

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO.7955 OF 2019

Shoeb Qazi S/o Shri G.A. Quazi Aged About 33 Years Working as Assistant Labour Commissioner, Near Collectorate Office, Kutcheri Chowk, Raipur, District Raipur Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Labour Department, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh.
2. Labour Commissioner Labour Department, Indrawati Bhawan, Atal Nagar, Raipur Chhattisgarh.
3. U.K. Kachchap Assistant Labour Commissioner, Korba District Korba Chhattisgarh.
4. R.K. Pradhan (Adhoc Assistant Labour Officer) Posted as Assistant Labour Commissioner, Durg District Durg Chhattisgarh.
5. V.R. Patel (Assistant Labour Officer) Posted as In-Charge Assistant Labour Commissioner, Korba District Korba, Chhattisgarh.
6. Jyoti Sharma (Labour Officer) Posted as Assistant Labour Commissioner, Bilaspur District Bilaspur Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri J. K. Gilda, Sr. Advocate along with Shri Anup Majumdar, Advocate.
For State	:	Shri Chandresh Shrivastava, Dy. A.G.
For Respondent No.3	:	Shri Prasun Bhaduri and Shri Utsav Mahiswar, Advocates.
For Respondent No.4	:	Shri Adhiraj Surana, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.10.2019

1. The present writ petition has been filed seeking quashment of the order of transfer dated 11.09.2019 and 12.09.2019, Annexure P/1&P/2 respectively. Vide the two orders, the petitioner stands transferred from the office of Assistant Labour Commissioner, Raipur to the office of Labour Officer, Kabirdham.
2. Facts of the case, in brief, is that the petitioner is substantively holding the post of Labour Officer and was posted in the office of the Assistant Labour Commissioner, Raipur. He was appointed to the post on 20.03.2015. Between 2015 to 2017 for a period of roughly 2 and ½ years the petitioner

had worked at district Narayanpur as Labour Officer. Subsequently, the petitioner got transferred to Raipur. Having worked at Raipur for just about one year time the petitioner was vide order dated 03.10.2018 transferred from Raipur to Sukma. The petitioner challenged the said order of transfer dated 03.10.2018 in Writ Petition (S) No.6723 of 2018. The petitioner was also granted interim relief vide order dated 08.10.2018 whereby this court had, as an interim measure, stayed the effect and operation of the impugned transfer order dated 03.10.2018 so far as petitioner is concerned. Pending the interim protection by this court, the respondents passed an order on 03.08.2019 whereby the order of transfer dated 03.10.2018 was withdrawn and it was ordered that the petitioner would continue to work at Raipur itself. In the light of the order of transfer being withdrawn, the writ petition itself was disposed of as having become infructuous reserving the right of the petitioner to approach the court in the event of any subsequent development. The petitioner thereafter continued to work on the said post and now the order of transfer dated 11.09.2019 and 12.09.2019 have been passed transferring the petitioner from Raipur to Kabirdham. The place of transfer of the petitioner in both these orders remain the same. It is these two orders which are under challenge in the present writ petition.

- 3.** The contention of the petitioner is that, the impugned order has been passed malafidely. The order of transfer also does not have any proper application of mind for the reasons that the petitioner being a senior Labour Officer in the department has been sent as Labour Officer at Kabirdham whereas, the persons who are much junior to the petitioner as Labour Officer and some of whom are even not holding the post of Labour Officer, but holding the post of Assistant Labour Officer, have been

assigned the charge of Assistant Labour Commissioner which could not have been granted to the petitioner considering the seniority and the fact that the government's instruction so far as grant of charge is concerned is very explicit that it can be given to those officers in the department who are senior most in the hierarchy.

4. Further ground of challenge by the petitioner is that the petitioner has been victimized for the reason that he has been whistle blower in respect of certain irregularities and illegalities committed in the department and instead of taking stern action against those officers who are involved in the said illegalities and corruption, the department has transferred the petitioner himself. The petitioner had to pay the price of being transferred on his raking up of the issue of corruption in the department. Further, the petitioner in the past has already served in a scheduled area i.e. at Narayanpur and the petitioner having worked at Raipur for a period of just about two years again now stands transferred to another scheduled area which again is contrary to the transfer policy of the State Govt.
5. It was further contended by the petitioner that, since the petitioner already was transferred vide order dated 03.10.2018 from Raipur to Sukma which was stalled from being executed by this court and the respondents having later on withdrawn the said transfer order on 03.08.2019 could not have subjected the petitioner to another transfer in a very short span of time which again means that the earlier order of withdrawal of the transfer order dated 03.08.2019 was only to defeat the interest of the petitioner and ensuring that the writ petition gets infructuous and immediately the petitioner was again transferred to another place. Thus, for all these reasons, the counsel for the petitioner alleging malafides prays for quashment of the impugned orders.

6. Per contra, the counsel appearing for the State submits that the impugned order itself would reveal that it has been only on administrative exigency and it is not the petitioner alone who has been transferred. The order would show that there is a list of Labour Officers and Assistant Labour Officers who have been transferred from one place to another. The impugned order is only a routine order of transfer made in the administrative exigency and there being no malafide whatsoever against the petitioner. The petitioner now has been transferred to a nearby place which again would not create any great inconvenience to the petitioner who still is a Bachelor.
7. According to the State counsel, the order has been passed after due approval of the co-ordination which is the requirement under the transfer policy and therefore the order of transfer is not in violation of the transfer policy.
8. It is further urged that the order of transfer already stands executed as the respondent No3, who is the reliever to the petitioner, has already joined at the transferred place and has assumed charge and therefore there is no scope of interference left for this court.
9. The State counsel further submits that the petitioner also stands faced with serious complaints during his tenure at Raipur which includes complaints against him under the provisions of Sexual Harassment of female employees in the department and for which the petitioner is already subjected to an enquiry. It also cannot be said that the petitioner has been subjected to frequent transfer as the petitioner has already worked at the present place of posting for a period well over two years. It was also the contention of the respondents that it appears that the petitioner has habit of challenging every order of transfer and he wants to somehow remain at

the office at Raipur alone as would be evident from the challenge to the previous order of transfer dated 03.10.2018 when the petitioner was transferred from Raipur to Sukma.

- 10.** The counsel for the respondent No.3 also submits that the order so far as his transfer is concerned, already stands executed as he has resumed his duties as Assistant Labour Commissioner at Raipur. Therefore, there is no scope of any interference to the order of transfer at this stage. It was also contended that the respondent No.3 is substantively an Assistant Labour Commissioner whereas, the petitioner is only a Labour Officer, and therefore, the petitioner as such does not have any strong claim for holding the said post. According to respondent No.3, so far as transfer is concerned, it is only a routine administrative transfer order which has been duly complied with by him and that he has got no personal grudge, prejudice or malafides so far as petitioner is concerned.
- 11.** So far as other respondents i.e. respondents No.4&5 are concerned, it is their contention that there is no relief sought for against them in the present writ petition, nor are they, in any manner, associated, related or connected to the core issue in dispute.
- 12.** Given the aforesaid facts and circumstances of the case, what is relevant to take note of the fact at this juncture is that the petitioner admittedly is only a Labour Officer who was given the charge of the office of Assistant Labour Commissioner while he was posted at Raipur as regular posting of Assistant Labour Commissioner was not made. The petitioner had worked at Narayanpur for a period just little more than two years and in August, 2017 the petitioner came to Raipur and since then he is at Raipur and as such he had worked at Raipur also for a period of little more than two years. The respondent No.3 who has come in place of the petitioner is

substantively an Assistant Labour Commissioner whereas, the petitioner who is a Labour Officer has been transferred in the same capacity. A person who was given charge of a higher post cannot have a claim for the said post as a matter of right, nor can he have a grievance if a regular appointment on the higher post is made out.

- 13.** So far as scope of interference in an order of transfer is concerned, the Supreme Court in *State of UP & Others Vs. Gobardhan Lal*, AIR 2004 SC 2165 has held in paragraphs 8 & 9 as under :

“8. 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.

9. 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.”

14. It is a trite law that transfer/posting is an incidence of service. The Court should not interfere with the transfer/posting order unless there is malice, infringement of statutory rules and regulations. The employee may be posted anywhere at the instance of the employer in public interest and administrative exigency. Further, it is for the Government to post another person if any vacancy arises on account of transfer/posting of an employee. (See *E.P. Royappa v. State of Tamil Nadu and another*¹, *Shilpi Bose (Mrs.) and others v. State of Bihar & another*², *State of M.P. and another v. S.S. Kourav and others*³, *Mohd. Masood Ahmad v. State of U.P. & Others*⁴ *Chief Commercial Manager, South Central Railway, Secunderabad & Others v. G. Ratnam & Others*⁵ and *Airports Authority of India v. Rajeev Ratan Pandey & Others*⁶).

15. So far as allegation of malafide is concerned, except for the bald submissions made by the petitioner, there is no strong material available on record with which the malafide part could be established. If we look at the period of stay of the petitioner at the present place, it also does not make out a case of frequent transfer.

¹1974 (4) SCC 3

²(1991) Supp 2 SCC 659

³(1995) 3 SCC 270

⁴(2007) 8 SCC 150

⁵(2007) 8 SCC 212

⁶(2009) 8 SCC 337

- 16.** So far as juniors to the petitioner, on different place, being given the charge of Assistant Labour Commissioner is concerned, that cannot be a ground for interfering with the order of transfer, but that can only be a case of the petitioner to approach the State Govt. for considering him as incharge Assistant Labour Commissioner considering his seniority on the post of Labour Officer.
- 17.** The petitioner may make a representation in this regard to the State Govt. which the State Govt. may consider in accordance with rules, regulations and circulars of the State Govt. so far as grant of charge in respect of higher post which is lying or has fallen vacant.
- 18.** The Supreme Court has since long held that transfer policy of the State does not have force of law and those are mere guidelines to be borne in mind by the establishment at the time of transfer, the scope of interference therefore to the order of transfer gets reduced further. Merely because the petitioner in the past had challenged the order of transfer previously made and had got an interim protection from the High Court would not preclude the State Govt. from passing a fresh order of transfer. In addition, merely because the earlier order of transfer had been withdrawn by the State Govt. particularly one which was never executed and the State Govt. subsequently passed another order of transfer after about a year, cannot be said to be an order which has been passed with malafides.
- 19.** All the aforesaid facts and circumstances of the case and the authoritative judgments of the Supreme Court, some of which have been referred to in the preceding paragraphs, forces this court to hold the writ petition being devoid of merit. The same deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge