

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 10370 of 2019**

- Rangnath Dubey, S/o Shri Balmukund Dubey, Aged About 53 Years Presently Working As MPW (Multipurpose Health Worker) At SHC Amarkot, Tahsil Saraipali, District Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur District- Raipur Chhattisgarh
2. Under Secretary Health And Family Welfare Department Mantralaya Mahandi Bhawan, Naya Raipur, Atal Nagar, Post Office And Police Station Naya Raipur, District Raipur Chhattisgarh
3. Director Health Services Directorate Indrawati Bhawan Atal Nagar, Raipur, District Raipur Chhattisgarh
4. Collector District- Mahasamund, Mahasamund Chhattisgarh
5. Chief Medical And Health Office District Mahasamund Chhattisgarh
6. Block Medical Officer Community Health Center, Saraipali District- Mahasamund Chhattisgarh

---- Respondents

For Petitioner : Shri Sanjay Agrawal, Advocate

For Respondents/ State : Shri Ravish Verma, Government Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10/12/2019**

1. Heard.
2. This is second round of litigation. The petitioner was transferred from Sub Health Centre, Amarkot, District Mahasamund to Sub Health Centre, Baronda, District Gariyaband. This was subject of challenge in the WPS No. 8352 of 2019 where in this Court on 04.10.2019 passed the following orders:-

1. Challenge in the present Writ Petition is to the order of transfer dated 23.08.2019 whereby the petitioner has been transferred from Sub Health Centre, Amarkot, District Mahasamund to Sub Health Centre, Baronda, District Gariyaband.
2. The contention of the petitioner is that, the appointing authority of the petitioner is the Chief Medical and Health Officer of the concerned District and the seniority and promotion is considered district wise, and therefore the petitioner should not have been transferred to another District.
3. Given the said facts and circumstances of the case, it appears that the petitioner's services is a district cadre post and in the event of petitioner being shifted to another district, the seniority of the petitioner would get adversely affected.
4. Accordingly, let the petitioner make a representation in this regard to the respondents within a period of 10 day from today, who, in turn, shall consider and decide the same in accordance with transfer policy at the earliest preferably within a further period of 45 days.
5. Till the representation of the petitioner is decided, the effect and operation of the impugned order shall remain stayed so far as petitioner is concerned.
6. The writ petition accordingly stands disposed of.

3. Learned counsel for the petitioner submits that the representation would show that the petitioner's post is a district cadre post and his seniority would be affected if transferred to another District, that was the specific ground raised in the representation, however, while deciding the representation (Annexure P-1) the said fact has not been considered and only on the administrative ground the representation has been dismissed.
4. Learned State counsel opposes the same.
5. Perusal of the records would show that Grievance Redressal Committee called for the report of the Family Welfare Department, the report was not received, in absence of the report, the Committee came to a conclusion that the transfer is on the administrative ground. When, earlier order of the High Court exists as to subsequent issue which is raised by the petitioner i.e. transfer of petitioner from one District to another his seniority would be affected. It is expected while deciding the issue the State would take into notice the spirit of the order passed by the High Court.

6. The Supreme Court in the case of *Secretary and Curator, Victoria Memorial Hall Versus Howrah Ganatantrik Nagrik Samity and others* {(2010) 3 SCC 732} has held thus in para 41 & 42 which are reproduced herein below:-

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of U P (2008) 3 SCC 172; SAIL Vs. STO (2008) 9 SCC 407; State of Uttaranchal Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana (2009) 3 SCC 258; Mohd Yusuf Vs. Faij Mohammad (2009) 3 SCC 513; and State of H P Vs. Sada Ram (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.

7. The impugned order of deciding the representation dated 18.10.2019 appears to be non speaking specially with respect to the fact as to whether the transfer of the petitioner would affected his seniority. Under the circumstances, the matter is remitted back to the State to decide a fresh by taking into the ground raised by the petitioner with respect to his transfer from one District to another, as the seniority is maintained District wise. The transfer cannot be prejudicially to the interest of the petitioner, if it affect the seniority, the said decision shall be taken within 45 days from the receipt of a copy of this order.
8. In the meanwhile, the effect and operation of the transfer order of the petitioner dated 23.08.2019 shall not be given effect to till the representation is decided.
9. With the aforesaid observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge