

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 607 of 2019

*(Arising out of order dated 21/11/2019 passed by learned Single Judge in
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.

---- Appellant

Versus

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

-----Respondents

For Appellant	: Shri Ishan Verma, Advocate.
For State	: Shri Gagan Tiwari, Dy. Govt. Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per Parth Prateem Sahu, J

17/12/2019

1. This appeal has been preferred against the order dated 21-11-2019 passed by the learned Single Judge in WPS No. 9526 of 2019 whereby the learned Single Judge has dismissed the writ petition filed by the appellant challenging the order of his transfer.
2. The appellant, who is holding the post of Assistant Teacher in Govt. Primary School, Salauni has been transferred to Government Primary School, Majgaon District, Rajnangaon. Being aggrieved by the said order of transfer dated 12-07-2019, he filed a writ petition before this Court. Considering the grounds raised by the appellant in the first writ petition bearing No. 6504/2019, it was disposed off with an order directing the

appellant/ petitioner therein to make representation, the same to be decided by the concerned authority within a period of 45 days and till then the order of transfer to be stayed. The appellant filed representation before the competent authority which was dismissed.

3. Dismissal of representation was challenged by the petitioner in writ petition which came to be dismissed by impugned order. The learned Single Judge observed that transfer policy is not having statutory binding, the petitioner had not submitted documents and pleaded facts to show the period of his posting in school at Salauni and that there is no bar in transferring an employee if he has completed 'three years' of his service on his place of posting.
4. Learned counsel for the appellant submits that as per the transfer policy and the Circular issued by the State Government from time to time, the employees who are holding the post of employees of Union in present case the 'Chhattisgarh Sahayak Shikshak Federation' are not to be transferred till they complete three years on the said post. He refers to the document dated 29-10-2018 wherein he is said to be appointed as District Treasurer. On that basis, he sought to interdict the order of the transfer as well as the impugned order passed by the learned Single Judge.
5. Per contra, learned counsel for the State submits that the contentions of the appellant are not correct. He points out that the nomination letter dated 29-10-2018 is with regard to handing over the post of Treasurer to the appellant/ petitioner in furtherance to the post of the Media-In-Charge. He further submits that the appellant/ petitioner could not able to brought any document on record in the writ petition or before this Court as well as before the authority who decided the representation, since when he is holding the post of Media-in-charge with the Chhattisgarh Sahayak Shikshak

Federation. He lastly submits that the ground raised by the appellant was considered and found that it was not supported by necessary document showing period of working as Media-in-charge.

6. We have heard the learned counsel for the appellant as well as learned counsel representing the State and perused the record.
7. In connection with the transfer policy of 2019, we find it appropriate to extract clause 1.4 for ready reference:

“1.4 कर्मचारी संघ के पदाधिकारियों के स्थानांतरण के सम्बन्ध में सामान्य प्रशासन विभाग द्वारा समय समय पर जारी मार्गदर्शी सिद्धांतों / निर्देशों का पालन किया जाएगा।”

8. Perusal of clause 1.4 of the transfer policy shows that the members of the Federation who are holding any post shall be transferred in accordance with the direction/ circular issued by the General Administration Department time to time. The submission made by the learned counsel for the appellant that as he is holding the post of Treasurer of the Federation since 29-10-2018 and therefore he could not be transferred for a further period of 3 years from the date of his first coming on to the post of Treasurer, is also not sustainable in view of the fact that the document on which the learned counsel for the appellant has placed his reliance i.e. the order dated 29-10-2018 itself shows that the appellant was discharging duties of the post of Media-In-Charge of the Federation up till 29-10-2018 and he will continue to hold the same till further, but he could not able to point out that since how long he is holding the said post to appreciate the submissions of the learned counsel for the appellant that the office bearer cannot be transferred within 3 years from the date of his appointment on the post of Federation.

9. The learned Single Judge has taken into consideration the policy of 2019 and held as under:

“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.”

10. The object of Clause 1.4 of transfer policy is to understood in an objective manner. Its object is to provide stability on the posting of elected or nominated post holder of the Federation/ Union but that does not mean that if an employee is shown holding one post after another continuously, he cannot be transferred. This will frustrate the object for which the Government has included Clause 1.4 of Transfer Policy and issued Circular to that effect. Annexure A-2 dated 24-06-1996 relied upon by the appellant also shows that the office bearer of any recognized employee Union will get benefit of relaxation from transfer only up to 3 years and after 3 years such

office bearer can be transferred. Condition of service is of prime importance. It is for the employer to utilize the service of an employee at appropriate place looking to his/her efficiency and administrative exigency. Any employee by holding any post in the Union of employees cannot by itself create any right in his favour in the matter of transfer. It is settled law that transfer is an incidence of service and the Courts should not interfere in the administrative decision taken by employer towards his employee unless and until it is shown that the order passed is without jurisdiction or is an outcome of bias. Learned counsel could not point out any of the above illegality calling interference of this Court.

11. In view of the foregoing facts and circumstances of the case as well as considering the findings and reasonings assigned by the learned Single Judge in the impugned order for dismissal of writ petition, we do not find any infirmity or perversity in the order impugned. The appeal being devoid of any merit which is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge