

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS. No. 8177 OF 2019**

Anil Kumar Patel S/o Shri Kaushal Prasad Patel Aged About 38 Years
Presently Posted As Assistant Teacher (L.B.) At Government Middle
School Bharatpur, R/o Village-Janakpur, Tahsil Bharatpur District Koriya
Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Collector Koriya District Koriya Chhattisgarh
3. District Education Officer Koriya District Koriya Chhattisgarh
4. Block Education Officer Bharatpur District Koriya Chhattisgarh

---**Respondent(s)**

For Petitioner	:	Mr. Ishan Verma, Adv.
For State	:	Mr. Ayaz Naved, G.A.

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

04.10.2019

1. The Challenge in the present writ petition is to the order dated 31.08.2019 (Annexure P-1) passed by the respondents 3 whereby the representation against the order of transfer dated 12.07.2019 has been rejected.
2. The sole ground raised by the petitioner assailing the order of transfer is that the reason given by the respondent No. 3 rejecting the representation is per se, bad in law or illegal.
3. According to the Counsel for the petitioner, there are circulars of the State Government which show that even office bearer on the Block Level are entitled for protection of transfer as per transfer policy of the State Government. Counsel for the petitioner refers to Annexure P-10, a circular of the State of Madhya Pradesh which has been

adopted by the State of Chhattisgarh shows that the Block Level President is entitled for protection for being transferred.

4. At this juncture, it would be pertinent to mention that admittedly the services of the petitioner is a transferable service. The law so far as transfer is concerned is by now well settled by a catena of decisions by the Supreme Court as also by this High Court. The scope of interference in an order of transfer itself has been held to be only in the event, if the order of transfer is contrary to rules or has been issued by an Incompetent Authority and under no other circumstances can the order of transfer be assailed.
5. The Supreme Court has repeatedly held that the only remedy available to the petitioner is for approaching the authorities by way of a representation. This Court on an earlier round of litigation assailing the original order of transfer itself while disposing of the writ petition 5669/2019 had granted the liberty to the petitioner to approach the authorities by way of a representation and meanwhile the petitioner was also granted an interim protection from being shifted or relieved from the said place. The respondents having considered and taken a decision on the representation of the petitioner, the further scope of interference by the High Court invoking writ jurisdiction gets further reduced to see as to whether malafides are attributed. There is no malafide, arbitrariness attributed against any of the officer in the department.
6. Once when it has been categorically held by the Supreme Court that transfer is an incident to service and that the policy of the State

Government does not have any mandatory force but are only guidelines to be borne in mind by the respondent authorities in the course of issuance an order of transfer.

7. 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**”.

8. 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**.

9. Again, in the case of **State of U.P. and others V. Govardhan Lal**, wherein the Supreme Court referring to the transfer policy of the State Govt. have 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. 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”.

10. 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.**

11. The Supreme Court, in **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”.

12. Even otherwise, there is no challenge to the impugned order on any permissible legal grounds as aforesaid, warranting interference.

13. 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. **(See High Court of Judicature of Madras Vs. R. Perachi (2011) 12 SCC 137.**

14. In view of the aforesaid judgments by the Supreme Court and which have been followed by all the High Courts in the country, this Court does not find any strong case made out by the petitioner calling for interference with the impugned order of transfer, thus, the petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha