

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 7329 of 2018**

1. Ku. Champa Panjhare D/o Shri K. L. Panjhare, Aged About 39 Years
Assistant Teacher (Panchayat), Govt. Primary School Kulgaon, Block
Kanker, District- Kanker, Chhattisgarh
2. Vikash Kawade S/o Shri Brij Lal Kawade, Aged About 34 Years
Assistant Teacher (Panchayat), Govt. Primary School Rode, Block-
Kanker, District- Kanker, Chhattisgarh
3. Dinesh Kumar Komra S/o Shri Ramsingh Komra, Aged About 43
Years, Assistant Teacher (Panchayat), Govt. Primary School
Talakurra, Block- Kanker, District- Kanker, Chhattisgarh
4. Anil Kumar Sahu S/o Shri P. R. Sahu, Aged About 45 Years,
Assistant Teacher (Panchayat), Govt. Primary School Lalmatwar
(Badepara), Block- Kanker, District- Kanker, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural
Development Department, Mahanadi Bhawan, New Raipur,
Chhattisgarh
2. The Chief Executive Officer, Zila Panchayat, Kanker, District- Kanker,
Chhattisgarh
3. The Chief Executive Officer, Janpad Panchayat, Kanker, District-
Kanker, Chhattisgarh
4. Block Education Officer, Kanker, District- Kanker, Chhattisgarh
5. Treasury Officer, Treasury, Account And Pension, Kanker, District-
Kanker, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Somkant Verma, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16/11/2018

The challenge in the present writ petition is for grant of wages for the intervening period during which it is alleged that the petitioners were illegally transferred from one Janpad Panchayat to another Janpad Panchayat and also in few cases one Zila Panchayat to another Zila Panchayat.

2. Contention of the counsel for the petitioners is that the order of transfer dated 31.10.2015 was challenged by each of the petitioners by separate writ petitions i.e. WPS Nos. 4386/2015, 4272/2015, 4253/2015 & 4755/2015 and all these writ petitions were 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 petitioners were permitted to rejoin at their original place of posting where the petitioners are continuing their service.

3. The grievance of the petitioners is that for the intervening period i.e. from the date of issuance of illegal order of transfer till the date they rejoined their duties, the petitioners 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 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 petitioners also

¹ 1974(2) SCC 121

² 2002 (4) SCC 503

³ 2008 (7) SCC 748

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