

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 9526 of 2019

Shailendra Kumar Sahu S/o Shri Gangadas Sahu Aged About 36 Years Presently Posted As Assistant Teacher (L.B.) At Government Primary School Salauni, Rajnandgaon, R/o Village - Saloni, Tahsil And District Rajnandgaon Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of School Education, Mantralaya, Mahandi, Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Collector, Rajandgaon District Rajnandgaon Chhattisgarh.
3. District Education Officer Rajnandgaon District Rajnandgaon Chhattisgarh.
4. Block Education Officer, Rajnandgaon District Rajnandgaon Chhattisgarh.

----Respondents

For petitioner – Shri Ishan Verma, Advocate.
For State- Shri Amrito Das, Addl. A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order

21/11/2019

1. This is second round of litigation.
2. Instant petition is against the order dated 17/10/2019 (Annexure P-1). In the earlier round of litigation transfer of the petitioner which was made by order dated 12/07/2019 from Govt. Primary School, Salauni to Govt. Primary School, Majgaon was subject of challenge on the ground that the petitioner falls within the protected category as he is the District Treasurer of Chhattisgarh Sahayak Shikshak Federation, Dongargarh and as per the policy of the State the person who are office bearer of the particular union with whom the government correspondents would be exempted from transfer. It is stated that the petitioner had filed the document to show that he is treasurer of Chhattisgarh Sahayak Shikshak Federation and Media In-charge and though he has filed the document of

the notification but the representation has been dismissed on the ground that the federation itself has not given any document to support the same, therefore the order of cancellation of the representation is bad.

3. Per contra, learned State counsel would submit that as per the government circular absolute immunity cannot be enjoyed by a particular employee and it would depend on the direction passed from time to time by State. It is stated further if three years has already been passed after the posting those persons can be transferred even if they are office bearer of union.

4. Perusal of the record shows that the petitioner was transferred from Govt. Primary School, Salauni to Govt. Primary School, Majgaon by an order dated 12/07/2019. When such transfer was initially challenged, the petitioner was given the liberty to file a representation within a period of 10 days which in turn was directed to be decided within a period of 45 days and it was ordered till the representation is decided the transfer order shall not be given effect to. It is on this count after the representation has been dismissed the instant petition is filed.

5. Transfer policy 1.4 which is placed on record purports that person of the union would be transferred according to the direction given from time to time by State. Only ground which is raised before this court that the petitioner is office bearer of the union, therefore he is insulated from any transfer for time being. Order of the rejection of the representation shows that it do acknowledge that the persons who are office bearer of a union who have been given the liberty to correspond with the government they are exempted to be transferred, and further records that however if three years have passed on a particular place of posting that exemption would not be applicable. The pleading do not disclose the fact from which date the petitioner was posted at Govt. Primary School, Salauni. It is completely silent and no whisper is made. On the other hand the

representation which has been dismissed purports that if three years have passed then in such case the transfer can be effected. Even otherwise the transfer policy of the State would not have a statutory binding and is a policy to be adopted in generality. In given facts of a particular case it would be prerogative of the State to transfer its employee to other place.

6. Further unless and until the transfer is tainted with malafide or illegality it being the incident of service same cannot be interfered. The factual aspect that the petitioner has not pleaded that though his posting was less than three years he has been transferred. When the petitioner is claiming a particular benefit of the policy then particular pleading and the documents are required to be placed on record to appreciate those facts. No inference can be drawn in favour of the petitioner/employee on presumption. In the result, I do not find any illegality in the order of transfer.

7. Consequently, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE