

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7375 of 2019

Sundar Lal Druw S/o Late Shir Jagtaram Dhruw Aged About 60 Years
Occupation- Mukhya Prahari, District- Jail Kanker, District- Kanker,
Chhattisgarh., District : Kanker, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Home (Police) Mahandi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Inspector General Of Police (Department Of Jail), Police Head Quarter, Atal Nagar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. The Superintendent Of Jail District- Jail Kanker, District- Kanker, Chhattisgarh., District : Kanker, Chhattisgarh
4. Nakul Ram Dhruw Mukhya Prahari Central Jail Jagdalpur, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

For Petitioner	:	Shri Avinash K. Mishra, Advocate.
For State	:	Shri P. Acharya, PL

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

17/09/2019

1. The challenge in the present writ petition is to the order of transfer dated 23.08.2019 whereby the petitioner has been transferred from Kanker to Jagdalpur.
2. Contention of the petitioner is that the petitioner has already in the past worked in the core scheduled areas and therefore petitioner now should not have been sent to another scheduled area. Further ground of challenge is that the petitioner has worked only around 20

month's of service left for superannuation. Thus, for this reason also the petitioner should not had been disturbed at this juncture. If, at all, if petitioner was to be shifted he should have been transferred to a non scheduled area.

3. So far as transfer and transfer policy is concerned the Supreme Court has time and again held that transfer is an incident to service and transfer policy, mere guidelines and the guidelines framed by the State Government do not have force of law, they are to be followed as far as possible.
4. In the instant case from perusal of the record, it appears that at the present place of posting the petitioner has remained for more than 11 years i.e. since 2008 as is evident from Annexure P-4 dated 08.04.2008. The transfer being made after 11 years of posting at a place cannot be said to be either arbitrary or malafide nor can it be said to be contrary to the transfer policy in any manner.
5. Moreover, the distance between the two place is not too far calling for a judicial review by this High Court under Article 226 of the Constitution of India.
6. This view has been fortified by the decision of the Supreme Court as well as by this High Court in the following judgments :-

In case of **State of U.P. Vs. Siyaram (2004) 7 SCC 405**, wherein the Supreme Court has held as under:-

“The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon

peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in **National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan**".

7. A Similar view has also been taken by the Supreme Court in case of **Union of India and others V. Janardhan Debanath and others (2004) 4 SCC 245.**
8. Again, in the case of **State of U.P. and others V. Govardhan Lal**, wherein the Supreme Court referring to transfer policy of the State Govt. have categorically held that transfer policies do not have force of law nor is it mandatorily to be followed upon. Those are mere guidelines which the authorities have to bear in mind while making transfer. The Supreme Court in Paragraph 7 & 8 in the said judgment has held as under:-

"7 It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer

of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/ servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights. Unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on

concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer”.

9. So far as contention of the petitioner that the impugned transfer order is contrary to the policy of the State Government is concerned, the policies are mere guidelines and not controlled by any statutory provisions. The effect thereof is a advisory in character and thereby no legal right is conferred upon the employee. **Chief Commercial Manager, Sought Central Railway, Secundarabad & others V. G. Ratnam & others 2007 (8) SCC 212.**
10. The Supreme Court in the case of **Airports Authority of India V. Rajeev Ratan Pandey & others, 2009 (8) SCC 337** held that “In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the Courts do not substitute their own decision in the matter of transfer”.
11. Even otherwise, there is no challenge to the impugned order on any permissible legal grounds as aforestated, warranting interference.
12. This Court has limited jurisdiction to interfere with the transfer matter except in the cases of proved mala fide, non-competence of authority passing the transfer order and not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place forever. Under the provisions of service rules, employer has all the powers to post an employee at a particular place in view of public interest and administrative exigency.

13. For the aforesaid reasons, no strong case calling for an interference with the impugned order has been made out. Accordingly, the present writ petition stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit