NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7088 of 2018

Satish Mahanand S/o Late Shri A. E. Mahanand Aged About 60 Years Occupation- Forest Ranger, R/o Deepupara, Forest- Depot Colony, Beejapur, District- Beejapur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Forest Department, Mahanadi Bhawan, New Mantralaya, District : Raipur, Chhattisgarh
2. The Principal Chief Conservator Of Forest Aranya Bhawan, Sector-19, Atal Nagar, Raipur, Chhattisgarh.
3. The Deputy Director Cum Divisional Forest Officer Indrawati Tiger Reserve, Beejapur, District- Beejapur, Chhattisgarh.
4. Ramayan Mishra Occupation- Forester (In-Charge Range Officer Forest Range, Bhairamgarh), District- Beejapur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Avinash K. Mishra, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order on Board

27/10/2018

1. The petitioner has filed the present writ petition being aggrieved of the order dated 06.10.2018.

2. The facts of the case is that the petitioner was working as a Forest Guard appointed in the year 1978 and in due course of time, the petitioner got promotion and was made the Deputy Ranger in the year 2009 and posted at the Forest Range, Manchkot Forest Range, Kurandi, District Jagdalpur. Later on the petitioner got further promotion on the post of Forest Ranger on 14.08.2018 and on promotion was posted at the Game Ranger, Bhairamgarh, Pamed Sanctuary Forest Division, Beejapur. By virtue of the order of promotion and posting, the petitioner complied with the order and

assumed the duties of the Forest Officer, at Game Ranger Bhairamgarh, Pamed Sanctuary Forest Division, Beejapur and was allotted work in the office of the Additional Forest/Deputy Director, Indrawati Tiger Reserve, Beejapur. Having assumed his duties on 21.08.2018, the respondents suddenly now have issued the order dated 06.10.2018 whereby the fresh place of posting has been issued against the petitioner and instructions have been issued to ensure that the petitioner is relieved at the earliest.

3. The contention of the petitioner is that since the earlier order dated 14.08.2018 already stands executed; there cannot be an amendment or modification so far as the place of posting of the petitioner is concerned. So far as the issue of an order of transfer having once already got executed, whether the amendment to that order could be issued has already been considered by this High Court in WPS No. 2981/2014 (Narendra Patanwar v. State of Chhattisgarh & Anr.), as also in WPS No. 1126/2015 (Rajesh Verma v. State of Chhattisgarh & Ors.) both decided on 03.07.2014 and 30.07.2015 respectively. In the case of “Narendra Patanwar” (supra) this Court referring to an earlier decision of this Court in paragraph No. 4 & 5 held as under:

> ***“4. This Court, in the identical matters i.e. Brajendra Singh v. State of Chhattisgarh & Others (WPS No. 5012/2009 decided on 09.03.2010), Dr. Toshan Lal Todar v. State of Chhattisgarh & Others (WPS No. 855/2012, decided on 27.02.2012) and Khubchand Verma v. State of Chhattisgarh & Others (WPS No. 1054/2012, decided on 02.03.2012) observed that once the transfer order is executed, the same cannot be cancelled. It was further***

observed that the employer is always at liberty to pass an order of transfer and posting the employee keeping in view the administrative exigency and public interest.

5. Admittedly, the petitioner has complied with the order dated 17.01.2014 and the respondent authorities have cancelled the same after compliance of the transfer order by the petitioner, which is unjust. Thus, the impugned order dated 24.06.2014, in respect of the petitioner, is quashed. However, liberty is reserved to the respondent/ employer to pass an order, if so advised, in accordance with law, keeping in view the public interest and administrative exigency."

4. Likewise again in subsequent decision in the case of "Rajesh Verma" (supra) also in paragraph No. 4 & 5 this Court held as under:

"4. Although the representation has been decided pursuant to the direction issued by this Court in W.P. (S) No.3522/2014, yet considering the fact that while deciding the said representation neither the petitioner was noticed nor given any opportunity of hearing and moreover, the State Government has not considered the settled principle freshly reiterated by the Division Bench of this Court in Tarun Kanungo vs. State of Chhattisgarh and others (W.A. No.248 of 2015 decided on 15.05.2015) holding thus :

"3. The question for cancellation of an order not in existence does not arise. The only option available to the authorities was to issue any fresh orders. We may appropriately refer to two Bench decisions in 2000 (2) PLJR 332 (Smt.

Jyotsna Kumari v. The State of Bihar) and 2000 (3) PLJR 139 (Mahmood Azam Siddique v. The State of Bihar) observing as follows :

> ***'12. Now it is a settled law that once an order of transfer issued and acted upon, it is spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant.'"***

> ***5. In view of the above, the impugned order is set aside. However, liberty is reserved in favour of the State Government to pass fresh order depending upon the administrative exigency, in accordance with the transfer policy."***

5. In view of aforesaid couple of authoritative decisions of this High Court, I am of the view that the case of the petitioner in the present writ petition also stands squarely covered by the said decisions. Accordingly the present writ petition deserves to be and is accordingly allowed. However as decided in the aforesaid two decisions, the liberty is reserved in favour of the State Government to pass a fresh order depending upon the administrative exigency in accordance with the rules, regulations and guidelines applicable.

6. As a consequence, the writ petition stands allowed to the extent indicated above.

7. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Ved