

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3714 of 2018****Reserved on 28.08.2018****Delivered on 12 .09.2018**

Ishwari Prasad Sarthi S/o Shri Patang Ram Sarthi, Aged About 47 Years, R/o Village And Post Jatri, Tahsil Pussoure, District Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. Under Secretary, State Of Chhattisgarh, Urban Administration Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
3. Commissioner, Municipal Corporation Raigarh, District Raigarh, Chhattisgarh
4. Joint Director, Urban Administration Development, Regional Office, Ambikapur, District Surguja Chhattisgarh

---- Respondents

For Petitioner	:	Shri Raghvendra Pradhan, Advocate
For State	:	Shri Dhiraj Wankhede, Govt. Advocate
For Respondent no.3	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

The challenge in the present writ petition is to the order Annexure P-1 dated 07.05.2018 whereby the service of the petitioner which was on deputation has been cancelled and the petitioner has been

transferred from Municipal Corporation, Raigarh to the Office of Joint Director, Urban Administration and Development, Ambikapur.

2. The facts leading to the filing of the present writ petition is that the petitioner substantively is a sub engineer under the Urban Administration and Development Department. The petitioner earlier stood posted at Nagar Panchayat Parishad, Janjgir-Naila where he was assigned the duty of incharge engineer. While working on the said post, the petitioner was transferred to Nagar Panchayat, Dharamjaigarh vide order dated 18.06.2012 on the post of Sub Engineer. The petitioner was again transferred from Dharamjaigarh to Nagar Panchayat Pussore vide order dated 22.04.2013. Meanwhile, the petitioner got suspended. However, vide order dated 04.08.2015 the suspension order stood revoked and the petitioner was posted at Nagar Panchayat, Gourela where the petitioner gave his joining on 10.08.2015. The petitioner again stood transferred from Gourela to Nagar Panchayat, Malhar vide order dated 19.08.2015. The petitioner complied with this order of transfer and joined at Malhar on 02.09.2015. Barely 7 months of having joined at Malhar, the respondents again issued an order on 01.04.2016 transferring the petitioner from Malhar to Nagar Panchayat, Geedam. Out of sheer frustration of being subjected to frequent transfer, the petitioner challenged the order of transfer dated 01.04.2016 by way of writ petition i.e. WPS No. 1042/2016. Meanwhile, an interim protection was granted in favour of the petitioner. On the representation of the petitioner and the direction by this Court in WPS No. 1042/2016, the order of transfer dated 01.04.2016 stood modified and in stead of Geedam, the place of posting of the petitioner stood amended to Nagar Palika Parishad, Sakti

vide order dated 25.05.2016 (Annexure P-11). Working as sub engineer at Nagar Palika Parishad Sakti, the petitioner was again placed under suspension. The said order of suspension stood revoked on 22.08.2017 and the petitioner was sent on deputation to Nagar Palika Nigam, Raigarh. As per the order dated 22.08.2017, the petitioner gave his joining at Nagar Palika Nigam, Raigarh on 25.08.2017. Having worked there for just about 8 months' time, the respondents have now again issued the impugned order Annexure P-1 dated 07.05.2018. Vide the impugned order, the respondents have firstly cancelled the deputation of the petitioner at Nagar Palika Nigam, Raigarh and at the same time have posted the petitioner to the office of respondent no.4 i.e. the office of Joint Director, Urban Administration and Development Department, Ambikapur. It is this order which is under challenge in the present writ petition.

3. Contention of the counsel for the petitioner was that the petitioner has been subjected to frequent transfer as is reflected from the details given in the preceding paragraph which would reveal that the petitioner has not been permitted to work at a single place for more than a year in the past about 6 years and at times there are more than a couple of transfers made in the same year, as such, the same is bad in law and contrary to the usual tenure of an employee which is 3 years. The frequent transfer of the petitioner is also contrary to the transfer policy framed by the State Govt. It was the contention of the petitioner that since the services of the petitioner were on deputation at Nagar Palika Nigam, Raigarh, the period of deputation could not have been curtailed or cancelled without the consent of the petitioner and at the same time

before cancelling the tenure of the petitioner on deputation, the petitioner was not given an opportunity of hearing. It was also the contention of the petitioner that once when an order of deputation is cancelled, the consequence is that the petitioner is repatriated to the place from where he was sent on deputation which in the instant case was Nagar Palika Parishad Sakti. However, in the instant case cancelling the deputation, the petitioner has been sent to a new place of posting i.e. at Ambikapur which again is bad in law and against the guidelines governing the service condition of a deputationist.

4. State counsel, per contra, opposing the petition submits that it is ultimately an order of transfer and the petitioner should not have much grievance on the same. Further it was contended that there is very little scope for this Court under Article 226 of the Constitution of India to interfere with an order of transfer which has been made on administrative exigency. According to the respondents, service of the petitioner was on deputation and therefore he does not have an indefeasible right for remaining at a deputation place neither is it a case where the petitioner was given a fixed tenure of deputation and it stood reduced by the effect of the impugned order.

5. Having heard the contentions put forth on either side and on perusal of the record it would reveal that the petitioner has been subjected to very frequent transfer or change of posting from one Nagar Panchayat to other Nagar Panchayat and the respondents have not been able to show any justified or a bona fide administrative exigency which led to the issuance of frequent order of transfer. Another aspect which is not in dispute is that the petitioner before being sent on

deputation at Nagar Palika Nigam, Raigarh was posted at Nagar Palika Parishad, Shakti.

6. Given the facts, this Court is of the opinion that ends of justice would meet if the writ petition is disposed of with liberty to the petitioner to make a detailed representation to respondent no.1 within a period of 10 days from the date of receipt of certified copy of this order and on such representation being made, respondent no.1 in turn would consider and decide the same within a further period of 2 months. Meanwhile, the respondents shall not give effect to the impugned order so far as the petitioner is concerned.

**Sd/-
P. Sam Koshy
Judge**