NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 2905 of 2019

Kamlesh Mishra S/o Shri Shiv Kishor Mishra, Aged About 52 Years Presently Posted As District Audit In Charge, At Office Of Deputy Director (Panchayat), Mungeli Chhattisgarh, R/o Village Makri, Tahsil Pandriya, District Kabirdham, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Panchayat And Rural Development Department, Mantralaya, Atal Nagar Raipur Chhattisgarh

2. Director, Directorate Of Panchayat, Raipur, District Raipur Chhattisgarh

3. Collector Mungeli, District Mungeli, Chhattisgarh

4. Chief Executive Officer, Zila Panchayat Mungeli, District Mungeli Chhattisgarh

5. Ajay Tiwari Presently Posted As Assistant Internal Audit Taxation Officer, At Janpad Panchayat Mungeli, District Mungeli Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Ishan Verma, Advocate.
For State/Respondents 1 to 3	:	Mr. Jitendra Pali, Dy. A.G.
For Respondent no.4	:	Mr. Abhishek Chandravanshi, Advocate
For Respondent no.5	:	Mr. V. R. Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20.08.2019

1. The challenge in the present writ petition is to the order Annexure P-1

dated 06.03.2019 whereby the respondents have passed an order partially amending the order which was passed about 6 years back i.e. on 16.05.2013 to the extent of relieving the petitioner from the post of In charge, District Auditor in the office of Dy. Director (Panchayat), District Mungeli and posting him on his substantive post at Janpad Panchayat, Mungeli, District Mungeli. At the same time, an order has been passed posting respondent no.5 as the In charge, District Auditor in the office of the Dy. Director (Panchayat), Mungeli.

2. Facts of the case are that the petitioner was initially appointment on the post of Assistant Gram Panchayat Officer on 21.07.1987. In due course of time, the post on which the petitioner was working was re-designated as " Assistant Internal Taxation Examining Officer" and the petitioner vide order dated 16.05.2013 Annexure P-2 was given the additional charge of District Auditor in the office of the Dy. Director (Panchayat), District Mungeli. The petitioner by virtue of the order dated 16.05.2013 was discharging his duties as an Incharge District Auditor till the impugned order was passed.

3. According to the petitioner, the impugned order is bad, arbitrary and has been issued with malafides for more than one reasons. According to the petitioner, he is senior to respondent no.5 as an Assistant Internal Taxation Examining Officer as the petitioner was appointed much before respondent no.5 was appointed, therefore the respondents were not justified in taking the charge away from the petitioner and handing over the same to a junior person. The second contention of the petitioner is that for the year 2017-18, the respondents State had conducted an examination for appointment of the post of Auditors and it is the petitioner who had scored much better than respondent no.5 and his name was reflected much above the name of respondent no.5. On this count also, it was the petitioner's right to hold the post of In-charge District Auditor of District Mungeli. The further contention of the petitioner is that the impugned order has been passed only to accommodate Respondent No. 5 without there being any administrative exigency or circumstance so arisen requiring a change. Counsel for the petitioner referred to Annexure P-6 dated 04.07.2018 whereby it is revealed that the petitioner would be given only those Gram Panchayats which have to be audited by the officers of the level of District Auditor.

4. Per contra, counsel appearing for the respondents opposing the petition submit that in fact the Writ Petition itself is not maintainable for the reason that there is no substantive right of the petitioner which has been adversely affected or which has been infringed by issuance of the impugned order. The contention of the respondents is that as far as the petitioner is concerned, he has neither been shifted out of Mungeli district nor has his substantive appointment been changed in any manner which could have given rise for invoking the writ jurisdiction of this Court. According to the counsel for the respondents, the petitioner substantively was an Assistant Internal Taxation Examining Officer and vide impugned order, it is only the temporary arrangement of the appointment of In-charge District Auditor which has been taken from the petitioner and handed over to Respondent No. 5, as such there is no illegality in the impugned order calling for an interference by this Court. According to the respondents, since it is only the charge which the petitioner was temporarily granted that has been taken away by the impugned order and therefore, the petitioner is not in any manner adversely affected, to challenge the same as there is no change of posting of the petitioner nor any sort of service benefit attached to substantive post which has been taken away or infringed by the impugned order. As such, the Writ Petition deserves to be rejected. As regards the examination which the petitioner had participated, the contention of the respondents is that, that was only for the auditing year 2017-18.

5. Having heard the contentions put-forth on either side and on perusal of the record, some of the undisputed facts as are evident from the pleadings are that admittedly the petitioner was appointed under the respondents State in the year 1987. The Respondent No. 5 was appointed much after the petitioner was appointed. The petitioner as well as the Respondent No. 5, both hold the substantive post of Assistant Internal Taxation Examining Officer. It appears that the petitioner, by virtue of his seniority, was granted the post of Incharge District Auditor vide order dated 16.05.2013. There is also no dispute so far as the petitioner discharging the duties of an In-charge District Auditor, District: Mungeli since 16.05.2013. It is also not in dispute that the petitioner had appeared in the examination for Senior/Internal/Assistant Internal Taxation Examining Officer for the audit work for the financial year 2017-18 along with respondent no.5 and the petitioner stood meritorious inasmuch as the petitioner was placed at serial no.2 and respondent no.5 was placed at serial no.9 in the order of merit .

6. Now what is also undisputed is that the substantive post which the petitioner holds is that of Assistant Internal Taxation Examining Officer and vide order dated 16.05.2013 the petitioner was only made the Incharge District Auditor as a temporary arrangement. Since the petitioner was given the charge that too on temporary basis, the petitioner does not have an indefeasible right attached to that post. The substantive place of posting, the substantive post which the petitioner holds and the service benefit attached to the substantive post have neither been withdrawn nor curtailed nor infringed upon.

7. For invoking the writ jurisdiction of a Court it is necessary to show that a right which is otherwise guaranteed under the Service Regulations has been infringed upon which in the instant case does not appear to be infringed. At the same time, what also cannot be lost sight of is that if it was only a temporary arrangement which was made vide order dated 16.05.2013, the respondents could have simply passed a fresh order discontinuing the temporary arrangement of handing over the charge to the petitioner. But the respondents avoiding such a method passed an order amending the order which was passed about 6 years back. For these 6 years of time, the order dated 16.05.2013 stood complied with and it is settled position of law that once when an order of the Department gets complied with or executed, there cannot be an order amending the same after almost 6 years. Nothing prevented the respondents from passing a fresh order taking away the charge of District Auditor.

8. Another discrepancy which is reflected from the impugned order is that after taking away the charge from the petitioner, the respondents have assigned the charge to respondent no.5 projecting as if the post of District Auditor in the office of Dy. Director (Panchayat) District Mungeli was lying vacant, which in fact is not correct as the said post was occupied by the petitioner all along since 16.05.2013 and it is the respondent no.5 who has been ordered to be replaced the petitioner.

9. So far as the claim of the petitioner of having scored better in the examination of Senior/Internal/ Assistant Internal Accounts Examiner than respondent no.5 is concerned, the merit list Annexure P-5 would show that there is one Shri Ram Kumar Patre who had scored more marks than the petitioner and in Annexure P-6 the name of Ram Kumar Patre has been shown below the petitioner.

10. So far as the reply of the respondents regarding various complaints that have been levelled against the petitioner is concerned, as per the documents enclosed along with the reply, those complaints do not seem to be the basis for passing of the impugned order dated 06.03.2019. None of the documents or orders of the State Govt. reflect that the reason for the impugned order to be passed was the complaints that were received against the petitioner. Hence, it is difficult to accept the stand taken by the State Govt. as well as by the private respondents. Moreover, if the basis for issuance of the impugned order is the complaints, the respondents ought to have proceeded further with the complaints by conducting some sort of inquiry on the complaints to reach to the truth of the allegation. What is also necessary to be borne in mind is for the respondents to consider the aspect of seniority also while handing over the charge of the District Auditor. Though the petitioner as well as the respondent no.5 each claims to be senior than the other, the order impugned does not reveal the fact as to whether the impugned order was passed keeping the view the circular of the State Govt. whereby it has been clearly envisaged that the charge or an Incharge posting should always be given to the senior most person available in the department.

11. For all the aforesaid reasons this Court is of the opinion that the impugned order passed by the respondent no.1 needs reconsideration. The impugned order thus stands set aside/quashed as of now and the matter stands remitted back to the respondent no.2 to consider all the observations made by this Court in this order and to pass a fresh order at the earliest preferably within a period of 45 days from the date of receipt of this order. Till the fresh order is passed by respondent no.2, the interim protection granted to the petitioner of continuing on the post of Incharge District Auditor shall continue.

12. The writ petition accordingly stands disposed of.

Sd/-
P. Sam Koshy
Judge

Khatai