

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 23/10/2019****Order Delivered on 11/11/2019****WA No. 478 of 2019**

(Arising out of order dated 25.9.2019 passed by learned Single Judge in WPS No.7859/2019)

1. Manoj Vishwakarma S/o Shri R.S. Vishwakarma, aged about 46 years Posted as Patwari In Patwari Halka No.57, Village Raipura, Tehsil Raipur, District Raipur (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mahanadi Bhavan, Mantralaya, Nava Raipur, District Raipur (CG)
2. Collector Raipur, District Raipur (CG)
3. Sub Divisional Officer (Revenue) Raipur, District Raipur (CG)

---- Respondents

For Appellant	:	Shri Sandeep Dubey, Advocate
For Respondents	:	Shri Vikram Sharma, Dy. Government Advocate.

Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Interference declined by the learned Single Judge in respect of challenge raised by the appellant against the order transferring appellant from Patwari Halka No.57- Raipura to Patwari Halka No.1-Village Bherwa, Padarbhata, Bhainsmunda, RI Circle Raipur, Sub-Tahsil Dharsiwa, District Raipur, is under challenge in this writ appeal.
2. Facts of the case, in nutshell, are that the petitioner/ appellant was appointed as 'Patwari' and was working at Patwari Halka No.57, Village Raipura, Tahsil & District Raipur since 14.2.2019.

On 12.9.2019 respondent No.3, on the ground of administrative exigency, had issued an order posting the petitioner/ appellant at Patwari Halka No.1, Village Bherwa, Padarbhatta, Bhainsmunda, RI Circle Raipur, Sub-Tahsil Dharsiva, District Raipur, until further orders. Aggrieved by the order (Annexure P-1), the petitioner/appellant preferred writ petition bearing WPS No.7859/19 before the writ Court on the ground that earlier transfer order has been passed after approval of the Collector, who is Competent Authority, but the impugned order has been passed by respondent No.3 without there being any approval of the Collector. Another ground raised is that the respondent No.3 is not competent to pass impugned order of transfer and that the order is in violation of Clause 1.1 of the transfer policy dated 27.6.2019.

3. Learned Single Judge after considering the submissions made by learned counsel appearing for both the sides, dismissed writ petition by recording a finding that order Annexure P-1 is not a transfer order but it is an order of distribution of work between the Patwaris posted under respondent No.3; distance between two places is very short and that the scope of the High Court under Article 226 of the Constitution of India is very limited for interfering with the orders of transfer.
4. Learned counsel for appellant submits that learned Single Judge has not considered the competency of respondent No.3 to effect the order of transfer upon appellant as under Section 104 of the Chhattisgarh Land Revenue Code, 1959 (for short

'the Code of 1959'), it is the Collector who has been authorized to appoint one or more Patwaris to each Patwari Halka and therefore respondent No.3-SDO could not have passed the impugned order of posting of appellant. He also submits that the order impugned is in violation of Clause 1.1 of the transfer policy and therefore the same is liable to be set aside.

5. Per contra, learned counsel appearing for the State submits that the impugned order is not a transfer order but only an order by which place of posting has been changed looking to excess work in other Patwari Halkas within the same Tahsil. He also submits that change of place of posting within Tahsil cannot be considered as transfer of appellant. He further submits that admittedly under Section 104 (2) of the Code of 1959 the Collector is shown to be the appointing authority of Patwari but under the Notification issued by the State Government, all the powers of the Collector conferred under Section 104 (2) of the Code of 1959 have been delegated to the Sub-Divisional Officer. To buttress his submissions, he places his reliance on the decision of a Full Bench of Madhya Pradesh High Court reported in 2011 (11) MPLJ 547.
6. We have heard learned counsel for the parties and perused the record.
7. Perusal of order (Annexure P-1) would show that the same has been passed by the Sub-Divisional Officer by which place of posting of the appellant has been changed that too within the Tahsil and it does not reflect that it is an order of transfer.

Section 22 of the Code of 1959 provides for the 'Sub-Divisional Officer', which is reproduced herein below;-

“22- (1) The Collector may place one or more Assistant Collectors of sub-divisional Officers. Deputy Collectors in-charge of a sub-division of a district or in-charge of two or more sub-divisions of a district.

(2) Such Assistant Collector or Deputy Collector shall be called a Sub-Divisional Officer and shall exercise such powers of a Collector as the State Government may, by notification, direct.”

Section 24 of the Code of 1959 provides for conferral of powers conferred by or under the Code of 1959 by the State Government on any person. Section 24 reads as under:-

“24. (1) The State Government may confer on any person the powers conferred by or under this Code on any Revenue Officer.

(2) The State Government may confer on any Assistant Collector, Tahsildar or Naib-Tahsildar the powers conferred by this Code on a Revenue Officer of a higher grade.”

Sub-section (2) of Section 24 in a very specific term provides that the powers conferred by the Code of 1959 on a revenue officer of a higher grade can be conferred by the State Government on any Assistant Collector, Tahsildar or Naib Tahsildar. The Assistant Collector has been shown to be a 'Sub-Divisional Officer' under Section 22 of the Code of 1959.

8. The State Government in exercise of powers conferred under Sections 22 & 24 of the Code of 1959 issued Notification dated 1.10.1959, which reads as under:-

“In exercise of the powers conferred by sub-section (2) of section 22 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), and in supersession of all previous Notifications on the subject, the State Government hereby directs that all Sub-Divisional

Officers shall exercise powers of a Collector under sub-section (2) of section 57, sub-section (5) of section 59, section 87, sub-section (2) of section 104 and sub-section (2) of section 110 of the said Code, within their respective jurisdictions.”

9. From perusal of the above Notification it is apparent that the State Government while exercising powers conferred under Section 22 (2) of the Code of 1959, has authorized the Sub-Divisional Officer to exercise powers of the Collector under Section 104 (2) of the Code of 1959 along with other provisions of the Code of 1959. The issue with respect to exercise of powers of the Collector by the Sub-Divisional Officer while dismissing Patwari from service has been considered by a Full Bench of MP High Court in *Kala Bai v. State of MP & ors* reported in (2011) 1 MPLJ 547 (FB) and after considering the relevant provisions of the MP Land Revenue Code, 1959, which are *pari materia* with the Code of 1959, has held as under:-

“26. The conclusion recorded by us on the question referred to by the Single Judge are summarized as under:-

(a) That the Sub Divisional Officer has been conferred powers of the Collector to appoint a Patwari in view of the provisions of section 22 (2) of the Code and the Notification dated 1.10.1959 published in the M.P. Gazette on 9.10.1959 and as a consequence thereof he also has the power to remove a Patwari from service.

(b) That there is no conflict between the decision rendered in the case of *Vishwanath Prasad (supra)* and *Mangilal (supra)* as the factual matrix on the basis of which the two judgements were rendered was totally different and that the Division Bench in the case of *Mangilal (supra)* on that count has rightly distinguished the case of *Vishwanath Prasad (supra)*.

(c) The Single Bench judgments in the case of *Vinod Kumar Khare v. State of M.P., 2008 (4) MPLJ SN 44 : ILR (2008) M.P. 1436; Ashok*

Kumar Khare v. State of M.P. WP No.7785/2003 dated 10.1.2005; and *Phulloo Ram Kol v. State of M.P.*, No.8777/2003 dated 25-9-2008 are hereby overruled while the judgment in the case of *Ravindra Kumar Gupta v. State of M.P.*, W.P. No.10863/2009 decided on 5-8-2010 [2010 (4) MPLJ 439] is hereby affirmed and approved.

The reference made to this Full Bench is answered accordingly.”

10. In view of the provisions of Section 22, 24 of the Code of 1959, Notification dated 1.10.1959 issued by the State Government and also taking into consideration the verdict of the Full Bench of MP High Court, we are of the firm view that respondent No.3 is competent to pass order Annexure P-1 against the appellant.
11. As regards the violation of Clause 1.1 of the transfer policy, the impugned order does not show that it is a transfer order transferring the appellant because no specific word ‘transfer’ finds place in the order impugned. Even otherwise, transfer policy is only a guideline and not the Statute and therefore second submission made by learned counsel for the appellant is also not sustainable.
12. For the foregoing reasons, both the grounds raised by learned counsel for the appellant do not stand in view of the provisions of law laid down by the Full Bench of the MP High Court. The writ appeal being bereft of any merits stand dismissed accordingly.

Sd/-
(PR Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-