

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.752 OF 2019**

Suryalal Sahu S/o Shri Anand Ram Sahu Aged About 48 Years Presently Posted As Assistant Teacher, Primary School Sagarpali, Block Pathalgaon, District- Jashpur, Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhavan, Mantralaya, Atal Nagar, District- Raipur, Chhattisgarh.
2. The Director Directorate Of Public Instructions, Indrawati Bhawan, Atal Nagar, Raipur, Chhattisgarh.
3. The District Education Officer District Jashpur, Chhattisgarh.
4. The Block Education Officer Pathalgaon, District- Jashpur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Sanjay Patel, Advocate.
For Respondent-State	:	Shri P. Acharya, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05.02.2019

1. With the consent of the parties, the matter is heard finally at admission stage.
2. The challenge in this petition is to the order dated 17.01.2019 (Annexure P/1) whereby the respondent No.3, by way of modification to the earlier order dated 26.12.2018, have changed the place of posting of the petitioner.
3. The facts of the case is that, the petitioner was working as Assistant Teacher (LB) at the Govt. Primary School Bhalukhar (Kotba), Block Pathalgaon, District Jashpur and while working there, the petitioner was placed under suspension on 19.09.2018. The order of suspension was subsequently revoked vide order dated 26.12.2018. On revocation, the place of posting of the petitioner was shifted from Bhalukhar to Govt. Primary School Sagarpali, Block Pathalgaon, District Jashpur. The said order was duly complied with by the petitioner on 28.12.2018 itself and the

petitioner started discharging his duties at Govt. Primary School Sagarpali since then.

4. Now, vide the impugned order dated 17.01.2019 (Annexure P/1) the respondent No.3 has, by way of an amendment/modification to the order dated 26.12.2018, have changed the place of posting of the petitioner from Govt. Primary School Sagarpali, Block Pathalgaon to Govt. Primary School Karradand Circle, Block Pathalgaon.
5. The contention of the petitioner is that once when the earlier order stood complied with, the same has attained its finality and the respondents subsequently could not have modified or amended the executed order. It is by now well settled proposition of law that once an order has been passed particularly in respect of change of place of posting is concerned and the same having been acted upon, the execution of the order gets complete and the order thereafter cannot be amended or modified. It is always for the respondents to pass a fresh order in the administrative exigency brining in change of place of posting.
6. In the instant case the earlier order of revocation of suspension was acted upon and the petitioner joined the service at the place where he was asked to report for duty on the revocation of the suspension. Once the petitioner having joined there, which according to the petitioner he did on 28.12.2018, there was no occasion for the respondents to have modified the place of posting. If at all, if the respondents intended to change the place of posting or transfer the petitioner elsewhere, they ought to have passed altogether fresh order of transfer in accordance with law.
7. So far as the issue in respect of the change of place of posting after an order stands already executed is concerned, it would be relevant at this juncture to refer to the judgment of this court in case of Satish Mahanand

Vs. State of Chhattisgarh & Ors. (WPS No.7088 of 2018) in which it has been held as under:

“3. So far as the issue of an order of transfer having once already got executed, whether the amendment to that order could be issued has already been considered by this High Court in WPS No. 2981/2014 (Narendra Patanwar v. State of Chhattisgarh & Anr.), as also in WPS No. 1126/2015 (Rajesh Verma v. State of Chhattisgarh & Ors.) both decided on 03.07.2014 and 30.07.2015 respectively. In the case of “Narendra Patanwar” (supra) this Court referring to an earlier decision of this Court in paragraph No. 4 & 5 held as under:

“4. This Court, in the identical matters i.e. Brajendra Singh v. State of Chhattisgarh & Others (WPS No. 5012/2009 decided on 09.03.2010), Dr. Toshani Lal Todar v. State of Chhattisgarh & Others (WPS No. 855/2012, decided on 27.02.2012) and Khubchand Verma v. State of Chhattisgarh & Others (WPS No. 1054/2012, decided on 02.03.2012) observed that once the transfer order is executed, the same cannot be cancelled. It was further observed that the employer is always at liberty to pass an order of transfer and posting the employee keeping in view the administrative exigency and public interest.

5. Admittedly, the petitioner has complied with the order dated 17.01.2014 and the respondent authorities have cancelled the same after compliance of the transfer order by the petitioner, which is unjust. Thus, the impugned order dated 24.06.2014, in respect of the petitioner, is quashed. However, liberty is reserved to the respondent/employer to pass an order, if so advised, in accordance with law, keeping in view the public interest and administrative exigency.”

4. Likewise again in subsequent decision in the case of “Rajesh Verma” (supra) also in paragraph No. 4 & 5 this Court held as under:

“4. Although the representation has been decided pursuant to the direction issued by this Court in W.P. (S) No.3522/2014, yet considering the fact that while deciding the said representation neither the petitioner was noticed nor given any opportunity of hearing and moreover, the State Government has not considered the settled principle freshly reiterated by the Division Bench of this Court in Tarun Kanungo vs. State of Chhattisgarh and others (W.A. No.248 of 2015 decided on 15.05.2015) holding thus :

“3. The question for cancellation of an order not in existence does not arise. The only option available to the authorities was to issue any fresh orders. We may appropriately refer to two Bench decisions in 2000 (2) PLJR 332 (Smt.Jyotsna Kumari v. The State of Bihar) and 2000 (3) PLJR 139 (Mahmood Azam Siddique v. The State of Bihar) observing as follows :

'12. Now it is a settled law that once an order of transfer issued and acted upon, it is spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant."

5. In view of the above, the impugned order is set aside. However, liberty is reserved in favour of the State Government to pass fresh order depending upon the administrative exigency, in accordance with the transfer policy."

5. In view of aforesaid couple of authoritative decisions of this High court, I am of the view that the case of the petitioner in the present writ petition also stands squarely covered by the said decisions. Accordingly the present writ petition deserves to be and is accordingly allowed. However as decided in the aforesaid two decisions, the liberty is reserved in favour of the State Government to pass a fresh order depending upon the administrative exigency in accordance with the rules, regulations and guidelines applicable.

6. As a consequence, the writ petition stands allowed to the extent indicated above."

8. The impugned order dated 17.01.2019 (Annexure P/1) stands set aside/quashed to the aforesaid extent reserving the right of the respondents/State to pass a fresh order in the event of administrative exigency that too in accordance with the transfer policy and the guidelines framed by the State Govt.
9. Accordingly, the petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge