

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5190 of 2019

1. Dau Lal Tiwari S/o Late Shri Lakhan Lal Tiwari, Aged About 49 Years Lecturer (Sanskrit) Government Higher Secondary School, Charama, District- Kanker, Chhattisgarh, R/o Gram Girtola, Post- Charama, District- Kanker, Chhattisgarh Pin 494337, District : Kanker, Chhattisgarh **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya At Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh- 492002, District : Raipur, Chhattisgarh
2. Director, Directorate Of Public Instruction, Indravati Bhawan, Atal Nagar, Raipur, Chhattisgarh- 492002, District : Raipur, Chhattisgarh
3. Collector, District Kanker, Chhattisgarh, District : Kanker, Chhattisgarh
4. District Education Officer, District- Kanker, Chhattisgarh, District : Kanker, Chhattisgarh
5. District Education Officer, Near Collectorate, District- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh **---Respondents**

For Petitioner	:	Mr. Tanmay Thomas, Advocate
For State	:	Mr. Jitendra Pali, Dy. A. G.

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

16/07/2019

1. The Challenge in the present writ petition is to the order Annexure P/3 dated 30.01.2019 and the order Annexure P/5 dated 28.06.2019. Vide the order dated 30.01.2019, the petitioner's order of transfer dated 25.01.2019, transferring the petitioner from Aamgaon District Dhamtari to Charama District Kanker has been cancelled and the vide Annexure P/5 dated 28.06.2019, the petitioner is said to have been relieved from the present place of posting i.e. Charma District Kanker.
2. According to the petitioner, the two orders are per se illegal for the reason that it is a settled position of law once when an order passed by the State Government got executed, there could not have been amendment or

modification made to that nor it could have been cancelled by the respondent authorities without any cogent reason.

3. The State Counsel opposing the petition submits that it is a case where the respondents vide Annexure P/3 only cancelled the earlier order of transfer made in respect of the petitioner and cancellation is well within the powers of the State Government. Therefore, there is hardly in scope of interference by this Court to the said impugned order.
4. Having heard the contentions put forth on either side and on perusal of records admittedly the petitioner first stood transferred on promotion vide order dated 27.05.2017, the petitioner was on promotion transferred from Charama District Kanker to Aamgoan, District Dhamtari. The said order however stood modified . The petitioner immediately complied with the said order, thereafter, the respondents again passed an order on 25.01.2019 amending the earlier order and transferring the petitioner from Aamgaon District Dhamtari to Charma Kanker. This order also the petitioner promptly complied with and reported for joining his duty at Charama on 29.01.2019. Thereafter the State Government again has now passed an order dated 30.01.2019 cancelling the earlier order dated 25.01.2019 only so far as the petitioner is concerned without assigning any reason whatsoever. Though the order was passed on 30.01.2019, the respondents have not relieved the petitioner and meanwhile the petitioner has been approaching authorities for cancelling the said order dated 30.01.2019.
5. However, now vide order Annexure P/5 dated 28.06.2019, the petitioner has been relieved from Charma District Kanker which has led to filing the present writ petition.

6. It would be relevant at this juncture to refer to the decision of the Division Bench of this Court in WP No. 248 of 2015 decided on 15.05.2015 whereby In Paragraph-3 the Division Bench had observed as under:-

“3 The question for cancellation of an order not in existence does not arise. The only opinion available to the authorities was to issue any fresh orders. We may appropriately refer to two Bench decisions in 2000 (2) PLJR 332 (Smt. Jyotsna Kumari V. The State of Bihar) and 2000 (3) PLJR 139 (Mahmood Azam Siddique V. The State of Bihar) observing as follows:

“12 Now it is a settled law that once an order of transfer issued and acted upon, it is spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order that effect is redundant.”

7. A similar view has also been taken by this Court in the case of **Ms. Manisha Agarwal Vs. State of Chhattisgarh and others 2015(4) C.G.L.J. 182.**
8. In view of the aforesaid legal position as it stands, the factual aspect as has been submitted by the petitioner that the order dated 25.01.2019 has already stood complied with on 29.01.2019, when the petitioner joined at Charama District Kanker, the subsequent cancellation of the order does not arise at all, the order therefore would not be sustainable, order of relieving as a consequence also becomes bad in law. The two orders Annexure P/3 and Annexure P/5 being bad in law deserves to be and is accordingly set aside.
9. Reserving the right of the respondents to pass an appropriate order on the Administrative side in case of administrative exigency in accordance with the rules, the present writ petition stands allowed. Sd/-

(P. Sam Koshy)
Judge