

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6243 of 2019**

Bijay Bishwas (Vijay Vishwas) S/o Late Shri N.P. Bishwas, Aged About 58 Years, Occupation- Head Master, Middle School Sargipal, Tahsil And Block Jagdalpur, District- Bastar, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Atal Nagar District- Raipur Chhattisgarh
2. The Collector, Bastar, Jagdalpur, District- Bastar, Chhattisgarh
3. The District Education Officer, Bastar, Jagdalpur District- Bastar Chhattisgarh
4. The Block Education Officer Bastar, Jagdalpur, District- Bastar Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Avinash K. Mishra, Advocate.
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****20.08.2019**

1. Challenge in this petition is to the order dated 03.07.2019 (Annexure P/1) whereby the petitioner has been ordered to be relieved to join at his substantive place of posting i.e. Middle School at Singhanpur, Block Tokapal.

2. According to the petitioner, there is no dispute so far as his original place of posting being Middle School Tokapal, Singhanpur is concerned. Later on, the respondents themselves vide order dated 26.10.2009, on account of vacancy that arose in the Middle School Sargipal, Block Jagdalpur, of the post of Headmaster, posted the petitioner temporarily there. According to the petitioner, he is working at Sargipal since October, 2009 and by efflux of time, the petitioner has to be accepted to have substantively posted at Sargipal though no formal order has been passed in this regard. He further submits that now after more than a decade, the petitioner could not have been relieved back to his original place of posting at Singhanpur.
3. The State counsel, on the contrary, opposing the petition submits that it is a case where the petitioner indisputably is substantively in the record posted at Middle School, Singhanpur. The order of year, 2009 (Annexure P/2) is one which was only a temporary arrangement made and the petitioner as such would not have an indefeasible right on the said posting. Moreover, the impugned order has been passed pursuant to the policy decision of the State Govt. whereby they have withdrawn all orders of attachment of the employees to different places and have ordered for sending back the attached persons to their substantive place of posting. Thus, the impugned order cannot be said to be bad in law.
4. Having heard the contentions put forth on either side and on perusal of records, particularly taking note of the fact that the petitioner at the present place of posting has been working since October, 2009 onwards i.e. at Middle School Sargipal; 10 years time is a long period

to be treated as temporary arrangement. Moreover, from the record it appears that even salary of the petitioner was being drawn against the post of Headmaster Middle School Sargipal. This again would show that the petitioner was not posted there as stop gap arrangement or as temporary arrangement for the intervening period. By efflux of time i.e. almost 10 years, the petitioner has derived the status of a permanent staff of the Middle School Sargipal and therefore, at this juncture i.e. after 10 years there was no occasion of sending the petitioner back to the original place of posting.

5. If at all, if the respondents/State intended to change the place of posting or transfer the petitioner from one place to another taking into consideration his length of service at the present place of posting, the respondents had a liberty of issuing appropriate transfer order in this regard. It appears that the State Govt. has not resorted to such steps and have passed the order of sending the petitioner back to a place where he was posted 10 years back.
6. Subsequent to the impugned order having been passed, the higher authority in the department i.e. the Joint Director, Public Instructions has made a correspondence to the District Education Officer on 10.07.2019 intimating that since at the place where the petitioner is being sent i.e. at Singhanpur there is already a Headmaster posted who has not been disturbed, there should be complications created if the petitioner is given joining there and therefore the impugned order so far as the petitioner is concerned may not be given effect to.
7. Given the said facts and circumstances of the case, this Court is of the opinion that there does not seem to be any logic involved in

sending the petitioner back to the substantive place of posting i.e. at Middle School, Singhanpur after a lapse of 10 years and in between the petitioner having worked at Middle School Sargipal for the entire 10 years period. The impugned order so far as petitioner is concerned, therefore, is set aside/quashed reserving the right of the respondents to take an appropriate step in this regard.

8. As a consequence of the impugned order so far as the petitioner is concerned getting quashed, the relieving order if any issued to the petitioner would also stand automatically quashed reserving the right of the respondents to pass an appropriate fresh order on the administrative exigency, if they so want.
9. The writ petition accordingly stands allowed and disposed of.

Sd/-
P. Sam Koshy
Judge