the MP High Court as also the judgment of this High Court in Omprakash (Supra), this court has no hesitation in holding that since the appointment/notification of the petitioner as Panchayat Secretary of a particular Gram Panchayat has been made by the State Govt., the transfer orders also could be made only by the State Govt. and if at all if the services of the petitioners were to be transferred from one Janpad Panchayat to another Janpad Panchayat, the consent of the Panchayat Secretary concerned of the two Panchayats also was required to be obtained as per Rule 27 of the Rules, 1999.

15. So far as the judgments which have been relied upon by the respondents in case of Smt. Sumitra (Supra) is concerned, it is under entirely different fact and circumstances and moreover this High Court earlier had an occasion of considering the judgment of Omprakash (Supra) as also the judgment of Ashok Kumar Kaurav (Supra). While dealing with the said cases and perusal of these two judgments would show that it is these two judgments which are more closure to the facts of the present case for adjudication of the disputes raised in the present cases.
16. Given the said facts and circumstances of the case, this court is of the opinion that judgment of Smt. Sumitra (Supra) is distinguishable on its facts itself and as a consequence, relying upon the judgment of Omprakash (Supra) as also that of Ashok Kumar Kaurav (Supra), this court holds that the impugned order so far as transferring the petitioners from one Janpad Panchayat to another Janpad Panchayat is bad in law and has been passed by an incompetent authority. The same therefore deserves to be and is set aside/quashed.
17. All the writ petitions are accordingly allowed.
18. Needless to mention that since the order of transfer has been set aside, on technical ground, it would not preclude the authority concerned or the competent authority to pass an appropriate order on administrative exigency.

Sd/-
(P. Sam Koshy
Judge