

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 8069 OF 2019**

Dr. Virendra Thakur, aged about 63 years, S/o Late Shri Damodar Singh Thakur, presently posted as Chief Medical and Health Officer, Kondagaon, District Kondagaon (CG)

... Petitioner

versus

1. State of Chhattisgarh, through its Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Atal Nagar, Naya Raipur (CG)
2. Dr. Suresh Kumar Kanwar, presently posted as Medicine Specialist, District Hospital Kondagaon, District Kondagaon (CG)

... Respondents

For Petitioner	:	Mr. Gary Mukhopadhyay and Mr. Syed Majid Ali, Advocates.
For Respondent-State	:	Mr. P. Acharya, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/09/2019

1. Challenge in the present writ petition is to the order dated 9.9.2019 (Annexure P-1) whereby the representation of the petitioner against the order of transfer dated 7.8.2019, pursuant to the directives given by this Court in W.P.S. No. 6406/2019 decided on 26.8.2019, has been rejected.
2. Case of the petitioner is that, the petitioner originally was posted at Sukma prior to 18.2.2019 and on 18.2.2019 (Annexure P-3) he was transferred from Sukma to Kondagaon. By the very same order, the respondent no.2 was also transferred from Kondagaon to Sukma. So far as the petitioner is concerned, he immediately complied with the said order of transfer and joined his service at Kondagaon, however, the respondent no.2 did not comply with that order and remained at Kondagaon without giving his joining at Sukma. That, barely in six months down the line the order dated 7.8.2019 (Annexure P-2) was passed transferring the petitioner from Kondagaon to Dantewada and the respondent no.2 was ordered to be retained back from Kondagaon itself though on papers he stood transferred by order dated 18.2.2019.
3. The said order dated 7.8.2019 (Annexure P-2) transferring the petitioner from Kondagaon to Dantewada was challenged before this Court vide W.P.S. No. 6406/2019 and this Court disposed of the said writ petition on 26.8.2019 directing the petitioner to approach the authorities by way of a representation and the

representation was ordered to be decided within a period of 45 days and till the said representation is decided the authorities concerned were directed to restrain from implementing the said order. The petitioner immediately thereafter made a representation to the authorities concerned which stood rejected vide the impugned order, leading to the filing of the present writ petition.

4. The sole ground that the counsel for the petitioner has raised is that the entire impugned order rejecting the representation has been made only to protect the respondent no.2 and that the respondent authorities have shown favour towards respondent no.2 by retaining him at Kondagaon itself and the transfer order dated 18.2.2019 so far as the respondent no.2 is concerned transferring him from Kondagaon to Sukma has till date not been executed by respondent no.2. Neither has there been any order modifying, amending or cancelling the order dated 18.2.2019 so far as respondent no.2 is concerned nor the respondent no.2 has been ordered to be retained at Kondagaon itself from Kondagaon, which otherwise shows the malafide on the part of the respondents.

5. In the opinion of this Court the said ground raised by the petitioner would not be relevant so far as the petitioner is concerned, for the simple reason that the transfer order dated 7.8.2019 is from Kondagaon to Dantewada and the respondent no.2 all along for this 6 months period, i.e., from 18.2.2019, was working at Kondagaon itself along with the petitioner. It is not a case where the non-compliance of the order dated 18.2.2019 by the respondent no.2 has created any complication so far as the joining of the petitioner at Kondagaon is concerned. He was permitted to give his joining and he has also discharged his duties and the respondent authorities meanwhile also appeared to have accommodated the respondent no.2 also at Kondagaon. It could also be a case where the respondent no.2 must have approached the respondent authorities in respect of the order dated 18.2.2019 and which the respondent authorities must have considered sympathetically and accommodated him at Kondagaon. Thus, malafides cannot be inferred only because the respondent no.2 has been accommodated at Kondagaon.

6. This Court has limited jurisdiction to interfere with the transfer matter except in the cases of proved malafide, 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. [**See High Court of Judicature of Madras Vs. R. Perachi, {2011 (12) SCC 137}**].

7. So far as the scope of interference in transfer matter by the High Court under Article 226 of the Constitution of India is concerned, the law by now is well settled by a catena of decisions of the Hon'ble Supreme Court. The Supreme Court has repeatedly held that, If at all, if the employee is aggrieved by an order of transfer he can at best make representation to the authorities concerned and the High Court cannot substitute itself as another Higher Authority in the Administrative Hierarchy to decide the place of posting, tenure of posting or to decide as to who has to be transferred when and where.

8. In the case of **State of U.P. Vs. Siyaram, 2004 (7) SCC 405**, the Hon'ble 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**”.

9. A Similar view has also been taken by the Hon'ble Supreme Court in case of **Union of India and others Vs. Janardhan Debanath and others, 2004 (4) SCC 245**.

10. Again, in the case of **State of U.P. and others Vs. Govardhan Lal, 2004 (11) SCC 402**, the Hon'ble Supreme Court referring to the transfer policy of the State Government has categorically held that such policies do not have force of law nor is it mandatorily to be followed. Those are only guidelines which the authorities have to bear in mind while making the transfer. In Paragraphs 7 & 8 of the said judgment it was 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.”

11. The Hon'ble Supreme Court in **Airports Authority of India Vs. 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.”*

12. In view of the aforementioned authoritative decisions of the Hon'ble Supreme Court and also considering the fact that the petitioner's representation has been duly considered by the respondent authorities and have taken a decision, this Court does not find any strong case to be made out by the petitioner calling for interference in the impugned order.

13. The writ petition thus fails and is dismissed accordingly.

/sharad/

Sd/-
(P. Sam Koshy)
JUDGE