

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6702 of 2018**

Dr. Rajesh Kumar Saxsena S/o K.N. Saxsena, Aged About 59 Years R/o
Plot No. 87, Kosabadi, District Korba Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Higher Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. The Secretary, Higher Education Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
3. Joint Secretary, Higher Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Parag Kotecha, Advocate
For State	:	Mr. S.P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/10/2018**

1. The challenge in the present writ petition is to the order Annexure P/3 dated 01.10.2018, whereby the petitioner has been transferred from Korba to Shankargarh, Ambikapur.
2. The challenge has been made on more than one ground. The first ground being that the petitioner has been transferred from one schedule area to another schedule area. Second ground is that the wife of the petitioner is not keeping well for quite sometimes as she is suffering from Asthama and it would cause inconvenience to the petitioner.
3. The further ground is that the wife of the petitioner also is in government employment and it was keeping in view that the spouses were in government employment both were placed at Korba. It was further contended by the counsel for the petitioner that if at all if the

respondents intended to transfer the petitioner; they ought to have transferred to a non-schedule area.

4. So far as the law of transfer is concerned, it is by now well settled by a catena of decisions that the transfer is an incident to service and unless the transfer is hit by mala fides or is being issued in contraventions to the service conditions or has been issued by an incompetent person, the Court would not in its usual course entertain or subject the order of transfer to judicial review.
5. The petitioner in support of its contention has referred to the order passed by the Division Bench of this Court in the case of “Chonhas Toppo v. State of Chhattisgarh & Ors.” WA No. 549/2016 and the order of Single Bench of this Court in the case of “Dr. Anjani Kumar Pandey v. State of Chhattisgarh & Ors.” WPS No. 5581/2016.
6. Perusal of the facts of both these orders would reveal that those judgments have been decided with facts of those cases quite distinguishable from the facts of the present case for instance the Division Bench in WA No. 549/2016 had interfered with the order for the reason that the appellant therein had been working in the schedule area for more than two decades and again he has been transferred to a schedule area. The petitioner in the instant case was unable to distinguish this aspect from the facts so far as the petitioner is concerned. Likewise the order passed by the Single Bench in the case of “Dr. Anjani Kumar Pandey” (supra) also is distinguishable on its facts.
7. So far as the transfer is concerned, the Hon’ble Supreme Court in the case of **“State of U.P. & Ors. v. Gobardhan Lal” 2004(11) SCC 402** has in very categorical terms held that if at all if an employee on his

being transferred has some inconvenience or is not comfortable with the place of posting, the only remedy available to the employee is to approach the higher authorities in the department for ventilating his grievance by filing detailed representation in this regard. For ready reference paragraphs No. 7 & 8 of the judgment passed in the case of “Gobardhan Lal” (supra) is reproduced herein under:

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally

enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer. ”

8. Reserving the right of the petitioner for approaching the department for ventilating his grievance by way of a representation, the present writ petition in its present form stands dismissed.
9. On such representation being made, it is expected that the authorities concerned would decided the same at the earliest preferably within a period of 45 days from today from the date of receipt of the representation.

Sd/-
(P. Sam Koshy)
Judge