

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 7706 of 2018

Chandrika Prasad Tiwari S/o Late Shri Aatmaram Tiwari, Aged About 56 Years, Presently Posted As Pharmacist Grade-II (Storekeeper), Office Of Chief Medical And Health Officer, Seepat Road, Sarkanda, Bilaspur, District - Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Health And Family Welfare Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, District - Raipur, Chhattisgarh.
2. Directorate Of Health Services, Through The Director, Health Services, Indravati Bhawan, Atal Nagar, District - Raipur, Chhattisgarh.
3. Chief Medical And Health Officer, Seepat Road, Sarkanda, Bilaspur, District - Bilaspur, Chhattisgarh.
4. Harishankar Sahu S/o Shri R. C. Sahu, Presently Posted As Pharmacist Grade-II, Police Welfare Hospital, Bilaspur, District - Bilaspur, Chhattisgarh.

---Respondents

For petitioner	:	Shri Amrito Das, Advocate.
For State	:	Shri Dheeraj Wankhede, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/11/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 16/10/2018 passed by the respondent No.2.
2. Perusal of the impugned order reveal that the respondent No.2 vide the said order intends to transfer the services of the petitioner out of his present place of posting and the respondent No.2 has also pointed out certain destinations where the petitioner can be posted. While passing the order, the

respondent No.2 has taken note of the observations made by this Court in WPS No.7423/2017 decided on 02/05/2018.

3. The contention of the counsel for the petitioner is that, the order dated 02/05/2018 was subjected to challenge in a Writ Appeal i.e. WA No. 560/2018 and the division Bench of this Court deciding the Writ Appeal on 13/08/2018 held as under:-

“2. The order dated 2-5-2018 passed by the learned Single Judge within the matrix of the facts that the appellant and the private respondent came to be posted as Store Keeper in the office of the Chief Medical & Health Officer, Bilaspur, is now academic in view of the fact that prior to passing of the impugned order dated 2-5-2018, the private respondent already stood transferred vide order No.Health/2018/170 dated 23-4-2018, copy of which is Annexure R1/4-9 attached with the return of the State.

3. We also notice that the said order has already been marked and communicated to one and all including the private respondent. This fact was neither brought to the notice of the writ Court nor any challenge was thrown to the said decision.

4. In view of the same, it is left open to the private respondent to either join the place of posting in terms of the order dated 23-4-2018 or fight his legal battle against such a decision.

5. The appeal stands disposed off with a clarification that the issue of claim of right of the private respondent to be

posted as Store Keeper in the office of the Chief Medical & Health Officer, Bilaspur, is non est now and the appellant will continue in the present place of posting i.e. office of the Chief Medical & Health Officer, Bilaspur, as Store Keeper till such further decision is taken by the competent authority.”

6. According to the counsel for the petitioner, the respondent No.2 while passing the impugned order – Annexure-P/1 perhaps has lost sight of or was not aware of the order passed by the division Bench of this Court on 13/08/2018 and the impugned order seems to have been passed only on the basis of the observations made by the single Bench while deciding the Writ Petition on 02/05/2018.

7. The State counsel also on perusal of the record does not dispute the fact that, the order dated 02/05/2018 has subsequently got merged with the order dated 13/08/2018 passed by the division Bench and as such the impugned order could not have been passed only based on the order of single Bench dated 02/05/2018 passed in WPS No. 7423/2018.

8. In the given facts, this Court is of the opinion that ends of justice would meet if the Writ Petition is disposed off with a direction to the respondent No.2 to reconsider the issue so far as the posting of the petitioner as well as the respondent No.4 is concerned. While reconsidering the same, it may take note of the observations made by the division Bench of this Court in Writ Appeal No. 560/2018 decided on 13/08/2018.

9. Till the respondent No.2 passes a fresh order it is ordered that, the impugned order – Annexure-P/1 dated 16/10/2018 shall not be further acted upon.

10. With the aforesaid observation, the Writ Petition stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit