

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 3239 OF 2019**

Dr. K. L. Uraon S/o Late Shri Rajauram Aged About 59 Years Working As Block Medical Officer And Posted At Community Health Centre, Malkharouda, District Janjgir Champa Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary Department of Health and Family Welfare Mahanadi Bhawan, Mantralaya New Raipur, District Raipur Chhattisgarh.
2. Chief Medical and Health Officer Janjgir District Janjgir Champa Chhattisgarh.
3. Krishna Kumar Sidar Working on the post of Medical Officer at Community Health Centre, Malkharouda, District Janjgir Champa Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Shri Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

02.05.2019

1. The challenge in this petition is to the impugned order dated 07.12.2018 (Annexure P/1) whereby the petitioner has been transferred from Malkharoda, District Janjgir Champa to District Hospital, Gariyaband on the post of Radiologist.
2. The challenge is on the ground that the petitioner at the first instance was transferred from Malkharoda to District Hospital Bilaspur as Radiologist vide order dated 12.04.2017. The said order was questioned by the petitioner in WPS No.330 of 2018. The writ petition was allowed vide order dated 01.05.2018 and the order dated 12.04.2017 transferring the petitioner from Malkharoda to Bilaspur stood quashed. Subsequently, since the petitioner was not granted joining back at Malkharoda, he filed a contempt petition vide Contempt Case No.671 of 2018 which stood disposed of on 03.08.2018 and

thereafter as a consequence the petitioner was granted joining at Malkharoda on 04.09.2018.

3. Though the petitioner was given joining at Malkharoda, but was not given charge of Block Medical Officer and the junior person was discharging the duties of Block Medical Officer. This led to filing of fresh writ petition by the petitioner vide WPS No.7993 of 2018. This court again disposed of the said writ petition on 05.12.2018 directing the respondents to consider seniority of the petitioner and to take a decision so far as charge of the Block Medical Officer is concerned keeping in view the circular of the State Govt. in this regard. Thereafter, the petitioner was given the charge of the Block Medical Officer vide order dated 08.03.2019. Meanwhile, the petitioner vide order dated 07.12.2018 had been transferred from Malkharoda to District Hospital Gariyaband, the order which is under challenge in this writ petition.
4. According to the petitioner, the authorities concerned are waiting for model code of conduct and thereafter they would be relieving the petitioner to District Hospital Gariyaband. The order dated 07.12.2018 is bad in law for the reason that the contents mentioned in the said order are totally uncalled for and are not as has been ordered or directed by this court in WPS No.330 of 2018 or for that matter in the Contempt Case No.671 of 2018. He further submits that the impugned order is also bad in law for the reason that the department has now issued the said order cancelling its earlier order dated 12.04.2017 which infact had already been quashed by this court on 01.05.2018. According to the petitioner, since the order dated 12.04.2017 was already quashed by the High Court, there was no occasion for the

State to have again canceled the same and the said order is therefore bad in law and is also malafidely issued.

5. The State counsel, on the contrary, opposing the petition submits that it is a case where all the earlier orders passed by this court have been promptly complied with and as a consequence the petitioner has been given charge of Block Medical Officer at Malkharoda. Since the petitioner has been working at Malkharoda for quite sometime, under the administrative exigency the petitioner was to be transferred to a different place and it was on this count that the petitioner has been ordered to be shifted to Gariyaband and therefore prays that the writ petition does not have merit and the same deserves to be rejected.
6. Having heard the contentions put forth on either side and on perusal of records, this court is of the opinion that once when this court in WPS No.330 of 2018 vide its order dated 01.05.2018 had set aside/quashed the order dated 12.04.2017, there was no need or an occasion for the respondents to have again fallen back upon the said order. Moreover, once when the State Govt. have already complied with the directives given by this court in WPS No.330 of 2018 and the petitioner was given joining back as Block Medical Officer at Malkharoda, nothing prevented the State Govt. from issuing a fresh transfer order, if required, and that there was no need for referring to the earlier order that was passed by this court because it was of no further consequence since direction given by this court already stood complied with and thereby nothing further was left for adjudication or compliance from the said order.
7. It is always the prerogative of the employer to decide when, where and for what duration an employee/officer has to be posted. The

employee, if at all, if he is aggrieved of the order, may challenge it by way of a writ petition and if the writ petition is allowed and the order of transfer has been quashed, it does not mean that the State Govt. does not have power to transfer the employee/officer again on administrative exigency.

8. Given the aforesaid facts and circumstances of the case, this court is of the opinion that since the order dated 12.04.2017 has already been set aside/quashed by this court on 01.05.2018 in WPS No.330 of 2018, the order passed by the State Govt. again cancelling the same order dated 12.04.2017 which stands quashed is not sustainable and the same deserves to be and is accordingly set aside/quashed.
9. Quashing of the impugned order dated 07.12.2018 would not come in the way of the State Govt. if they want to pass a fresh order of transfer altogether taking into consideration the administrative exigency. It is also mentioned that whenever the State Govt. next time considers transferring the petitioner, they would look into the aspect as to whether the petitioner is substantively a Radiologist or has been appointed against the post of Radiologist or not. If not, the petitioner would be posted in the capacity substantively which he holds in the department.
10. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge