

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 521 of 2019

Pinky Thakkar W/o Jitendra Pandey, Aged About 35 Years, R/o Ram Shyam Bhawan, Link Road, Ward No.16, Janjgir, District Janjgir Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Women And Child Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, District Raipur, Chhattisgarh
2. The Commissioner, Women And Child Development, Indrawati Bhawan, Mantralaya, Atal Nagar, District Raipur, Chhattisgarh
3. District Programme Officer, Women And Child Development, Janjgir Champa, District Janjgir Champa, Chhattisgarh
4. Project Officer, Integrated Child Development Project, Women And Child Development Department, Nawagarh, District Janjgir Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vikas Dubey, Advocate
For State	:	Mr. Sameer Bihar, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/01/2019

1. The challenge in the present writ petition is to the order Annexure P1 dated 05.01.2019, passed by the respondent No.2 revoking the order of suspension of the petitioner and giving her posting at a place different than the place from where she was suspended.
2. The relevant facts for adjudication of the present writ petition are that the petitioner was working as Supervisor under the Integrated Child Development Scheme of the State Government and was posted at Nawagarh, District Janjgir Champa when she was placed under

suspension on 21.12.2016. The petitioner was subsequently subjected to departmental enquiry and the departmental enquiry culminated in punishment to the petitioner where she has been inflicted with a punishment of stoppage of one annual increment without cumulative effect. Subsequent to the punishment being imposed, the order of revocation has been passed vide impugned order dated 05.01.2019. However, on revocation of the suspension order, the petitioner has been ordered to be posted at the office of the Integrated Child Development Scheme, Dabhra, District Janjgir Champa. It is this part of the order Annexure P1 which the petitioner is aggrieved with.

3. According to the counsel for the petitioner, the said order is an illegal order as respondent No. 2 is not a competent officer to transfer the petitioner from one place to another. He submits that the effect of the impugned order is the transfer of the petitioner and at present, there is a complete ban of transfer, therefore, the authority could not have transferred the petitioner to Dabhra, District Janjgir Champa. It is the further contention of the petitioner that even otherwise, the order is bad in law for the reason that it has not been routed through the Co-ordination Committee which is required as per the transfer policy of the State Government. For this reason also the impugned order should be set aside/quashed. He further submits that the petitioner, on an earlier occasion i.e. on 05.01.2011 was transferred by an order of the State Government, therefore, it is only the State Government who could have changed the place of posting of the petitioner. The Disciplinary Authority does not have any right to change the place of posting of the petitioner and for this reason also the impugned order is bad.

4. Counsel for the petitioner relied upon the decision of this Court rendered in the case of Dr. Pramod Tiwari vs. State of Chhattisgarh in WPS No.4857 of 2018 dated 21.08.2018. It was lastly contended by the counsel for the petitioner that the authority concerned i.e. respondent No.2 does not have the power to supersede the order of posting earlier issued in favour of the petitioner by the State Government as he has not been authorised or empowered to take such a decision. For this reason also the impugned order is bad.
5. The State Counsel, on the contrary, opposing the petition submits that the petition is totally devoid of merits for the reason that the impugned order by no stretch of imagination can be said to be an order of transfer. According to the State Counsel, it is only a simple order of revocation of suspension and the authority has given the place of posting of the petitioner to resume her duties. It is the further contention of the respondents that the distance between the two places i.e. Nawagarh and Dabhra is also too short a distance which does not require interference by this Court under Article 226 of the Constitution of India. Thus, prayed for dismissal of the writ petition.
6. Having heard the contentions put forth on either side and on perusal of record, what is relevant at this juncture to take note of the admitted factual positions are: The petitioner was posted as a supervisor at ICDS, Nawagarh since 05.01.2011. The petitioner was placed under suspension from ICDS, Nawagarh, District Janjgir Champa on 21.12.2016. The petitioner was also subjected to departmental enquiry. The departmental enquiry ended in the punishment of stoppage of one annual increment without cumulative effect. Subsequently, the impugned order has been passed revoking the order of suspension.

7. The only grievance which survives as per the petitioner is the issue of change of posting. According to the petitioner, the impugned order is an order of transfer which the State Government or the respondent No.2 could not have passed at this juncture and on revocation, she should have been posted at the same place from where she was suspended.
8. What needs to be appreciated is the fact that from the date of suspension till the date of revocation of suspension, a considerable period of time has lapsed. The departmental enquiry initiated against the petitioner has culminated in the petitioner being found guilty and she being punished for that. So far as the change of place of posting is concerned, it would be relevant at this juncture to refer to the judgment of the Full Bench decision of Madhya Pradesh High Court rendered in the case of **Asif Mohd. Khan vs. State of M.P. and Ors.** reported in **2015 (4) MPLJ 406**, wherein in paragraphs 32 to 34 it has been held as under:-

“32. The next question is: whether the lien would be on the post held substantively or against the place where he was working. This doubt can be straightaway answered on the basis of the definition of expression “lien” given in rule 9(13) of the Madhya Pradesh Fundamental Rules. Expression “lien” reads thus:

“lien’ means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively.”

33. In view of this express provision, it is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension. In the case of Haribans Mishra v. Railway Board [MANU/SC/0214/1989: (1989) 2SCC 84 (P.15)], the Supreme Court has held that lien can be on a post and not a lien on a place.

34. Indubitably, even if the employee is placed under suspension, he would continue to hold his lien on the “post” on which he was “appointed substantively”, until reinstated after revocation of suspension. However, there can be no vested right to continue at a place where the employee was posted at the time of suspension. Any other

view would be anti-thesis to the rule of transfer being an incidence of service. It may be a case of transfer and posting at a different place, by the competent authority. That may be open to challenge on permissible grounds.”

9. Based on the said judgment of the M.P. High Court, recently the Division Bench of this High Court, in the case of **L. P. Saket vs. Chhattisgarh State Civil Supplies Corporation Ltd. and ors.** decided on 15.11.2018 in **WPS No.7269 of 2017**, has in very categorical terms reiterating the view of the Full Bench decision of the M.P. High Court, in paragraph 14 held as under:-

“The question of law for which the reference was made has been answered in the preceding paragraphs of this order. To sum, it cannot be a thumb rule that an employee whose suspension has been revoked has a right to be posted and continued in the same place of posting on revocation of suspension, as he only has a lien on the post and not on the place of posting.”

10. Taking into consideration the aforesaid legal position as it stands, if we take into consideration the facts of the present case, what clearly reveals is that the order of suspension and the order of revocation of the suspension have been passed by the same authority. If the authority who has placed the employee on suspension, at a later stage, in the light of the subsequent culmination of the departmental enquiry and the petitioner having been inflicted with a minor punishment, has given a posting to a different place, the same cannot be said to be in excess of powers or something he is denuded of. What also need to be appreciated is that the distance between two places which is too short a distance for judicial review of the impugned order by this Court under Article 226 of the Constitution of India. Moreover, what cannot be lost sight of is that the petitioner remains to be posted under the same authority who had placed her under suspension even after revocation of suspension.

11. In view of the same, this Court does not find any strong case made out on behalf of the petitioner calling for an interference with the impugned order at this juncture.

12. The writ petition thus deserves to be and is accordingly dismissed. Our reluctance to entertain the writ petition would not preclude the petitioner to pursue the departmental remedy for change of posting and also pursuing the appeal that she has preferred against the impugned order before the higher authorities in the Department.

Sd/-
(P. Sam Koshy)
Judge

Khatai