

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 7582 of 2018**

Sanjeev Kumar S/o Shri Nanduram, Aged About 39 Years, Working
As Assistant Teacher (Panchayat), Govt. Primary School,
Sikariyapara, Block Sitapur, District Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resources
Department, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Collector, Ambikapur, District Surguja, Chhattisgarh
3. The Chief Executive Officer, Jila Panchayat, Ambikapur, District
Surguja, Chhattisgarh
4. The Chief Executive Officer, Janpad Panchayat Sitapur, District
Surguja Chhattisgarh

---- Respondents

For Petitioner	:	Shri Harish Khuntiya, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/11/2018**

The challenge in the present writ petition is for grant of wages for the intervening period during which it is alleged that the petitioner was illegally transferred from one Zila Panchayat to another Zila Panchayat.

2. Contention of the counsel for the petitioner is that the order of transfer dated 04.04.2016 was challenged by the petitioner in WPS No. 1133 of 2016 which was finally decided on 23.12.2016 whereby the order of transfer was held to be illegal and without jurisdiction. Subsequent to the

quashment of the illegal order of transfer the petitioner was permitted to rejoin at his original place of posting where the petitioner is continuing his service.

3. The grievance of the petitioner is that for the intervening period i.e. from the date of issuance of illegal order of transfer till the date he rejoined his duties, the petitioner would be entitled for salary.

4. The dispute raised by the petitioners has already been considered by this Court in the case of **Ku. Girja Patel Vs. State of Chhattisgarh and others** in WPS No. 2791 of 2017 decided on 03.07.2017. Subsequently, some more writ petitions were decided in line of the judgment passed by this Court in the case of Ku. Girja Patel (supra). Thereafter, a couple of writ appeals were filed before the Division Bench challenging the order of this Court in the case of Ku. Girja Patel (supra) and the Division Bench also vide its order dated 04.10.2018 upheld the decision of the Single Bench and dismissed the writ appeals.

5. The Supreme Court in para 6 of its judgment in the case of Nawabkhan Abbaskhan Vs. The State of Gujrat¹, held that the constitutional perspective must be clear in unlocking the mystique of 'void' and 'voidable' vis-a-vis orders under the Act. Again, in para 20 of the aforesaid judgment, the Supreme Court holds that when a competent Court holds such official act or order invalid or sets it aside, it operates from nativity, i.e. the impugned act or order was never valid.

6. While discussing on the issue of the effect of null and void order, the aforesaid view has been further fortified from the judgment of the Supreme Court in the matter of Kendriya Vidyalaya Sangathan and Others Vs. Ajay

¹ 1974(2) SCC 121

Kumar Das and Others². It is an elementary principle of law that if an authority has no jurisdiction over the subject matter and in the process, if orders are passed, they are mere nullity and the effect would be that it was never in force.

7. In the case of Deepka Agro Foods Vs. State of Rajasthan & Others³, the Supreme Court had made an observation that when an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties.

8. Given the facts that the judgment passed by this Court in the case of Ku. Girja Patel (supra) and the subsequent writ petitions have been affirmed by the Division Bench in writ appeals, the present petitioner also in the given factual background would be entitled for the similar benefit that has been extended to Ku. Girja Patel and other similarly placed persons.

9. The present writ petition accordingly stands allowed and the respondents are directed to ensure that the unpaid salary as claimed for be paid at the earliest preferably within a period of 3 months from the date of receipt of this order.

Sd/-
(P. Sam Koshy)
JUDGE

Khatai

² 2002 (4) SCC 503

³ 2008 (7) SCC 748