

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1328 of 2019

Smt. Renuka Sinha W/o Shri Tuka Ram Sinha Aged About 43 Years
Assistant Teacher (L.B.) Govt. Primary School Demar, Block And
District Dhamtari, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Panchayat And Rural Development Department Mahanadi Bhawan New Raipur, Chhattisgarh.
2. The Chief Executive Officer Zila Panchayat Dhamtari District Dhamtari, Chhattisgarh.
3. District Education Officer Dhamtari, District Dhamtari, Chhattisgarh.
4. Treasury Officer Treasury, Account And Pension Dhamtari, District - Dhamtari Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Somkant Verma, Advocate
For State	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/02/2019

1. The challenge in the present writ petition is for grant of wages for the intervening period during which it is alleged that the petitioner was illegally transferred from one Zila Panchayat to another Zila Panchayat.
2. Contention of the counsel for the petitioner is that the order of transfer dated 10.11.2015 was challenged by the petitioner vide separate writ petition i.e. WPS Nos. 4054/2015 and this writ petition was finally decided on 23.12.2016 whereby the order of transfer was held to be illegal and without jurisdiction. Subsequent to the quashment of the illegal order of transfer, the petitioner was

permitted to rejoin at his original place of posting where the petitioner is continuing his service.

3. The grievance of the petitioner is that for the intervening period i.e. from the date of issuance of illegal order of transfer till the date he rejoined his duties, the petitioner would be entitled for salary.
4. The dispute raised by the petitioner has already been considered by this Court in the case of “**Ku. Girja Patel Vs. State of Chhattisgarh and others**” in **WPS No. 2791 of 2017** decided on 03.07.2017. Subsequently, some more writ petitions were decided in line of the judgment passed by this Court in the case of Ku. Girja Patel (supra). Thereafter, a couple of writ appeals were filed before the Division Bench challenging the order of this Court in the case of “**Ku. Girja Patel**” (supra) and the Division Bench also vide its order dated 04.10.2018 upheld the decision of the Single Bench and dismissed the writ appeals.
5. The Supreme Court in para 6 of its judgment in the case of “**Nawabkhan Abbaskhan Vs. The State of Gujrat**” **1974(2) SCC 121**, held that the constitutional perspective must be clear in unlocking the mystique of 'void' and 'voidable' vis-a-vis orders under the Act. Again, in para 20 of the aforesaid judgment, the Supreme Court holds that when a competent Court holds such official act or order invalid or sets it aside, it operates from nativity, i.e. the impugned act or order was never valid.
6. While discussing on the issue of the effect of null and void order, the aforesaid view has been further fortified from the judgment of the

Supreme Court in the matter of “**Kendriya Vidyalaya Sangathan and Others Vs. Ajay Kumar Das and Others**” 2002 (4) SCC 503. It is an elementary principle of law that if an authority has no jurisdiction over the subject matter and in the process, if orders are passed, they are mere nullity and the effect would be that it was never in force.

7. In the case of “**Deepka Agro Foods Vs. State of Rajasthan & Others**” 2008 (7) SCC 748 the Supreme Court had made an observation that when an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties.
8. Given the facts that the judgment passed by this Court in the case of “**Ku. Girja Patel**” (supra) and the subsequent writ petitions have been affirmed by the Division Bench in writ appeals, the present petitioner also in the given factual background would be entitled for the similar benefit that has been extended to Ku. Girja Patel and other similarly placed persons.
9. The present writ petition accordingly stands allowed and the respondents are directed to ensure that the unpaid salary as claimed for be paid at the earliest preferably within a period of 3 months from the date of receipt of this order.

Sd/-
(P. Sam Koshy)
Judge