

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1036 of 2019

Rajendra Singh Thakur S/o Late Shri Goverdhan Singh Thakur, Aged About 61 Years, R/o Near Ghanshyam Tailors, Kushalpur, Raipur, District- Raipur, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Urban Administation And Development, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District- Raipur, Chhattisgarh.
2. Commissioner, Through Municipal Corporation, Raipur, District- Raipur, Chhattisgarh.

---Respondents

For petitioner	:	Shri Yashwant Thakur, Advocate.
For resp.No.2	:	Shri Satish Gupta, Advocate.
For State	:	Shri Rahul Mishra, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/02/2019

1. The instant Contempt Petition has been filed assailing the order dated 28/01/2019 whereby the petitioner has been transferred from the post of Lecturer posted under the Municipal Corporation, Raipur to the Multipurpose School under the Municipal Corporation, Ambikapur.
2. The challenge in the present Writ Petition is on the ground that, the petitioner being substantively an employee of the Municipal Corporation and having been appointed by an order passed by the Commissioner, Municipal Corporation could not have been transferred by an order of the State Government.

3. The challenge further is that, the petitioner could not have been transferred from one Municipal Corporation to another unless the transfer is made on deputation.

4. According to the petitioner, the impugned order does not reflect that the services of the petitioner has been transferred on deputation, neither does the impugned order reflect that, the petitioner would get the benefits as are enshrined under sub-section 6 of Section 58 of the Chhattisgarh Municipal Corporation Act, 1956.

5. The counsel appearing for the Municipal Corporation opposing the petitioner submits that, under Section 58(5), the State Government has power to transfer an employee from one Corporation to another. However, he was not in a position to show whether the order of transfer has been made through the Co-ordination Committee routed through the office of Chief Minister or not.

6. The same stand has also been taken by the State counsel.

7. Prima-facie, reading of the provision of sub-sections 5 & 6 of Section 58 it reveals that, an employee of one Corporation can be transferred to another Corporation only under Section 58 (5), but the said provision clearly stipulates that the transfer under the said provision can be made only on deputation. In the instant case, the impugned order is silent on that aspect. Neither does the impugned order show any protection that the employee would be entitled for as is envisaged under sub-section 6 of Section 58.

8. The impugned order also does not show the same to have been routed through the office of Chief Minister and the Co-ordination as is required.

Thus, the same also seems to be in contravention to the transfer policy of the State Government prevalent.

9. Given the said facts, the impugned order is not sustainable and the same deserve to be and is accordingly set-aside.

10. Reserving the right of the respondents to pass a fresh order if administrative exigency so arises in accordance with the provisions of Municipal Corporation, Act as also keeping in view the transfer policy of the State Government. The instant Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit