

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 10405 of 2019**

- Sudhir Hari Shrivastava S/o Late H. Shrivastava Aged About 53 Years Presently Working As Accountant At Office Of District Education Officer, Bemetara, District Bemetara Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur District Raipur Chhattisgarh
2. Committee Of Senior Secretaries Address Department Of General Administration, Mahanadi Bhawan, Atal Nagar, New Raipur Chhattisgarh
3. District Education Officer Bemetara District Bemetara Chhattisgarh

---- Respondents

For Petitioner : Shri S.K. Verma, Advocate

For Respondents/State : Shri Akanksha Jain, Dy. GA

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

1. Heard.
2. This is second round of litigation. Earlier the petitioner having been transferred from Bemetara to Raipur, the same was subject of challenge before this Court in WPS No.6959 of 2019, wherein this Court on 03.09.2019 has passed the following order:-

- “1. The challenge in the present Writ Petition is to the order AnnexureP/1 dated 21.08.2019 whereby the services of the petitioner has been transferred from Bemetara to Raipur.
2. The contention of the petitioner is that the wife of the petitioner is also in government employment and is posted

at Bemetara. Therefore, as per the transfer policy as far as possible the petitioner should have been retained in the same district. Second ground is that the petitioner is working as Accountant which is a Class-III post which is a district Cadre post. Since the petitioner is being transferred to a place out of the district there is all possibility of petitioner's seniority and promotion getting adversely affected.

3. Given the aforesaid facts, let petitioner make a detailed representation to the respondents within a period of 10 days from today and on receipt of representation of the petitioner, respondents shall decide the same within a period of 45 days.

4. Till the representation of the petitioner is decided, the effect and operation of the impugned order Annexure P-1 shall remain stayed."

3. Learned counsel for the petitioner would submit that pursuant to the order passed in WPS No.6959 of 2019 the representation was filed on the ground that by transfer of the petitioner, who is an Assistant Grade-II, his seniority would be affected. It is stated that as per set up, the appointing authority of petitioner is District Education Officer, consequently, on transfer of the petitioner it will have an adverse effect on the promotional avenue in future of him. However, the representation having been filed, the same was decided on 18.10.2019 by the Grievance Redressal Committee, wherein no whisper was made as to what will happen to the seniority of the petitioner if he is transferred or what would be the impact on the career of the petitioner if his seniority is affected.
4. Per contra learned State counsel opposes the arguments advanced by learned counsel for the petitioner and submits that the order of the committee is well merited which do not call for any interference.
5. Perused the Annexure P-2 which is the order of the Committee rejecting the representation of the petitioner, which shows that the comment from the department was called for by the Committee but the same having not been reached, the representation was dismissed on the ground that the transfer is

made on the administrative grounds. When there is a specific order by this Court to decide the representation of the petitioner, it is to be evaluated in the right spirit. The earlier order passed by this Court if read along with the representation, it would show that the petitioner has raised a ground that with the transfer of the petitioner from Bemetara to Raipur, his seniority would be affected. The set up which is filed along with the Rules, it shows that the appointing authority of the A.G.-II & A.G.-III with respect to the Education Department is District Education Officer, therefore, when the ground of seniority has been raised against transfer, it needs to be answered with the reasons.

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. Fajl 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. Taking into such fact, after going through the order of rejecting the representation, I do not find any reason in rejecting the representation to encompass the fact to justify the grounds raised by the petitioner and reasons

were not assigned. It is silent whether on such transfer the petitioner would lose his seniority and it would have some adverse effect to his future prospects for promotion. Consequently, the order dated 18.10.2019 is set aside. The matter is remitted back to the Committee again for adjudication afresh and it is expected that the Committee shall decide the representation by evaluating the facts whether the petitioner would lose his seniority with the transfer to other district or not. The said exercise shall be carried out within a further period of 60 days from the date of receipt of this order. Till then the transfer order of the petitioner shall not be given effect to.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu