

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 8531 of 2019**

- Kishan Singh Thakur, S/o Shri Mohan Singh Thakur, Aged About 33 Years, Occupation- Service- Assistant Grade-III, Office Of The Deputy Director, Food And Drug Administration Raigarh (Chhattisgarh), R/o-I-10, P.W.D. Colony, Bayran Bazar, Raipur, District- Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
2. Controller, Food And Drug Administration, 4th Floor Indrawati Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. Deputy Director, Food And Drug Administration Raigarh, District Raigarh Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Vinay Pandey, Advocate
For Respondents/ State	:	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/10/2019**

1. The grievance of the petitioner is that the petitioner was suspended by order dated 31.05.2019, at the time of suspension the petitioner was placed in Office of Deputy Director, Food and Drug Administration, Raigarh. Subsequent to that the petitioners suspension has been revoked by order dated 15.07.2019 (Annexure P-1). However, with the revocation of the suspension order the petitioner has been transferred to Kanker instead of Raigarh. It is contended that the petitioner should have been placed at the same place after revocation of suspension as he was holding the lien over the post. Learned counsel for the

petitioner further submits that this issue has already been settled in WPS No. 217, dated 07.07.2015, therefore, after revocation of the suspension order, the petitioner could not have been shifted to other place.

2. Learned State counsel opposes the same.
3. Perusal of Annexure P-1 would show with that the suspension order of the petitioner was revoked, he was posted at another place i.e. Kanker other than his headquarter i.e. Raigarh. This issue has already been decided by this Court in WPS No. 217 wherein this Court has referred to the judgment passed in 2005 (4) MPHT 352 (DB) and has reiterated the legal ratio which reads as under in para 6 of WPS No. 217 of 2015 is reproduced hereinunder:-

6. The issue fallen for consideration has been decided by the Division Bench of the High Court of Madhya Pradesh in **Kendriya Vidyalaya Sangthan and others v. Dr. R.K. Shahstri** and another wherein the following has been held :

10. The order dated 6/8-7-2002 is not passed by the authority who passed the order of suspension, but by the Appellate Authority in exercise of appellate power, while dealing with an appeal filed by the employee. While exercising the appellate power under Rule 23 read with Rule 27 (1), the Appellate Authority can either confirm the suspension or revoke the suspension. Therefore the second respondent while passing the order dated 6/8-7-2002, could not have transferred the employee reporting at the place of transfer. The order of the Appellate Authority to the extent it subjects the revocation of suspension conditional to reporting to duty at K.V. Karimganj is therefore illegal and inoperative.

It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled position that the station of posting immediately before suspension would be the headquarter vis-a-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending enquiry, is to

be filled by a reservist and where a reservist is not available by officiating appointment. Therefore on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7-2002 to the extent it posts the first respondent to Karimganj and makes the revocation of suspension effective from the date of reporting at K.V., Karimganj, is invalid and liable to be quashed.

Emphasis supplied

4. Considering the fact that after the revocation of suspension order of the petitioner, the petitioner has been transferred to Kanker which is contradictory to the principle laid down, supra, therefore, part of the posting of the petitioner to Kanker to the Deputy Director Food and Durg Administration, Kanker is modified. The petitioner shall be entitled to join the same place of posting from where he was suspended. Thereafter, the State would be at liberty to place any order if so desired as per the ratio laid down in the aforesaid case.
5. Accordingly, the case stands disposed of.

Sd/-

Goutam Bhaduri
Judge