

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 216 of 2019**

*(Arising out of the order dated 25.01.2019 passed in writ petition WPS
No.521/2019 by the learned Single Judge)*

- 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

---- Appellant**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, Nawagarh, District Janjgir-Champa Chhattisgarh

---- Respondents

For Appellant : Shri Santosh Kumar Pandey, Advocate with
Shri Vikas Dubey, Advocate

For Respondents/State : Shri Siddharth Dubey, Dy. GA

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Judgment on Board

Per Goutam Bhaduri, J.

21/06/2019

1. Heard.
2. The present appeal is against the order dated 25.01.2019 passed in WPS No.521 of 2019. The said writ petition was filed with the following reliefs:-
 - i. To kindly call for the records of the case from the respondents.
 - ii. To kindly quashed the such portion of the impugned order dated 05.01.2019 (Annexure P/1) which is concerned with the transfer/changing the posting of the petitioner and permitted to continue on the present posting place i.e. Integrated Child Development Project, Nawagarh, District Janjgir Champa.
 - iii. To kindly direct the respondent No.1 to consider the departmental appeal with respect to the other part accordance with law within stipulated time.
 - iv. To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case.”
3. The contention of the petitioner is that she was suspended by order dated 21.12.2016 and after conclusion of departmental enquiry, she was posted at a place other than the place of posting wherein she was posted at the time of suspension. The place was Navagarh District Janjgir-Champa. Learned counsel for the appellant further submits that the posting of the petitioner to another place other than the place of posting wherein she was initially discharging her duties would amount to transfer and would be against the transfer policy of the State, which was the then existing at the relevant time on 11th of July, 2017. It is stated that therefore the part of the order under challenge whereby the petitioner has been posted to Dabhra District Janjgir-Champa may be canceled. The learned single Judge has dismissed the writ petition by holding that the petitioner do not have any lien over the post as it was a case of suspension then after the

departmental enquiry, then she was posted in a new place of posting as such no interference was made.

4. The facts as would be evident from the record that the petitioner was suspended on 21.12.2016 at the time she was posted at Navagarh, district Janjgir-Champa she was subjected to departmental enquiry. Subsequently after conclusion of the departmental enquiry, an order was passed on 05.01.2019 i.e. after almost three years and she was posted at Dabhra, District Janjgir-Champa. It is obvious that when the order of suspension was passed the said post having fallen vacant, the same cannot be kept vacant for indefinite period of time. Here the period of suspension and the order after the departmental enquiry which envelops the fresh posting order, there is a gap of three years in between. Further, it cannot be said that the petitioner has a right to be restored back to the old position of posting as was on the date of suspension. Further the perusal of the order passed by the learned single judge would show that the right has been given to the petitioner to pursue the departmental remedy for change of posting and pursue the appeal against the order of departmental enquiry. During the course of argument, it is pleaded that the petitioner has already filed the necessary application qua to change her place of posting. The prayer includes the fact to change her place of posting and to restore back to the original place, wherein at the time of suspension she was posted. Considering the fact that the same is pending coupled with the fact that the government counsel also makes a submission that the application, if so pending, shall be decided within a period of four weeks from the date of

receipt of the certified copy of this order, taking into time which lapsed in between, we do not find any perversity in the order. However, it is directed that the State shall be obliged to decide the application which is pending at the end of the State within a further period of four weeks from the date of receipt of the certified copy of this order.

5. With the aforesaid observation, the writ appeal stands disposed of.

Sd/-

(P.R. Ramachandra Menon)

Chief Justice

Sd/-

(Goutam Bhaduri)

Judge

Ashu