

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No 849 of 2018****Reserved on 10/12/2018****Delivered on 09/01/2019**

Shashank Singh S/o Shri R. K. Singh Aged About 33 Years R/o Qtr. No. G-08, New Irrigation Colony Janjgir, District Janjgir Champa Chhattisgarh, Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Water Resources, Mahanadi Bhawan Naya Raipur, Raipur Chhattisgarh.
2. The Engineer In Chief, Water Resources Department Sihawa Bhawan Civil Lines Raipur Chhattisgarh.
3. The Chief Engineer, Minimata (Hasdeo) Bango Minimata Project, Water Resources Department Bilaspur Chhattisgarh.
4. The Executive Engineer, Hasdeo Canal Water Management Division Janjgir District Janjgir Champa Chhattisgarh.
5. Shri D.L. Khunte S/o Late Fagulal Khunte Aged About 57 Years Assistant Engineer, Canal Water Management Sub Division No.1 Janjgir Champa District Janjgir Champa Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Shailendra Dubey, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.
For Respondents	:	Mr. V.R. Tiwari, Advocate
		Mr. Varunendra Mishra, Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER**

1. The challenge in the present writ petition is to the order dated 10.01.2018 passed by the respondent No.1. Vide the impugned order, the respondent No.1 has modified the earlier order of transfer dated 14.08.2017 and has modified the place of posting of the petitioner from the post of Sub-Divisional Officer, Water Resources, Janjgir Canal Branch, Sub-division No.1, Janjgir to the post of Sub-Divisional Officer, Mini Mata Bango Canal, Sub-division No.17, Bilaspur.

2. The brief facts relevant for the adjudication of the present case is that on 14.08.2017, a transfer order was issued, whereby the respondent No.5 namely Mr. B.L. Khunte, Assistant Engineer was transferred from Janjgir Canal Branch, Water Resources Sub-division No.1, Janjgir to Mini Mata Bango Canal, Sub-division No.17, Bilaspur and vide the same order, the petitioner, who was posted at the Hasdeo Canal, Water Management Division, Janjgir, transferred to the Janjgir Branch Canal, Water Management, Sub-division No.1, Janjgir.
3. The respondent No.5 challenged the order of transfer on various grounds vide WPS No. 6551/2017 (D.L. Khunte v. State of Chhattisgarh & Ors.). The said writ petition got disposed of on 29.11.2017, wherein this Court, while disposing the writ petition, held as under:

“4. Let the petitioner prefer representation within a period of 03 weeks from today and thereafter, the concerned competent authority shall consider and decide the same within the next 7 weeks, in accordance with law and on its own merits.

5. For a period of 10 weeks or till the representation is decided, whichever is earlier, the status quo, as it exists today, in respect of the petitioner's posting, shall be maintained.”

4. Subsequently, the respondent No.5 made a representation and that representation stood decided vide the impugned order (Annexure P/1) dated 10.01.2018. The respondent authorities taking into consideration the grievances of the petitioner modified the earlier transfer order and have cancelled the change of posting of the respondent No.5 and ordered to retain the respondent No.5 as a Sub-Divisional Officer, Janjgir Branch Canal, Water Management Sub-division No.1, Janjgir and in turn the

petitioner herein has been ordered to be posted from Janjgir to Bilaspur, where the respondent No.5 was earlier ordered to be posted. It is this order, changing the place of posting of the petitioner from Janjgir to Bilaspur, which is under challenge in the present writ petition.

5. The contention of the petitioner is that the petitioner had already joined the transferred place as per order dated 14.08.2017 and assumed his duties and therefore the order subsequently could not have been modified. According to the petitioner, the impugned order has been passed only with an intention of accommodating the respondent No.5 and therefore the impugned order is a malafide order. It was further the contention of the petitioner that the petitioner also is an officer, who otherwise is the Secretary of the Association, to which he belongs and therefore he falls under the protected category from being transferred.
6. It was the further contention of the petitioner that after the impugned order was passed, the petitioner had filed a contempt petition before this Court vide Contempt Petition No. 64/2018 and this Court in the said contempt petition had initially granted an interim protection to the petitioner staying the effect & operation of the impugned order dated 10.01.2018 under challenge in the present writ petition. Later on the contempt petition stood disposed of and has now questioned the order by this writ petition for the aforesaid reasons of firstly it being issued with malafide intention, secondly it having being issued with the only intention of accommodating the respondent No.5 and thirdly, since the petitioner had already joined his place of posting as per the order of transfer dated 14.08.2017, he could not have been subsequently shifted.

7. To counter these contentions, the counsel appearing for the respondent/State as well as private respondent No.5, it was contended that there is no malafides in the issuance of the impugned order, secondly, it is not a case of showing undue favour to the respondent No.5, and thirdly, no prejudice has been caused to the petitioner as vide order dated 14.08.2017, the petitioner was transferred from one division to another Sub-division in the same division, as such, there was not much inconvenience, which has been caused to the petitioner. The impugned order has been passed considering the representation of the petitioner, hence the same cannot be held to be either bad in law or arbitrary or in any manner contrary to the powers, which are otherwise conferred upon the respondent/State and thus prayed for the rejection of the petition.
8. Having heard the contentions put forth on either side and on perusal of record, what has primarily to be seen is that, the petitioner at the first instance vide order dated 14.08.2017 was transferred within the city Janjgir itself. Except for the change of office, there was not much change or shifting of the petitioner. Moreover, from the records, it appears that the petitioner has been at Janjgir for quite sometimes and it is not his case of being subjected to frequent transfer. It is also not in dispute that the respondent No.5 also on an earlier occasion had approached the High Court vide WPS No. 6551/2017 and this Court disposed of the writ petition asking the respondent No.5 to file a representation to the State Government, who in turn may decide the same.
9. The Hon'ble Supreme Court has time and again reiterated the legal position, so far as a transfer order is concerned, holding the fact that it is always the prerogative of the State Government to decide when, where and for what duration an employee/officer should be posted at a particular

place. It is also specifically held by the Hon'ble Supreme Court that the Courts do not have the power to scrutinize an order of transfer made unless they are contrary to Rules or have been issued by an incompetent officer. It has also been repeatedly held by the Hon'ble Supreme Court in a catena of decisions that instead of approaching the Courts against an order of transfer, the employee/officer should approach the employer by way of representation, leaving it for the employer to decide the representation considering the inconvenience/ grievance that the employee/officer shall face on the execution of the transfer order.

10. If the State Government under the said circumstances, particularly on a direction by this Court on 29.11.2017 in WPS No. 6551/2017 entertains the representation of the respondent No.5 modifying the earlier order of transfer retaining the respondent No.5 at the same place and in turn, if they have shifted the petitioner from Janjgir to Bilaspur, in the opinion of this Court, it cannot be said to be in any manner arbitrary, nor can it be said to be with malafides, neither is it, in contravention to the transfer policy of the State Government.
11. So far as the petitioner having already joined the transferred place as per the order dated 14.08.2017, the said would not give any substantial right in favour of the petitioner for the reason that the petitioner already as it is, was posted in Janjgir itself, and except for the change in the office located in the same division, there was no substantial shifting. It is always within the domain of the State Government to entertain a representation of an employee.
12. From the factual matrix, which has been narrated in the preceding paragraphs, it clearly denotes that the respondent No.5 had made a

representation to the State Government, pursuant to an order passed by this Court. The State Government subsequently having entertained the representation, modified the order of transfer dated 14.08.2017 and in the process, the place of the posting of the petitioner has got shifted. The subsequent change of posting should not in any manner be treated as one which has been issued with any malafide intention against the petitioner or showing any undue favour to the respondent No.5.

13. The writ petition, therefore for these grounds, does not have any force of law for being entertained, nor does it have any strength calling for an interference with the impugned order.
14. During the course of arguments, the respondents brought to the notice of the Court an order dated 13.04.2018, whereby the State Government has passed an order accommodating the petitioner as well as the respondent No.5 at Janjgir and since 13.04.2018 both of them are working at Janjgir-Champa. In the opinion of this Court, ends of justice would serve if it is ordered that the respondents shall not act upon the order dated 10.01.2018, so far as the petitioner is concerned, rather permit the petitioner and respondent No.5 to discharge their duties as per the place of posting as provided in the order dated 13.04.2018. However the right stands reserved for the Government to pass fresh orders, in case administrative exigency so warrants.
15. The writ petition accordingly stands disposed off.
16. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge