

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 412 of 2019**

*{Arising out of Order dated 16/08/2019 passed in Writ Petition(S) No.4239 of 2019 by
the learned Single Judge}*

- Bhagirathi Banjare S/o Late Shri Yadram Aged About 61 Years Working as Project Administrator, Integrated Tribal Development Project Korba and In-charge Assistant Commissioner, Tribal Development Korba, District Korba Chhattisgarh

----Appellant

VERSUS

1. State of Chhattisgarh through its Secretary, Aadim Jati Tatha Anusuchit Jati Vikas Vibhag, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh
2. Collector, District Korba Chhattisgarh
3. Commissioner, Aadim Jati Tatha Anusuchit Jati Vikas Vibhag, Indrawati Bhavan, Atal Nagar, District Raipur Chhattisgarh
4. Shri N.K.S. Dixit, Assistant Commissioner, Tribal Development Mungeli, District Mungeli Chhattisgarh

-----Respondents

For Appellant	:	Mr. Kishore Bhaduri, Advocate with Mr. Pankaj Singh, Advocate & Mr. Vinod Deshmukh, Advocate
For Respondent No. 4	:	Mr. A.S. Rajput, Advocate
For Respondent-State	:	Mr. Amit Buxy, Panel Lawyer

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

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, C.J.

12/09/2019

1. Interference declined by the learned Single Judge in respect of the challenge raised against Annexure P/10 order dated 23.05.2019 whereby the 4th respondent therein was transferred to the post of Assistant Commissioner, Tribal Welfare Department, District Korba, Chhattisgarh, is put to challenge in this appeal.
2. Heard Mr. Kishore Bhaduri, learned counsel appearing for the appellant and Mr. A.S. Rajput, learned counsel appearing for respondent No. 4; besides learned counsel representing the State.

3. The factual matrix of the matter is that the appellant herein, while working as the Assistant Commissioner at Dhamtari, got promoted to the post of Deputy Commissioner, Tribal Development Department on 20-03-2018 and was posted as the Project Administrator at Nagri Integrated Tribal Development Project, district Dhamtari, from which place, he was subsequently transferred and posted at Korba, where he is continuing from 31-08-2018. While working so, the appellant was also put on additional charge of the lower post of Assistant Commissioner at Korba from 20-09-2018. It is stated that the appellant is to retire from service on attaining the age of superannuation as 62 years w.e.f. 30-09-2019. In the meanwhile, there was an attempt on the part of the respondent authorities to bring the 4th respondent to hold the post of Project Administrator which was sought to be challenged by the appellant and the same came to be interdicted in Writ Petition(S) No. 2899/2019. The 4th respondent was subsequently given a transfer, to be posted as Assistant Commissioner, Tribal Development, Korba, as per the order dated 08-03-2019; which was stayed by a learned Judge of this Court and the grievance projected by the appellant-petitioner by way of representation preferred before the competent authority was diverted to be considered and finalized, making it clear that the interim order of stay will stand operative till the matter was finalized as above.
4. The case now projected is that, an order came to be passed on 23-05-2019 without finalizing the representation; whereby the 4th respondent has been given a posting as Assistant Commissioner, Tribal Development, Korba; which was subjected to challenge by filing WPS No. 4239/2019. The effect and operation of the said order was stayed by this Court, issuing notice to the respondents concerned. Subsequently, when the matter came up for further consideration on 16-08-2019, the merit was considered and the Writ Petition came to be dismissed, which, hence is sought to be challenged in the present appeal.

5. Mr. Kishore Bhaduri, learned counsel for the appellant submits that the career of the 4th respondent is very much tainted and that the appellant was instrumental in initiating appropriate proceedings against him. It is without any regard to the said fact, that the authorities concerned are keen and conscious to bring back the 4th respondent to the very same place by giving transfer and posting as Assistant Commissioner, in respect of which post, additional charge is being held by the appellant. This is only to extend unlawful gains to the 4th respondent, which is virtually determinantal to the rights and interests of the State as well and hence the challenge.
6. The learned counsel appearing for the 4th respondent submits that the rights and interests of the appellant are not affected prejudicially in any manner and that the posting given to the 4th respondent is only as 'Assistant Commissioner' which is a post lower to the post of Deputy Commissioner held by the appellant. It is also stated that the post of 'Project Administrator' is a higher post having the same pedestal occupied by the Deputy Commissioner. The said version is sought to be supported by the State as well.
7. It is seen from the judgment under challenge, that a factual analysis has been done by the learned Single Judge to see whether any of the rights of the appellant was affected in any manner. It has been held that the rights and liberty of the appellant are only in respect of a 'substantive post' and that the additional charge given in respect of a lower post i.e. of the Assistant Commissioner cannot be aspired forever. It is always open to the authorities concerned to have it segregated, appointing a proper person to the post in question as the charge arrangement cannot be claimed as a matter of right. It was for the said reason, that interference was declined and the writ petition came to be dismissed.
8. The observations, finding and the reasoning are contained in paragraph 3 & 4 of the judgment under challenge. We find it appropriate to have the same extracted, so as to avoid repetition and for convenience or reference:

- “3. All said and done what is apparent from the records is that the petitioner admittedly substantially holds the post of Project Administrator, Integrated Tribal Development Project, Korba. He was given an additional charge as in-charge Assistant Commissioner, Tribal Welfare Department, District Korba. The impugned order now is one by which the charge of Assistant Commissioner is being taken from the petitioner and in place the respondent No.4 has been substantially posted as an Assistant Commissioner. The substantive status of the petitioner as the Project Administrator does not get adversely affected. The place of posting of the petitioner also is not affected in any manner. It is only the additional charge of Assistant Commissioner which the petitioner was discharging, which has been taken from the petitioner and in place the respondent No.4 has been posted. The petitioner as such may not have an indefeasible right against the post which he was holding as an in-charge Assistant Commissioner. The petitioner can only have a right to the substantive post and the substantive place of posting i.e. of the Project Administrator. Since there is no change, so far as the substantive post of the petitioner and the place of posting of the petitioner is concerned, this Court does not find any strong case made out by the petitioner to interfere with the impugned order Annexure P/10, the writ petition to that extent stands rejected.
4. The counsel for the petitioner also submits that the respondent No.4 was earlier posted at the same place and on account of certain alleged misconduct the preliminary enquiry was also conducted and which is still pending and inspite of that the respondent/State has again brought the respondent No.4 at the same place of posting, where there is an allegation of irregularities committed by the respondent No.4. This aspect again is one, which has to be looked into by the State Government and it is expected that the respondent No.1 would look

into the aspect and take all necessary steps if at all
if there are any enquiry initiated or contemplated.”

9. After hearing both the sides, we find that the verdict passed by the learned Single Judge is within the four walls of law. No tenable ground is raised to call for interference. Appeal fails and is hereby dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge